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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Doc. No. AMS–FV–12–0067; FV13–915–1 FR]

Avocados Grown in South Florida; Change in Minimum Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the minimum grade requirements currently prescribed under the Florida avocado marketing order (order). The order regulates the handling of avocados grown in South Florida, and is administered locally by the Avocado Administrative Committee (Committee). This action increases the current minimum grade requirement from a U.S. No. 2 to a U.S. Combination grade for avocados shipped to destinations outside of the production area. Increasing the minimum grade requirement aligns marketing order regulations with current industry practices to the benefit of growers, handlers, and consumers.

DATES: *Effective Date:* August 21, 2013.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–7893, or Email: *Doris.Jamieson@ams.usda.gov* or *Christian.Nissen@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 915, as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of entry of the ruling.

This final rule revises the minimum grade requirements currently prescribed under the order. This rule increases the current minimum grade requirement from a U.S. No. 2 to a U.S. Combination grade for avocados shipped to destinations outside of the production area and was recommended by the Committee at a meeting on October 10, 2012.

Section 915.51 of the order provides, in part, authority to issue regulations establishing specific grade requirements for avocados. Section 915.52 of the order provides authority for the modification, suspension or termination of established regulations.

Section 915.306 of the order's container and pack regulations prescribe grade, pack, and container marking requirements for Florida avocados. Paragraph (a)(1) of that section prescribes, in part, that no handler shall handle any variety of avocados grown in the production area unless such avocados grade at least U.S. No. 2.

While marketing order regulations specify a minimum grade requirement of a U.S. No. 2, it is standard industry practice to ship avocados to destinations outside of the production area at the higher grade of a U.S. Combination, especially at the beginning of the season. The minimum requirement for a U.S. Combination grade provides that at least 60 percent of the fruit in the pack must meet the U.S. No. 1 grade and the remaining fruit must meet at least a U.S. No. 2 grade. Handlers have voluntarily shipped the higher grade fruit in order to get the best price for growers and to provide quality fruit to consumers.

During the first four months of the 2012–13 season, the volume of U.S. No. 2 grade fruit was 13 percent higher than shipments of that grade during the comparable period of the previous season. Buyers were reluctant to pay a higher price for the better grade fruit when they could purchase the lower grade fruit for less. This negatively affected the price of the U.S. Combination grade fruit and resulted in the loss of sales of the higher grade fruit.

During several meetings, Committee members expressed concern that volume of the U.S. No. 2 grade fruit may continue to increase and negatively impact price. Further, the Florida avocado industry has established a reputation for providing consumers with high quality fruit and the Committee believes shipping U.S. No. 2 grade fruit outside of the production area could lower that standard.

As the majority of handlers are currently shipping at the higher grade, it is not anticipated that this change will reduce overall shipments. Even though there was an increase in shipments of U.S. No. 2 grade fruit to destinations outside of the production area during the 2012–13 season, Committee data indicates total shipments of U.S. No. 2 grade fruit represented only about one percent of total shipments this season, which were over 1.1 million 55-pound bushel containers.

Consequently, the Committee recommended raising the minimum grade requirement to a U.S. Combination for avocados shipped to destinations outside of the production area. Fruit shipped within the production area will continue to be required to meet the current minimum grade of a U.S. No. 2, which will provide an outlet for U.S. No. 2 grade not utilized in the U.S. Combination pack. This final rule aligns marketing order regulations with current industry practices to the benefit of growers, handlers, and consumers. This rule will help maintain the industry's reputation for providing consumers with high quality avocados from Florida, while continuing to provide handlers with an outlet for their U.S. No. 2 fruit.

One member of the Committee voted against the recommendation. He stated that the minimum grade requirement should be raised, but only during the beginning of the season when domestic production was minimal. He believed that when imports begin arriving in October, the minimum grade should revert back to a U.S. No. 2 in order for the Florida avocado industry to compete with imported fruit. However, the majority of the Committee agreed that the quality of the fruit was the most important issue and shipping the lower grade fruit undermined the high standard established by the Florida avocado industry. Other members of the Committee also commented that they believe raising the minimum grade for Florida avocados will cause the quality of imported fruit to improve to match the industry's higher standard.

Section 8e of the Act provides that when certain domestically produced commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. The changes in this rule apply only to shipments outside of the production area. The current, less restrictive regulations will continue to apply to shipments within the production area and to imported avocados. A clarification will be made to the import regulation in a separate action.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 30 handlers of Florida avocados subject to regulation under the order and approximately 300 producers of avocados in the production area. Small agricultural service firms, which include avocado handlers, are defined by the Small Business Administration (SBA) as those whose annual receipts are less than $7,000,000, and small agricultural producers are defined as those having annual receipts less than $750,000 (13 CFR 121.201).

According to Committee data and information from the National Agricultural Statistical Service, the average price for Florida avocados during the 2011–12 season was approximately $20.79 per 55-pound bushel container and total shipments were slightly higher than 1.2 million 55-pound bushels. Using the average price and shipment information provided by the Committee, the majority of avocado handlers could be considered small businesses under SBA's definition. In addition, based on avocado production, producer prices, and the total number of Florida avocado producers, the average annual producer revenue is less than $750,000. Consequently, the majority of avocado handlers and producers may be classified as small entities.

This final rule revises the minimum grade requirements currently prescribed for Florida avocados under § 915.306 of the order. This change raises the minimum grade from a U.S. No. 2 to a U.S. Combination grade for avocados shipped to destinations outside of the production area and aligns marketing order regulations with current industry practices. This rule was recommended by the Committee at a meeting on October 10, 2012. Authority for this action is provided in §§ 915.51 and 915.52 of the order.

Any additional costs associated with this change are anticipated to be minimal. The order requires that all containers be marked with the grade of the fruit in the container. However, the vast majority of handlers are currently shipping at the higher grade requirement, and marking their containers accordingly. Any containers currently in inventory that have been pre-stamped with a U.S. No. 2 can be used for shipments within the production area. Therefore, this change should not yield any additional costs.

As previously stated, the volume of U.S. No. 2 grade Florida avocados shipped during a season represents less than one percent of total annual shipments. In addition, the U.S. Combination grade requires that at least 60 percent of the fruit in the pack be a U.S. No. 1 grade and the remaining fruit must meet a U.S. No. 2 grade. Consequently, U.S. No. 2 fruit can be utilized in the U.S. Combination pack. Further, U.S. No. 2 grade avocados can still be shipped to destinations within the production area. Therefore, implementation of this rule is not expected to impact the overall volume of U.S. No. 2 fruit being utilized as adequate uses for such fruit will continue to exist.

Raising the minimum grade requirement aligns marketing order requirements with current industry practices. Consumers benefit as a result of the higher quality pack available in the marketplace. It also builds consumer confidence and improves grower returns. The benefits of this rule are not expected to be disproportionately greater or smaller for small handlers or growers than for large entities.

The Committee considered alternatives to this recommended change. The Committee discussed raising the minimum grade to U.S. Combination grade during the early part of the season and then reverting back to the minimum grade requirement of a U.S. No. 2 in October when imported fruit typically begins arriving in the U.S. There was concern that having the higher grade requirements in effect when imports begin arriving would make it difficult for the domestic industry to compete. However, the Committee agreed that the quality of the fruit was the most important issue and shipping the lower grade fruit undermined the high standard established by the Florida avocado industry. Also, Committee members stated that they believe raising the minimum grade for Florida avocados shipped outside of the production area for the entire season would result in improved quality of both domestic and imported avocados, as importers would likely strive to match the quality standards set by the Florida avocado industry. Therefore, this alternative was rejected.

The Committee also considered changing the minimum grade requirements for all Florida avocados handled, regardless of market destination. However, maintaining the current minimum grade requirement for avocados shipped to destinations within the production area provides an outlet for U.S. No. 2 grade fruit not utilized in

the higher grade packs. Therefore, the Committee also rejected this alternative.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189, Generic Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule revises the minimum grade requirement under the Florida avocado marketing order. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large Florida avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule. Further, no comments were received concerning the initial regulatory flexibility analysis.

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

In addition, the Committee's meeting was widely publicized throughout the Florida avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 10, 2012, meeting was a public meeting. All entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on May 23, 2013 (78 FR 30782). Copies of the rule were mailed or sent via facsimile to all Committee members and avocado handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending June 24, 2013, was provided to allow interested persons to respond to the proposal. No comments were received. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) as handlers are already shipping avocados for the 2013–14 season. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 915

Avocados, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

■ 1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 915.306, paragraph (a)(1) is revised to read as follows:

§ 915.306 Florida avocado grade, pack and container marking regulation.

(a) * * *

(1) Such avocados grade at least U.S. Combination, except that avocadoes handled to destinations within the production area grade U.S. No. 2 and except further that such avocados may be placed in containers with avocados of dissimilar varietal characteristics.

* * * * *

Dated: August 14, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–20274 Filed 8–19–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Doc. No. AMS–FV–12–0042; FV12–929–2 FR]

Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Revising Determination of Sales History

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the determination of sales history provisions currently prescribed under the cranberry marketing order (order). The order regulates the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, and is administered locally by the Cranberry Marketing Committee (Committee). This rule modifies sales history calculations so that they are applicable for future seasons and adjusts the number of years that can be considered when determining the highest four years of past sales.

DATES: *Effective Date:* August 21, 2013.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or Email: *Doris.Jamieson@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 929, as amended (7 CFR part 929), regulating the handling of cranberries produced in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the

State of New York, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule revises the order's rules and regulations pertaining to the determination of grower sales history. This change modifies sales history calculations so that they are applicable for future seasons and adjusts the number of years that can be considered when determining the highest four years of past sales. These changes were unanimously recommended by the Committee at a meeting on February 20, 2012.

The order provides authority for volume control in the form of a grower allotment program. This program provides a method for limiting the quantity of cranberries that handlers may purchase or handle on behalf of growers in years of oversupply. Under this program, a marketable quantity and allotment percentage are established by the Committee. Each grower's sales history is calculated by averaging recent years' sales data using information submitted by the grower on a production and eligibility report filed with the Committee. If volume control regulations are to be implemented, each grower's allotment is then calculated by multiplying the allotment percentage by the grower's sales history.

Section 929.48 of the order prescribes provisions for computing grower sales history. These provisions include a requirement that a new sales history be calculated for each grower after each crop year, using the formula established in § 929.48(a) or such other formula as determined by the Committee, with the approval of the Secretary. Section 929.149 provides another formula for calculating grower sales history, which includes provisions for additional sales history to make calculations more equitable for growers with new acreage. The calculations in this section are currently based on, and specifically reference, the six years immediately preceding the last year volume regulation was in effect, 2001–02, making them applicable for only the one season. This section also specifies that sales history can be calculated using the average of the highest four of the most recent seven years of sales for acreage with seven or more years of sales history.

In an effort to update the regulations pertaining to the calculation of grower sales history, the Committee recommended two changes to § 929.149. The first change removes the outdated references to specific years used in calculating sales history. The second change reduces the maximum number of years of sales that can be used to determine the highest four years of sales from seven years to six years.

The formula for determining sales history in § 929.149 was developed specifically for the implementation of volume regulation during the 2001–02 season, the last time volume regulation was used under the order. The Committee developed the formula to address potential inequities that could result when calculating sales history, especially in regards to new acreage. Because a cranberry bog does not reach full production capacity until several years after being planted, using an average of early sales for bogs which have not reached maturity could result in a sales history that does not reflect future sales potential. Because calculated sales history impacts the amount of allotment received under volume regulation, it is important that the calculated sales history is as representative of grower sales as possible.

Therefore, in 2001 the Committee created a formula to determine an amount of additional sales history per acre to be applied to acreage planted in 1995, 1996, 1997, 1998, 1999, and 2000. To help establish the additional amount of sales volume to be provided for new acreage, the Committee and USDA conducted surveys to determine average yields on new acreage over the first five years of production. Recognizing that the averages may not be reflective of all growers, the averages were adjusted upward by 25 barrels and were used to calculate the numbers for additional sales history provided in Table 1 in § 929.149 for bogs planted from 1995 through 2000.

At its February 20, 2012, meeting, the Committee discussed the volume regulation provisions in the order's rules and regulations and how these provisions may need to be updated for upcoming seasons in the event volume regulation is implemented. The Committee reviewed § 929.149 and how it calculates sales history and agreed that the adjustments for additional sales history were still important in establishing equity for new acreage.

Recognizing the specific dates currently in § 929.149 are not applicable for future seasons, the Committee recommended revising this section to remove the date-specific language so that it is applicable to each individual season. Rather than referring to acreage planted in the years 1995 through 2000, this revision refers to acreage planted between one and six years prior to the current season. With this change, § 929.149 is applicable to the calculation of grower sales history for any season, making the additional sales history adjustment available to growers with new acreage.

In regards to the specific amounts of additional sales history per acre provided for new acreage in Table 1 in § 929.149, the Committee recommended no change. While the amounts were based on production data collected in 2000, the majority of cranberry production still comes from the same variety as in 2000, as do the majority of new plantings. Further, with the average yields used to calculate the amounts increased by 25 barrels, the calculated yields used to develop the additional sales history should still be reflective of the average yields for new acreage. Therefore, the current amounts of additional sales history to be applied per acre for new or re-planted cranberry acreage remain unchanged by this final rule.

The Committee also discussed the time period that should be used to determine a grower's highest four years of sales when calculating sales history. Section 929.149 currently uses the average of the highest four of the most recent seven years of sales for acreage with seven or more years of sales history. The formula in § 929.48 calculates sales history using the average of the highest four of the most recent six years of sales. The additional year provided for in § 929.149 was to compensate growers for possible lower

sales numbers stemming from volume regulation in 2000–01, so that grower sales history would be more reflective of their typical sales. Committee members agreed that since volume regulation has not been implemented for more than six years, the additional year is no longer needed, and that the most recent six years of sales data is adequate for determining a grower's highest four years of sales.

Therefore, this final rule revises § 929.149 to remove the outdated references to specific years so that its provisions can be utilized to calculate a grower's sales history for all future seasons. The final rule also reduces the time period used to determine the highest four years of sales from seven years to six years.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 55 handlers of cranberries who are subject to regulation under the marketing order and approximately 1,200 cranberry producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

Based on Committee data and information from the National Agricultural Statistics Service, the average annual f.o.b. price of cranberries during the 2012 season was approximately $41.25 per barrel and total shipments were approximately 8.0 million barrels. Using the average f.o.b. price and shipment data, the majority of cranberry handlers could be considered small businesses under SBA's definition. In addition, based on production, producer prices, and the total number of cranberry growers, the average grower revenue is less than $750,000. Therefore, the majority of growers and handlers of cranberries may be considered small entities.

This final rule revises the rules and regulations pertaining to the determination of sales history currently prescribed under the order in § 929.149. This change updates sales history calculations so that they are applicable for future seasons and adjusts the number of years that can be considered when determining the highest four years of past sales. These changes were unanimously recommended by the Committee at a meeting on February 20, 2012. Authority for these changes is provided in § 929.48 of the order.

It is not anticipated that this action will impose any additional costs on the industry. Each year, the Committee is required to calculate a sales history for each grower. This rule updates § 929.149 making its provisions for calculating grower sales history applicable to any season. Reducing the number of seasons that can be considered when determining the highest four years of sales from seven years to six years in this section, could result in a slightly lower average for the highest four years. However, as this change makes this section reflect the calculation currently used by the industry for the highest four, and given that a grower allotment volume regulation has not been implemented in more than ten years, the effects of this change should be minimal.

Further, the provisions in § 929.149 were developed to make the calculations of sales history more equitable for growers with new acreage. Because a cranberry bog does not reach full production capacity until several years after being planted, using an average of early sales for bogs which have not reached maturity could result in sales histories that do not reflect future sales potential. As calculated sales history impacts the amount of allotment received under volume regulation, it is important that the calculated sales history is as representative of grower sales as possible. Revising the calculations in § 929.149 could actually increase the calculated amount of sales history for new acreage, which in turn would provide the grower with additional allotment should volume regulation be implemented. The benefits of this rule are not expected to be disproportionately greater or less for small handlers or growers than for large entities.

The Committee considered one alternative to these changes: Making no change to the rules and regulations pertaining to the determination of sales history. The Committee recognized making no revisions to the way sales history is calculated under § 929.149 could mean new acreage not yet producing at full capacity could receive sales history below their potential average. Therefore, this alternative was rejected.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189, Generic Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large cranberry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule. Further, no public comments were received concerning the proposal not addressing the initial regulatory flexibility analysis.

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

In addition, the Committee's meeting was widely publicized throughout the cranberry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 20, 2012, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on May 14, 2013 (78 FR 28149). Copies of the rule were mailed or sent via facsimile to all Committee members and cranberry handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending June 13, 2013, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may

be viewed at: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee is planning its next industry meeting for August, and having this final rule in place would be helpful to any discussion involving volume control. Further, the industry is aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is amended as follows:

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

■ 1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 929.149 is amended by revising paragraph (a), the first sentence in paragraph (b), paragraphs (c) and (d), and Table 1 to read as follows:

§ 929.149 Determination of sales history.

* * * * *

(a) For each grower with acreage with 6 or more years of sales history, a new sales history shall be computed using an average of the highest 4 of the most recent 6 years of sales. If the grower has acreage with 5 years of sales history and such acreage was planted more than 6 years ago, a new sales history shall be computed by averaging the highest 4 of the 5 years.

(b) For growers whose acreage has 5 years of sales history and was planted 6 years ago or later, the sales history shall be computed by averaging the highest 4 of the 5 years and shall be adjusted as provided in paragraph (d). * * *

(c) For growers with acreage with no sales history or for the first harvest of re-planted acres, the sales history will be 75 barrels per acre for acres planted or re-planted 1 year ago and first harvested in the current crop year and 156 barrels per acre for acres planted or re-planted 2 years ago and first harvested in the current crop year.

(d) In addition to the sales history computed in accordance with paragraphs (a) and (b) of this section, additional sales history shall be assigned to growers with acreage planted in the last 6 years. The additional sales histories depending on the date the acreage is planted are shown in Table 1.

TABLE 1—ADDITIONAL SALES HISTORY ASSIGNED TO ACREAGE

Date planted	Additional current crop year sales history per acre
6 years ago	49
5 years ago	117
4 years ago	157
3 years ago	183
2 years ago	156
1 year ago	75

* * * * *

Dated: August 14, 2013.

Rex A Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–20253 Filed 8–19–13; 8:45 am]

BILLING CODE 3410–02–P

FARM CREDIT ADMINISTRATION

12 CFR Part 610

RIN 3052–AC78

Registration of Mortgage Loan Originators

AGENCY: Farm Credit Administration.

ACTION: Interim rule with request for comments.

SUMMARY: The Farm Credit Administration (FCA, we or us) is repealing its regulations that govern the registration of residential mortgage loan originators employed by Farm Credit System (FCS or System) institutions. We are repealing these regulations because the Bureau of Consumer Financial Protection (CFPB), pursuant to its authority under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), is consolidating and recodifying the regulations that six Federal agencies jointly enacted to implement the Secure and Fair Enforcement for Mortgage Licensing Act (S.A.F.E. Act), which require residential mortgage loan originators at banks, savings associations, credit unions, FCS institutions, and their subsidiaries to register with the National Mortgage Licensing System and Registry (NMLSR or Registry) and obtain a unique identifier. Repealing these regulations avoids duplication, which is likely to cause confusion at FCS institutions.

DATES: This interim rule will become effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish notice of the effective date in the **Federal Register**. Please send your comments to us by September 19, 2013.

ADDRESSES: We offer a variety of methods for you to submit your comments. For accuracy and efficiency, commenters are encouraged to submit comments by email or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send us an email at *regcomm@fca.gov.*
- *FCA Web site: http://www.fca.gov.* Select ''Public Comments'' and follow the directions for ''Submitting a Comment.''
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Gary K. Van Meter, Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at *http://www.fca.gov.* Once you are in the Web site, select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Reading Submitted Public Comments.'' We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove

email addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:
Gaylon J. Dykstra, Assistant to the Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4056; or
Richard A. Katz, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION:

I. Background

On July 30, 2008, Congress enacted the S.A.F.E. Act,[1] which mandated a nationwide system for licensing and/or registering all residential mortgage loan originators in the United States. The S.A.F.E. Act requires all residential mortgage loan originators at depository institutions, FCS institutions, and their federally regulated subsidiaries to: (1) Register with the NMLSR; (2) obtain a unique identifier; and (3) maintain their registration.[2] Originally, section 1507 of the S.A.F.E. Act required the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the former Office of Thrift Supervision, and the National Credit Union Administration (collectively the Federal banking agencies) and the FCA to jointly develop and maintain a system for registering residential mortgage loan originators at the institutions they supervise and regulate. The six agencies decided to implement section 1507 of the S.A.F.E. Act through a joint rulemaking. The six agencies jointly published a proposed rule on June 9, 2009.[3] A joint final rule was issued on July 28, 2010,[4] and it became effective on October 1, 2010. However, actual registration with the NMLSR did not begin until the Registry became operational on January 31, 2011. The six agencies announced that the initial registration period for Federal registrations required by the S.A.F.E. Act and the final regulations would run from January 31, 2011, through July 29, 2011.[5]

Title X of the Dodd-Frank Act created the CFPB as the Federal agency that is primarily responsible for various Federal consumer financial protection laws.[6] Since July 21, 2011, the CFPB has authority to prescribe rules or issue orders or guidelines pursuant to Federal consumer financial laws.[7] The S.A.F.E. Act is an enumerated consumer financial law under the Dodd-Frank Act[8] and, therefore, the CFPB now has primary regulatory authority over it. Additionally, section 1100 of the Dodd-Frank Act amended section 1507 of the S.A.F.E. Act to transfer authority to develop and maintain the Registry from the FCA and the Federal banking agencies to the CFPB. As stated earlier, the FCA and the Federal banking agencies jointly enacted regulations to implement section 1507 of the S.A.F.E. Act.

Pursuant to its authorities under title X of the Dodd-Frank Act, the CFPB has consolidated and recodified the S.A.F.E. Act regulations of the FCA and the Federal banking agencies.[9] The CFPB recently published an interim rule in the **Federal Register**.[10] Instead of substantively amending the current regulations, the CFPB has made only certain technical, formatting, and stylistic changes.[11]

The CFPB consulted with the FCA and the Federal banking agencies when it drafted the interim rule. The CFPB has addressed all of the FCA's concerns, and it has gone to great lengths to ensure that the consolidated and recodified rule does not inadvertently conflict with provisions of the Farm Credit Act of 1971, as amended, and FCA regulations and other guidance that govern the lending authorities and corporate structure of FCS institutions. Additionally, the CFPB's interim rule does not impose any new substantive obligations on System institutions or their employees who are subject to the registration requirements of the S.A.F.E. Act.[12] As stated in the preamble to its interim rule, the CFPB considers employees of FCS associations who previously registered with the NMLSR and obtained unique identifiers in accordance the FCA's S.A.F.E. Act regulations to remain registered under its new regulations.[13]

Under these circumstances, the CFPB's consolidation and recodification of S.A.F.E. Act regulations causes no concerns to the FCA. Three provisions in title X of the Dodd-Frank Act pertain to the FCA's rulemaking authority over the S.A.F.E Act,[14] while section 1022 of the Dodd-Frank Act grants the CFPB primary rulemaking authority over consumer financial laws.

The FCA is repealing its S.A.F.E. Act regulations at 12 CFR part 610 in order to avoid confusion and unnecessary duplication. The CFPB's regulation at 12 CFR part 1007 will now govern the registration of residential mortgage loan originators at FCS institutions. To assist FCS institutions in locating part 1007, rescinded part 610 will retain its original heading and include a cross cite to the CFPB's rules governing the Federal registration of residential mortgage loan originators (Regulation G).

The FCA will continue to examine and enforce compliance by FCS

[1] The S.A.F.E. Act is title V of the Housing and Economic Recovery Act of 2008. Public Law 100–289, Division A, Title V, sections 1501–1517, 122 Stat. 264, 2810–2824 (July 30, 2008), codified at 12 U.S.C. 5101–5116.

[2] Separately, other provisions of the S.A.F.E. Act require every State to enact laws for licensing individuals who originate residential mortgages for State-regulated lenders. Residential mortgage loan originators who are licensed by one or more States must also register with the NMLSR, obtain a unique identifier, and maintain their licenses and registrations.

[3] 74 FR 27386 (June 9, 2009).

[4] 75 FR 44656 (July 28, 2009). The entire preamble to the final rule was reprinted at 75 FR 51623 (Aug. 23, 2010) because the footnotes in the preamble that was published on July 28, 2009 were not correctly numbered.

[5] The agencies issued a joint press release on January 31, 2011, and they subsequently published the announcement in the **Federal Register** on 76 FR 6185 (Feb. 3, 2011).

[6] Public Law 111–203, title X, 124 Stat. 1376, 1955–2113, (July 21, 2010).

[7] Section 1061 of the Dodd-Frank Act transferred the ''consumer financial protection functions'' of the Federal banking agencies, the Department of Housing and Urban Development (HUD), and the Federal Trade Commission to the CFPB. The ''consumer financial protection functions'' that transferred to the CFPB under section 1061(a)(1) of the Dodd-Frank Act include ''all authority to prescribe rules or issues orders or guidelines pursuant to any Federal consumer financial law. . . .''

[8] *See* section 1002(12)(N) of the Dodd-Frank Act, which classifies the S.A.F.E. Act as one of the ''enumerated consumer laws,'' and section 1002(14), which includes these ''enumerated consumer laws'' within the definition of a ''Federal consumer financial law.''

[9] The CFPB also has recodified the regulations that HUD promulgated under the S.A.F.E. Act to coordinate State compliance with the S.A.F.E. Act, and establish and maintain a licensing and registration system for residential mortgage loan originators in a State or territory that does not have one in place that meets the requirements of the S.A.F.E. Act.

[10] *See* 76 FR 78483 (December 19, 2011). The interim rule became effective on December 30, 2011, and the comment period expired on February 17, 2012.

[11] *See* 76 FR 78484 (December 19, 2011).

[12] *Id.*

[13] *Id.*

[14] Section 1027(k) of the Dodd-Frank Act states ''No provision of this title [X] shall be construed as altering, amending, or affecting the authority of the Farm Credit Administration to *adopt rules,* initiate enforcement proceedings, or take any other action with respect to a [Farm Credit System institution].'' (Emphasis added). Second, section 1100 of the Dodd-Frank Act retained the FCA's authority under section 1510 of the S.A.F.E. Act to ''charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry, to the extent that such fees are not charged to consumers for access to such system and registry.'' If the FCA were to assess such fees, it would do so only after a notice and comment rulemaking. Finally, the FCA, in contrast to the Federal banking agencies, is not a ''transferor agency'' under section 1061 of the Dodd-Frank Act.

institutions and their employees with the requirements of the S.A.F.E. Act and its implementing regulations pursuant to its authorities under the Farm Credit Act of 1971 and sections 1024(f) and 1027(k) of the Dodd-Frank Act.

II. Administrative Procedure Act

The Administrative Procedure Act (APA) [15] generally requires Federal agencies to give public notice that it is proposing to adopt, amend, or repeal a regulation, and then afford all interested parties an opportunity to comment before promulgating a final rule. However, a provision of the APA [16] authorizes waiver of notice and comment rulemaking when an agency, for good cause, finds that notice and comment are impracticable, unnecessary, or contrary to the public interest.

The FCA finds good cause for waiving notice and comment in this situation. Section 1100 of the Dodd-Frank Act amended section 1507 of the S.A.F.E. Act by granting the CFPB authority to develop and maintain the Registry that the FCA and the Federal banking agencies previously exercised. Since the FCA and Federal banking agencies implemented the S.A.F.E. Act by jointly enacting regulations, the CFPB assumed responsibility for these regulations, by operation of law, on July 21, 2011. The CFPB is now exercising its new authority under title X of the Dodd-Frank Act by consolidating and recodifying the S.A.F.E. Act regulations of the FCA and the Federal banking agencies without substantive change. Under the circumstances, repeal of the FCA's regulations in part 610 conforms with title X of the Dodd-Frank Act. For these reasons, the FCA finds that notice and comment rulemaking procedures for the repeal of the FCA's regulations in part 610 are impractical, unnecessary, and contrary to the public interest because the CFPB, not the FCA, now has primary rulemaking authority over S.A.F.E. Act, which the CFPB is now exercising.

Although notice and comment rulemaking is not required in this situation, we invite your comments. We will respond to any comments we receive when we publish the final rule.

III. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA certifies that the interim rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 610

Banks, banking, Consumer protection, Loan programs—housing and community development, Mortgages, Reporting and recordkeeping requirements, Rural areas.

■ For the reasons stated in the preamble, part 610 of chapter VI, title 12 of the Code of Federal Regulations is revised to read as follows:

PART 610—REGISTRATION OF MORTGAGE LOAN ORIGINATORS

Authority: Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 1.13, 2.2, 2.4, 2.12, 5.9, 5.17, 7.2, 7.6, 7.8 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2021, 2073, 2075, 2093, 2243, 2252, 2279a–2, 2279b, 2279c–10); and secs. 1501 *et seq.* of Pub. L. 110–289, 122 Stat. 2654.

§ 610.101 Cross reference.

The rules formerly at 12 CFR part 610 have been recodified by the Consumer Financial Protection Bureau at 12 CFR part 1007, ''S.A.F.E. Mortgage Licensing Act—Federal Registration of Residential Mortgage Loan Originators (Regulation G)''.

Dated: August 14, 2013.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2013–20276 Filed 8–19–13; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0353; Directorate Identifier 2008–SW–029–AD; Amendment 39–17545; AD 2013–16–07]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Eurocopter France (Eurocopter) Model AS332C, AS332L, AS332L1, AS332L2, and EC225LP helicopters to require inspecting for the presence of blind holes in the tail gearbox (TGB) attachment fittings, and, if they are missing, installing an additional washer under the head of the attachment bolt until the attachment fitting is replaced with an airworthy attachment fitting. This AD was prompted by the discovery of interference between the TGB aft attachment bolt and the structure fitting, caused by a manufacturing anomaly that omitted the blind hole required for proper fit of the attachment bolt. This condition, if not detected and corrected, could result in insufficient tightening of the TGB casing, damage to the TGB attachment, cracking under the attachment bolt, and loss of the TGB, resulting in loss of control of the helicopter.

DATES: This AD is effective September 24, 2013.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of September 24, 2013.

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

[15] 5 U.S.C. 551 *et seq.*

[16] 5 U.S.C. 553(b).

Discussion

On April 22, 2013, at 78 FR 23686, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to Eurocopter Model AS332C, AS332L, AS332L1, AS332L2, and EC225LP helicopters, serial numbers (S/N) up to and including 2680 and S/N 9000 through 9009. The NPRM proposed to require inspecting for the presence of blind holes in the TGB attachment fittings, and, if they are missing, installing an additional washer under the head of the attachment bolt until the attachment fitting is replaced with an airworthy attachment fitting. The proposed requirements were intended to prevent insufficient tightening of the TGB casing, damage to the TGB attachment, cracking under the attachment bolt, and loss of the TGB, resulting in loss of control of the helicopter.

The NPRM was prompted by AD No. F–2007–027, dated January 2, 2008 (F–2007–027), issued by the Direction Générale de L'Aviation Civile France (DGAC), the aviation authority for France. DGAC issued F–2007–027 to correct an unsafe condition for certain Eurocopter AS332 series and EC225 LP helicopters. The DGAC advises that during a scheduled maintenance check, a helicopter was discovered to have interference between the threaded section of the aft attachment bolt and the structure fitting. The interference is because of a manufacturing anomaly in the fittings that omitted the blind hole for bolt clearance in the structure fitting. Interference from this missing blind hole does not permit correct axial tightening of the TGB casing, even if the correct torque load is applied to the attachment bolt. Insufficient tightening of the bolt can damage the TGB attachment and initiate a crack under the head of the attachment bolt. This condition, if not corrected, could result in loss of the TGB and subsequent loss of control of the helicopter.

Comments

We gave the public the opportunity to participate in developing this AD, but we received no comments on the NPRM (78 FR 23686, April 22, 2013).

FAA's Determination

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

Related Service Information

Eurocopter has issued one Emergency Alert Service Bulletin (EASB), Revision 1, dated January 4, 2008, with four different numbers. EASB No. 53.01.58 is for the Model AS332 series helicopters; EASB No. 53.00.58 is for the Model AS532 series helicopters, which are not FAA type certificated; EASB No. 53A012 is for the Model EC225LP helicopter; and EASB No. 53A011 is for the Model EC 725AP helicopter, which is not FAA type certificated. The EASB specifies inspecting the forward and aft attachment fittings for proper depth of the bolt holes. If the bolt holes are less than the minimum depth, the EASB specifies checking the condition of the bolt. If there are no signs of chafing or contact, the EASB calls for adding an additional washer to the bolt and reinstalling the bolt in the TGB attachment fitting. If there are signs of chafing or contact, the EASB requires replacing the bolt with an airworthy bolt and two washers. The DGAC classified this EASB as mandatory and issued F–2007–027 to ensure the continued airworthiness of these helicopters.

Costs of Compliance

We estimate that this AD affects six helicopters of U.S. registry. Based on an average estimated labor cost of $85 per work-hour, we estimate the following costs:

- Inspecting the TGB for the presence of a blind hole requires 0.50 work-hour for a labor cost of about $43. No parts are needed, so the cost totals $43 per helicopter, or $258 for the fleet.
- Replacing bolts and adding a second washer if needed requires 0.50 work-hour for a labor cost of about $43. Parts cost about $200 for three replacement bolts and the washers for a total cost of $243 per helicopter.
- Replacing the TGB attachment fitting with an airworthy fitting requires 40 work-hours for a labor cost of $3,400. Parts cost about $1,921 for a total cost of $5,321 per helicopter.

Authority for this Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–16–07 Eurocopter France Helicopters: Amendment 39–17545; Docket No. FAA–2013–0353; Directorate Identifier 2008–SW–029–AD.

(a) Applicability

This AD applies to Eurocopter France (Eurocopter) models AS332C, AS332L, AS332L1, AS332L2, and EC225LP helicopters, serial numbers (S/N) up to and including 2680 and S/N 9000 through 9009, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as interference between the tail gearbox (TGB) attachment bolt and the structure fitting. This condition could result in insufficient tightening of the TGB casing, damage to the TGB attachment, cracking under the attachment bolt, loss of the TGB and consequently, loss of helicopter control.

(c) Effective Date

This AD becomes effective September 24, 2013.

(d) Compliance

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

(e) Required Actions

Within 50 hours time-in-service (TIS):

(1) Inspect the TGB aft attachment fitting to measure the dimension for a blind hole as follows:

(i) Remove the TGB attachment bolt (c) but retain washer (d) as depicted in Detail A, Figure 1, of Eurocopter Emergency Alert Service Bulletin (EASB) No. 53.01.58 and EASB No. 53A012, both Revision 1, and both dated January 4, 2008.

(ii) Use a depth gauge to measure dimension ''x'' between the top face of the washer (d) and the bottom of aft fitting (a) as depicted in Detail A, Figure 1, of the EASB.

(2) If the measurement is equal to or greater than 81 mm, then the blind hole is present. Install the TGB attachment bolt (c) with its washer (d) as depicted in Detail A, Figure 1, of EASB No. 53.01.58 or No. 53A012. Lock with lockwire.

(3) If the measurement is less than 81 mm, then the blind hole is missing. Inspect the end of the threaded section of bolt (c) for chafing or a contact mark, as depicted in Area 1, Figure 1, of the EASB.

(i) If there is no chafing and no contact marks, install bolt (c) with washer (d) and additional washer (2) as depicted in Detail B, Figure 1, of EASB No. 53.01.58 or No. 53A012.

(ii) If there is chafing or a contact mark, replace the TGB attachment bolt (c) with an airworthy bolt and install with washer (d) and additional washer (2) as depicted in Detail B, Figure 1, of EASB No. 53.01.58 or No. 53A012. Lock with lockwire.

(iii) Within the next 825 hours TIS, replace the TGB aft attachment fitting with an airworthy attachment fitting.

(4) Inspect the right and left attachment points of the TGB forward attachment to measure the dimension for a blind hole, as follows:

(i) Remove both TGB attachment bolts (c) but retain washers (d), as depicted in Detail A, Figure 2, of EASB No. 53.01.58 or No. 53A012.

(ii) Use a depth gauge to measure dimension ''x'' between the top face of washer (d) and the bottom of forward fitting (b) at the right and left attachment points, as depicted in Detail A, Figure 2, of EASB No. 53.01.58 or No. 53A012.

(5) If both measurements are equal to or greater than 81 mm, then the blind hole is present. Install TGB attachment bolt (c) with its washer (d), as depicted in Detail A, Figure 2, of EASB No. 53.01.58 or No. 53A012. Lock with lockwire.

(6) If one or both measurements are less than 81 mm, then the blind hole is missing. Inspect the end of the threaded section of each bolt (c) for chafing or a contact mark, as depicted in Area 1, Figure 2 of EASB No. 53.01.58 or No. 53A012.

(i) If there is no chafing and no contact marks, for each attachment point, install bolt (c) with washer (d) and additional washer (2), as depicted in Detail B, Figure 2, of EASB No. 53.01.58 or No. 53A012.

(ii) If there is chafing or a contact mark, replace each the TGB attachment bolt (c) with an airworthy bolt and install bolt (1) with washer (d) and additional washer (2), as depicted in Detail B, Figure 2, of EASB No. 53.01.58 or No. 53A012. Lock with lockwire.

(iii) Within the next 825 hours TIS, replace the TGB forward attachment fitting with an airworthy attachment fitting.

(f) Alternative Methods of Compliance (AMOCs)

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

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

(g) Additional Information

The subject of this AD is addressed in the Direction Générale de L'Aviation Civile (DGAC) France AD No F–2007–027, dated January 2, 2008. You may view the DGAC AD in the AD Docket on the Internet at *http://www.regulations.gov.*

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6520, Tail Rotor Gearbox.

(i) Material Incorporated by Reference

(1) The Director of the **Federal Register** approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Eurocopter EASB No. 53.01.58, Revision 1, dated January 4, 2008.

(ii) Eurocopter EASB No. 53A012, Revision 1, dated January 4, 2008.

Note 1 to paragraph (i)(2): Eurocopter EASB No. 53.01.58 and No. 53A012, both Revision 1, and both dated January 4, 2008, are co-published as one document along with Eurocopter EASB No. 53.00.58 and No. 53A011, also both Revision 1, and both dated January 4, 2008, which are not incorporated by reference in this AD.

(3) For Eurocopter service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub.*

(4) You may view this service information that is incorporated by reference in the AD Docket on the Internet at *http://www.regulations.gov.*

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas, on July 31, 2013.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–19159 Filed 8–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0297; Directorate Identifier 2012–NM–205–AD; Amendment 39–17550; AD 2013–16–12]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–102, –103, and –106 airplanes. This AD was prompted by a report of cracking in a lower longeron in a nacelle. This AD requires repetitive inspections for cracking of the lower longerons in the nacelles, and replacement with new longerons or repair if necessary.

Additionally, this AD specifies an optional terminating action. We are issuing this AD to detect and correct such cracking, which could result in degradation of the structural integrity of the nacelle and possible collapse of the main landing gear (MLG).

DATES: This AD becomes effective September 24, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 24, 2013.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffrey Zimmer, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7306; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR Part 39 to include an AD that would apply to the specified products. The NPRM was published in the **Federal Register** on April 9, 2013 (78 FR 21079). The NPRM proposed to correct an unsafe condition for the specified products. Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2012–27, dated November 2, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> There has been one in-service report where a nacelle lower longeron was found to be cracked during a routine maintenance inspection. The investigation determined that the crack initiated from the right-hand side (RHS) drain hole. Fatigue testing has indicated that both the RHS and left-hand side (LHS) longerons are vulnerable to fatigue cracking. Failure of the nacelle lower longeron would result in a degradation of the structural integrity of the nacelle and could potentially lead to collapse of the main landing gear (MLG).
>
> This [Canadian] AD mandates initial and repeat inspections [for cracking] of the RHS and LHS nacelle lower longerons until the terminating action is accomplished.

The initial inspection may be either a detailed inspection or a bolt-hole eddy current (BHEC) inspection. The repetitive inspection is a BHEC inspection. The corrective action is replacement of the longeron with a new longeron or repair. The optional terminating action is replacement of the nacelle lower longerons, and cold working of the drain holes. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (78 FR 21079, April 9, 2013) or on the determination of the cost to the public.

Changes to Service Information References

Bombardier, Inc. has issued revised service information, which specifies that no additional actions are necessary to address the identified unsafe condition. We have revised this AD to reference Bombardier Service Bulletin 8–54–39, Revision B, dated March 13, 2013, as the appropriate source of service information for accomplishing the required actions.

We have also added Bombardier Service Bulletin 8–54–39, Revision A, dated August 2, 2012, to paragraph (k) of this AD, which provides credit for actions performed before the effective date of this AD.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD with the changes described previously– and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 21079, April 9, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 21079, April 9, 2013).

Costs of Compliance

We estimate that this AD affects 51 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Repetitive Inspections	21 work-hours × $85 per hour = $1,785 per inspection cycle.	$0	$1,785 per inspection cycle.	$91,035 per inspection cycle.

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	100 work-hours × $85 per hour = $8,500	$23,849	$32,349

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures

the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–16–12 Bombardier, Inc.: Amendment 39–17550. Docket No. FAA–2013–0297; Directorate Identifier 2012–NM–205–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective September 24, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–102, –103 airplanes, and airplanes converted to Model DHC–8–106 in accordance with Bombardier Service Bulletin 8–92–07 or Bombardier Service Bulletin 8–92–08, serial numbers 003 through 287 inclusive, with pre-modification 8/1593 nacelle lower longeron installed; certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by a report of cracking in a lower longeron in a nacelle. We are issuing this AD to detect and correct such cracking, which could result in degradation of the structural integrity of the nacelle and possible collapse of the main landing gear (MLG).

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Initial Inspection

At the applicable time specified in paragraph (g)(1), (g)(2), (g)(3), or (g)(4) of this AD: Do a detailed visual inspection or a bolt-hole eddy current (BHEC) test for cracking of each nacelle lower longeron, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–54–39, Revision B, dated March 13, 2013.

(1) For Model DHC–8–102 and -103 airplanes that have accumulated 35,000 total flight cycles or less as of the effective date of this AD: Within 5,000 flight cycles after the effective date of this AD, but not to exceed 36,000 total flight cycles.

(2) For Model DHC–8–102 and -103 airplanes that have accumulated more than 35,000 total flight cycles as of the effective date of this AD: Within 1,000 flight cycles after the effective date of this AD.

(3) For Model DHC–8–106 airplanes with the Pre-Modification 8/1641 configuration, within 500 flight cycles after the effective date of this AD.

(4) For Model DHC–8–106 airplanes with the Post-Modification 8/1641 configuration, within 5,000 flight cycles after the effective date of this AD.

(h) Repetitive BHEC Testing

After accomplishment of the actions required by paragraph (g) of this AD, at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD: Do repetitive BHEC testing for cracking of each nacelle lower longeron, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–54–39, Revision B, dated March 13, 2013, until the terminating action specified in paragraph (j) of this AD is done.

(1) For Model DHC–8–102 and -103 airplanes, at intervals not to exceed 2,500 flight cycles.

(2) For Model DHC–8–106 airplanes, at intervals not to exceed 1,854 flight cycles.

(i) Replacement or Repair of Crack Longeron

If any cracking is found during any inspection required by paragraph (g) or (h) of this AD: Before further flight, replace any cracked nacelle lower longeron with a new longeron, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–54–39, Revision B, dated March 13, 2013; or repair the longeron using a method approved by either the Manager, New York ACO, ANE–170, FAA, or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

(j) Optional Terminating Action

Accomplishment of the actions specified in paragraphs (j)(1) and (j)(2) of this AD constitutes terminating action for the repetitive BHEC testing specified in paragraph (h) of this AD for that longeron only.

(1) Replacement of the nacelle lower longeron, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–54–39, Revision B, dated March 13, 2013.

(2) Cold working of the drain holes, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–54–39, Revision B, dated March 13, 2013.

(k) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 8–54–39, dated March 14, 2012; or using Bombardier Service Bulletin 8–54–39, Revision A, dated August 2, 2012; which are not incorporated by reference in this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York ACO, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7300; fax (516) 794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC

approval letter must specifically reference this AD.

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

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information Canadian Airworthiness Directive CF–2012–27, dated November 2, 2012, for related information, which can be found in the AD docket on the Internet at *http://www.regulations.gov.*

(2) Service information identified in this AD that is not incorporated by reference may be obtained at the address specified in paragraphs (n)(3) and (n)(4) of this AD. You may review copies of this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(n) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR Part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Bombardier Service Bulletin 8–54–39, Revision B, dated March 13, 2013.

(ii) Reserved.

(3) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 1, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–19157 Filed 8–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1180; Directorate Identifier 2012–CE–032–AD; Amendment 39–17539; AD 2013–16–01]

RIN 2120–AA64

Airworthiness Directives; Beechcraft Corporation and Hawker Beechcraft Corporation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Beechcraft Corporation (type certificate previously held by Hawker Beechcraft Corporation) Models 58, 95–C55, E55, and 56TC airplanes; and Hawker Beechcraft Corporation Models 58P and 58TC airplanes (both type certificates previously held by Raytheon Aircraft Company). This AD was prompted by reports of elevator balance weights becoming loose or failing because the balance weight material was under strength and did not meet material specifications. This AD requires inspections of elevator balance weights and replacement of defective elevator balance weights. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective September 24, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 24, 2013.

ADDRESSES: For service information identified in this AD, contact Beechcraft Corporation, B091–A04, 10511 E. Central Ave., Wichita, Kansas 67206; telephone: 1 (800) 429–5372 or (316) 676–3140; fax: (316) 676–8027; email: *tmdc@beechcraft.com;* or Internet: *http://www.beechcraft.com/customer_support/technical_and_field_support.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: T. N. Baktha, Senior Aerospace Engineer, FAA, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4155; fax: (316) 946–4107; email: *t.n.baktha@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR Part 39 to include an airworthiness directive (AD) that would apply to the specified products. The NPRM (77 FR 66566, November 6, 2012) proposed to require inspections of elevator balance weights and replacement of defective elevator balance weights. We followed the NPRM with a supplemental notice of proposed rulemaking (SNPRM) that published in the **Federal Register** on May 15, 2013 (78 FR 28540). The SNPRM proposed to prohibit the installation of designated spare parts and to clarify applicability.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the SNPRM (78 FR 28540, May 15, 2013) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the SNPRM (78 FR 28540, May 15, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the SNPRM.

Costs of Compliance

We estimate that this AD affects 1,326 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of the elevator balance weight.	.5 work-hour × $85 per hour = $42.50	Not applicable	$42.50	$56,355

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of elevator balance weight.	1 work-hour × $85 per hour = $85	$300	$385

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive

(AD): 2013–16–01 Beechcraft Corporation and Hawker Beechcraft Corporation: Amendment 39–17539; Docket No. FAA–2012–1180; Directorate Identifier 2012–CE–032–AD.

(a) Effective Date

This AD is effective September 24, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Beechcraft Corporation (type certificate previously held by Hawker Beechcraft Corporation) Models 58, 95–C55, E55, and 56TC airplanes; and Hawker Beechcraft Corporation Models 58P and 58TC airplanes, all serial numbers, certificated in any category. Both type certificates previously held by Raytheon Aircraft Company.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 2730: Elevator Balance Weight.

(e) Unsafe Condition

This AD was prompted by reports of elevator balance weights becoming loose or failing because the balance weight material was under strength and did not meet material specifications. We are issuing this AD to correct this unsafe condition, which could result in reduced flutter speed and lead to loss of control.

(f) Compliance

Comply with paragraphs (g) through (i), including all subparagraphs, of this AD within the compliance times specified, unless already done.

(g) Inspect Maintenance Records

(1) For Model 58 airplanes, serial numbers TH–1768 through TH–2110, before further flight after September 24, 2013 (the effective date of this AD), review the airplane maintenance records to determine if either of the elevator balance weights have ever been replaced. An owner/operator (pilot) holding at least a private pilot certificate is allowed to do this action.

(i) If, as a result of the maintenance records check, you positively identify that one or both of the elevator balance weights have never been replaced, then complete all of the actions in paragraph (h) and (i), all subparagraphs, as applicable in this AD.

(ii) If, as a result of the maintenance records check, you identify both balance weights have been replaced and you can positively identify by means of an Airworthiness Approval Tag (FAA Form 8130–3) or other positive form of parts identification such as a shipping ticket, invoice, or direct ship authority letter, that the purchase date from Hawker Beechcraft Corporation (also known as Raytheon Aircraft Company or Beechcraft Corporation)

on both balance weights is outside the date range of January 1, 1996, and December 31, 2005, then no further action is required for this AD.

(iii) For a replaced balance weight, if you cannot positively identify the date of purchase of a balance weight from Hawker Beechcraft Corporation (also known as Raytheon Aircraft Company or Beechcraft Corporation), then you must complete all of the actions in paragraph (h) and (i), all subparagraphs, as applicable in this AD.

(2) For Model 58 airplanes, all serial numbers (except TH–1768 through TH–2110), and Models 58TC, 58P, 95–C55, E55, and 56TC airplanes, all serial numbers, before further flight after September 24, 2013 (the effective date of this AD) review the airplane maintenance records to determine if the elevator balance weights have ever been replaced. An owner/operator (pilot) holding at least a private pilot certificate is allowed to do this action.

(i) If, as a result of the maintenance records check, you positively identify that both of the elevator balance weights have never been replaced, then no further action is required for this AD. An owner/operator (pilot) holding at least a private pilot certificate is allowed to do this action.

(ii) If, as a result of the maintenance records check, you identify that one or both of the balance weights have been replaced and you can positively identify by means of an Airworthiness Approval Tag (FAA Form 8130–3) or other positive form of parts identification such as a shipping ticket, invoice, or direct ship authority letter, that the purchase date from Hawker Beechcraft Corporation (also known as Raytheon Aircraft Company or Beechcraft Corporation) is outside the date range of January 1, 1996, and December 31, 2005, then no further action is required for this AD.

(iii) If you cannot positively identify the date of purchase of an aircraft balance weight from Hawker Beechcraft Corporation (also known as Raytheon Aircraft Company or Beechcraft Corporation), then you must perform all of the actions in paragraph (h) and (i), all subparagraphs, as applicable in this AD.

(h) Inspection of Elevator Balance Weight

Before further flight after September 24, 2013 (the effective date of this AD) and thereafter at intervals not to exceed 100 hours time-in-service (TIS) until the replacement required by this AD is done, inspect the elevator balance weights for looseness, failure, and/or working (smoking) fasteners and inserts following the Accomplishment Instructions paragraph 3.A in Hawker Beechcraft Mandatory Service Bulletin SB 55–4089, Revision 1, dated February, 2012.

(i) Replacement of Elevator Balance Weight

(1) Replace the defective elevator balance weight with an airworthy balance weight as specified in the Accomplishment Instructions paragraph 3.A in Hawker Beechcraft Mandatory Service Bulletin SB 55–4089, Revision 1, dated February, 2012, at either paragraph (i)(1)(i) or (i)(1)(ii) of this AD, whichever occurs first:

(i) Before further flight after any inspection required by paragraph (h) of this AD where any looseness, failure, and/or working (smoking) fasteners and inserts are found; or

(ii) Within the next 200 hours TIS after September 24, 2013 (the effective date of this AD).

(2) Replacement of elevator balance weights with airworthy elevator balance weights terminates the 100-hour inspection requirement in paragraph (h) of this AD.

(3) As of September 24, 2013 (the effective date of this AD), do not install P/N 96–610022, P/N 96–61022–5, P/N 96–610022–7, and P/N 96–610022–9 elevator balance weight assemblies, if originally purchased from Hawker Beechcraft Corporation (also known as Raytheon Aircraft Company or Beechcraft Corporation) between January 1, 1996, and December 31, 2005, on any airplane.

(j) Special Flight Permit

Special flight is permitted with the following limitations: Maximum structural cruising speed (V_{no}) = Design Speed for maximum gust intensity (V_b) = 195 Knots Calibrated Airspeed (KCAS), or V_{no}=V_b=195KCAS. This special flight is not allowed into known turbulence, and the duration of this flight should not be more than a total of 10 hours TIS.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(l) Related Information

For more information about this AD, contact T. N. Baktha, Senior Aerospace Engineer, FAA, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4155; fax: (316) 946–4107; email: *t.n.baktha@faa.gov.*

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Hawker Beechcraft Mandatory Service Bulletin SB 55–4089, Revision 1, dated February, 2012.

(ii) Reserved.

(3) For Beechcraft Corporation and Hawker Beechcraft Corporation service information identified in this AD, contact Beechcraft Corporation, B091–A04, 10511 E. Central Ave., Wichita, Kansas 67206; telephone: 1 (800) 429–5372 or (316) 676–3140; fax: (316) 676–8027; email: *tmdc@beechcraft.com;* or Internet: *http://www.beechcraft.com/customer_support/technical_and_field_support/.*

(4) You may view this service information at FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on July 25, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–20098 Filed 8–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0367; Directorate Identifier 2012–NM–177–AD; Amendment 39–17546; AD 2013–16–08]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, and Model CL–600–2D24 (Regional Jet Series 900) airplanes. This AD was prompted by a report of corrosion of the components of the main landing gear (MLG) retraction actuator found in service; the corrosion was found at the interface of the rod end and the piston, and at the bracket and related pins. This AD requires inspection of the MLG retraction actuator components; corrective actions if necessary; and, for certain retraction actuators, installation of a new jam nut. We are issuing this AD to prevent disconnection of the MLG retraction actuator, which could result in extension of the MLG without damping, and consequent structural damage and collapse of the MLG during landing.

DATES: This AD is effective September 24, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of September 24, 2013.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. The NPRM published in the **Federal Register** on May 10, 2013 (78 FR 27318). The NPRM proposed to correct an unsafe condition for the specified products.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2011–36R1, dated October 3, 2012, the Mandatory Continuing Airworthiness Information (MCAI), to correct an unsafe condition for the specified products. The MCAI states:

> Corrosion of the main landing gear (MLG) retraction actuator components was found in-service, either at the interface of the rod end and the piston or at the bracket and its related pins. This can cause the MLG retraction actuator to disconnect, leading to an MLG extension without damping, and a potential for MLG structural damage and possible collapse during landing.
>
> This [Canadian] AD mandates the inspection and rectification [corrective action] of the MLG retraction actuator components.
>
> This revision is to mandate [, for certain MLG retraction actuators,] the installation of the new retraction actuator jam nut. This revision also corrects the background information and updates Service Bulletin (SB) references.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (78 FR 27318, May 10, 2013) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed.

Costs of Compliance

Based on the service information, we estimate that this AD affects about 391 products of U.S. registry. We also estimate that it takes up to 16 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $1,018 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD on U.S. operators to be up to $929,798, or up to $2,378 per product.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) is not a ''significant regulatory action'' under Executive Order 12866,

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–16–08 Bombardier, Inc.: Amendment 39–17546; Docket No. FAA–2013–0367; Directorate Identifier 2012–NM–177–AD.

(a) Effective Date

This AD becomes effective September 24, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes specified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10002 and subsequent.

(2) Bombardier, Inc. Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 32: Landing gear.

(e) Reason

This AD was prompted by a report of corrosion of the components of the main landing gear (MLG) retraction actuator found in service; the corrosion was found at the interface of the rod end and the piston, and at the bracket and related pins. We are issuing this AD to prevent disconnection of the MLG retraction actuator, which could result in extension of the MLG without damping, and consequent structural damage and collapse of the MLG during landing.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Inspection of the MLG Retraction Actuator and Corrective Actions

For any airplane with an MLG retraction actuator assembly having any part number and serial number identified in paragraph 1.A., Effectivity, of Bombardier Service Bulletin 670BA–32–031, Revision C, dated April 17, 2012, except airplanes on which modification status ''32–64'' is marked on the identification plate: At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, perform a detailed inspection of the retraction actuator assembly for evidence of corrosion and security of the jam nut, as applicable, in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–031, Revision C, dated April 17, 2012; and Goodrich Service Bulletin 49600–32–63 R1, dated May 17, 2011. If any corrosion or unsecured jam nut is found, before further flight, replace the retract actuator with a new or serviceable retract actuator; and install the retract actuator in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–031, Revision C, dated April 17, 2012. Repeat the inspection at intervals not to exceed 1,200 flight hours or 12 months, whichever occurs first.

(1) For MLG retraction actuator assemblies on which, as of the effective date of this AD, 8,000 or more total flight hours have accumulated since new or since overhaul, or have been in service for more than 4 years since new or since overhaul: Inspect within 1,200 flight hours or 12 months after the effective date of this AD, whichever occurs first.

(2) For MLG retraction actuator assemblies on which, as of the effective date of this AD, less than 8,000 total flight hours have accumulated since new or since overhaul, and have been in service for 4 years or less since new or since overhaul: Inspect before the accumulation of 9,200 total flight hours on the MLG retraction actuator assembly since new or since overhaul or within 5 years in service since new or since overhaul, whichever occurs first.

(h) Inspection of MLG Retraction Actuator Bracket and Related Pins, and Corrective Actions

For any airplane with an MLG dressed shock strut having any part number and serial number identified in paragraph 1.A., Effectivity, of Bombardier Service Bulletin 670BA–32–033, Revision B, dated June 26, 2012: Within 4,400 flight hours or 24 months after the effective date of this AD, whichever occurs first, perform a detailed inspection of the retract actuator bracket assembly, associated pins, and the mating lugs on the outer cylinder for evidence of corrosion, in accordance with Bombardier Service Bulletin 670BA–32–033, Revision B, dated June 26, 2012; and Goodrich Service Bulletin 49000–32–46 R2, dated November 11, 2011. Do all applicable corrective actions before further flight (i.e., replace retract actuator bracket assembly and pins, or outer cylinder lugs, as applicable).

(i) Installation of New Jam Nut

For any airplane with an MLG retraction actuator assembly having any part number and serial number identified in paragraph 1.A., Effectivity, of Bombardier Service Bulletin 670BA–32–031, Revision C, dated April 17, 2012, except airplanes on which modification status ''32–64'' is marked on the identification plate: Within 20,000 flight hours or 10 years after the effective date of this AD, whichever occurs first, install a new jam nut having part number 49606–5, in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–031, Revision C, dated April 17, 2012; and Goodrich Service Bulletin 49600–32–64 R3, dated December 15, 2011.

(j) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraphs (g) and (i) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraphs (j)(1)(i), (j)(1)(ii), or (j)(1)(iii) of this AD, which is not incorporated by reference in this AD.

(i) Bombardier Service Bulletin 670BA–32–031, dated March 14, 2011.

(ii) Bombardier Service Bulletin 670BA–32–031, Revision A, dated June 9, 2011.

(iii) Bombardier Service Bulletin 769BA–32–031, Revision B, dated July 29, 2011.

(2) This paragraph provides credit for the actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (j)(2)(i) or (j)(2)(ii) of this AD, which is not incorporated by reference in this AD.

(i) Bombardier Service Bulletin 670BA–32–033, dated March 14, 2011.

(ii) Bombardier Service Bulletin 670BA–32–033, Revision A, dated July 29, 2011.

(k) Parts Installation Limitations

(1) As of the effective date of this AD, no person may install on any airplane an MLG retraction actuator assembly having any part number and serial number identified in paragraph 1.A., Effectivity, of Bombardier Service Bulletin 670BA–32–031, Revision C, dated April 17, 2012, unless that retraction actuator assembly has been inspected as specified in paragraph (g) of this AD, and all applicable corrective actions (i.e., replacement of the retract actuator) specified in paragraph (g) of this AD have been done. Repeat the inspection specified in paragraph (g) of this AD thereafter at the intervals specified in paragraph (g) of this AD.

(2) As of the effective date of this AD, no person may install on any airplane an MLG retraction actuator assembly having any part number and serial number identified in paragraph 1.A., Effectivity, of Bombardier Service Bulletin 670BA–32–033, Revision B, dated June 26, 2012, unless that retraction actuator assembly has been inspected and all applicable corrective actions have been done, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–033, Revision B, dated June 26, 2012.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information Canadian Airworthiness Directive CF–2011–36R1, dated October 3, 2012, for related information, which can be found in the AD docket on the internet at *http://www.regulations.gov*.

(2) Service information identified in this AD that is not incorporated by reference may be obtained at the address specified in paragraph (n)(3) of this AD.

(n) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Bombardier Service Bulletin 670BA–32–031, Revision C, dated April 17, 2012.

(ii) Bombardier Service Bulletin 670BA–32–033, Revision B, dated June 26, 2012.

(iii) Goodrich Service Bulletin 49000–32–46 R2, dated November 11, 2011.

(iv) Goodrich Service Bulletin 49600–32–63 R1, dated May 17, 2011.

(v) Goodrich Service Bulletin 49600–32–64 R3, dated December 15, 2011.

(3) For Bombardier service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(4) For Goodrich service information identified in this AD, contact Goodrich Corporation, Landing Gear, 1400 South Service Road, West Oakville L6L 5Y7, Ontario, Canada; telephone 905–825–1568; email *jean.breed@goodrich.com;* Internet *http://www.goodrich.com/TechPubs.*

(5) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 31, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–20109 Filed 8–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1038; Directorate Identifier 2011–NM–166–AD; Amendment 39–17537; AD 2013–15–21]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding airworthiness directive (AD) 2004–13–06 for certain Airbus Model A319 and A320 series airplanes. AD 2004–13–06 required repetitive detailed inspections to detect cracks in the keel beam side panels, and repair if necessary. This new AD requires repetitive eddy current inspections for cracking in the keel beam side panels, and corrective actions if necessary. This AD was prompted by reports of cracks on the side panels of the keel beams. We are issuing this AD to detect and correct fatigue cracks on the side panels of the keel beams, which could result in reduced structural integrity of the airplane.

DATES: This AD becomes effective September 24, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 24, 2013.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. The NPRM was published in the **Federal Register** on October 4, 2012 (77 FR 60655), and proposed to supersede AD 2004–13–06, Amendment 39–13688 (69 FR 38818, June 29, 2004). The NPRM proposed to correct an unsafe condition for the specified products. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0134, dated July 15, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During certification structural fatigue tests, several cases of structural damage (cracks) have been found on keel beam side panels. Cracks were observed on both sides of the keel beam around the rivets below the center wing box between frame (FR) 40 and FR 42, and in part of the area of the upper elliptical cut out forward of FR 41.
>
> This type of damage, if not detected and repaired, would adversely affect the structural integrity of the aeroplane.
>
> To address this unsafe condition, DGAC [Direction Générale de l'Aviation Civile] France issued AD 2003–146 [which corresponds to FAA AD 2004–13–06, Amendment 39–13688 (69 FR 38818, June 29, 2004)] to require repetitive detailed inspections of those two areas and corrective actions, depending on findings.
>
> Prompted by reported access difficulties and to allow extension of the interval between two consecutive inspections, Airbus validated an Eddy current Non-Destructive Test (NDT) inspection to replace the detailed inspection.
>
> For the reasons described above, this [EASA] AD, which supersedes DGAC France AD 2003–146, requires repetitive Eddy-current NDT inspections for cracks in the affected areas of the keel beam side panel below the center wing box and corrective actions [repair], depending on findings.

You may obtain further information by examining the MCAI in the AD docket.

Revised Service Information

The NPRM (77 FR 60655, October 4, 2012) referred to Airbus Mandatory Service Bulletin A320–53–1060, Revision 02, dated November 30, 2010, as the appropriate source of service information for the proposed actions. Airbus has revised this service information. We have reviewed Airbus Mandatory Service Bulletin A320–53–1060, Revision 04, dated September 13, 2012, which includes an updated effectivity, an added illustration, amended job set-up and close-up procedures, and minor changes, but adds no accomplishment instruction procedures.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Revise Referenced Service Information

Jetblue Airways requested that we revise the NPRM (77 FR 60655, October 4, 2012) to reference the latest service information.

We agree. As explained above, we reviewed Airbus Mandatory Service Bulletin A320–53–1060, Revision 04, dated September 13, 2012. We have revised this final rule to refer to Airbus Mandatory Service Bulletin A320–53–1060, Revision 04, dated September 13, 2012; to add new paragraph (i) to allow credit for actions accomplished before the effective date of this AD using Airbus Mandatory Service Bulletin A320–53–1060, Revision 02, dated November 30, 2010, or Revision 03, dated January 20, 2012; and to re-identify subsequent paragraphs.

Requests To Correct Subparagraph References

Delta Airlines (Delta) and Airbus requested that we fix typographical errors in paragraphs (g) and (j) of the NPRM (77 FR 60655, October 4, 2012), which refer to incorrect paragraphs.

We agree that those paragraphs were misidentified in the NPRM (77 FR 60655, October 4, 2012). We have changed paragraph (g) in this final rule to refer to paragraphs (g)(1) and (g)(2) of this final rule, instead of paragraphs (k)(1) and (k)(2) of this final rule. We have also changed paragraph (k) of this final rule (identified as paragraph (j) in the NPRM), to refer to paragraphs (k)(1), (k)(2), and (k)(3) of this final rule.

Request for Clarification of Inspection Interval

Delta requested that we clarify whether the eddy current inspection specified in the NPRM (77 FR 60655, October 4, 2012) will allow extension of the inspection intervals that are required by AD 2004–13–06. Delta stated it agrees that an eddy current inspection will be a more effective way to detect cracks than a detailed visual inspection, but disagrees that it will solve the access difficulty problem.

We agree to clarify these issues. EASA and Airbus later acknowledged that the general visual inspection was replaced with non-destructive testing (eddy current inspection) because the eddy current inspection procedure is a more effective way to detect cracking, not because the inspection area was difficult to access as stated in the MCAI. There is no change in the initial inspection compliance time for the eddy current inspection as compared to the initial inspection compliance time for the general visual inspection; however, the repetitive inspection interval for the eddy current inspection (12,000 flight cycles or 26,700 flight hours) is at a greater interval as compared to the repetitive inspection interval for the general visual inspection (4,300 flight cycles or 9,600 flight hours). We have not changed this final rule in this regard.

Request To Allow Flight With Cracks

The NPRM (77 FR 60655, October 4, 2012) requires crack repair before further flight. Delta requested that operators be allowed to comply with the crack repair compliance times described in Airbus Mandatory Service Bulletin A320–53–1060 (as referenced in EASA AD 2011–0134, dated July 15, 2011), or decrease the compliance times for crack repair in inspection Area A, instead of eliminating the repair deferral time specified in the NPRM. Delta stated that this would ease accomplishment of repetitive inspections for operators.

We are aware that Airbus Mandatory Service Bulletin A320–53–1060 allows deferral of crack repair in certain areas based on crack length. We usually do not allow dispatch with known cracks in primary structure. As specified in the NPRM (77 FR 60655, October 4, 2012) under ''Differences Between This AD and the MCAI or Service Information,'' we find that, to achieve an adequate level of safety for the affected fleet, fatigue cracks on the side panels of the keel beams must be repaired prior to further flight. However, if an operator has an inspection plan for tracking crack length and mitigating the risks associated with flight with cracks, then we will consider its request for approval of an alternative method of compliance in accordance with the provisions specified in paragraph (j) of this final rule. We have not changed this final rule in this regard.

Request To Approve Airbus Repair Approval Sheet (RAS)

Airbus requested that we consider each Airbus RAS approved under Airbus Design Organization Approval (DOA) EASA.21J.031, provided after cracking is reported, as an approved method for repair, as required by paragraph (h)(2) of the NPRM (77 FR 60655, October 4, 2012).

We agree to clarify. Airbus has design organization approval authority from EASA and, therefore, a RAS approved under DOA EASA.21J.031 would be a method of compliance for a repair required by this AD under the provisions specified in paragraph (j)(2) of this AD. We have not changed this AD in this regard.

Request To Update Airbus Contact Information

Airbus requested that we replace the acronym EAS with the acronym EIAS in its contact information.

We agree to change the Airbus contact information in this AD.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously—and minor editorial changes. We have determined that these changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 60655, October 4, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 60655, October 4, 2012).

Costs of Compliance

We estimate that this AD will affect about 351 products of U.S. registry.

We estimate that it will take about 29 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $865,215, or $2,465 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2004–13–06, Amendment 39–13688 (69 FR 38818, June 29, 2004), and adding the following new AD:

2013–15–21 Airbus: Amendment 39–17537. Docket No. FAA–2012–1038; Directorate Identifier 2011–NM–166–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective September 24, 2013.

(b) Affected ADs

This AD supersedes AD 2004–13–06, Amendment 39–13688 (69 FR 38818, June 29, 2004).

(c) Applicability

This AD applies to Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; and Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; certificated in any category; all manufacturer serial numbers, except those having embodied Airbus modification 30355 in production.

(d) Subject

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

(e) Reason

This AD was prompted by reports of cracks on the side panels of the keel beams. We are issuing this AD to detect and correct fatigue cracks on the side panels of the keel beams, which could result in reduced structural integrity of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Repetitive Eddy Current Inspection

At the applicable compliance time in paragraph (g)(1) or (g)(2) of this AD: Do an eddy current non-destructive test (NDT) inspection to detect cracks in the keel beam side panels at Area A and Area B, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A320–53–1060, Revision 04, dated September 13, 2012. Repeat the inspection thereafter at intervals not to exceed 12,000 flight cycles or 26,700 flight hours, whichever occurs first. Area A is part of the area of the upper elliptical cut-out stringer (STGR) 42 on the left-hand (LH) and right-hand (RH) side forward of frame (FR) 41; Area B is the area around the fasteners on both sides of the keel beam side panel below the center wing box at STGR 42 on the LH and RH side between FR 40 and FR 42.

(1) For airplanes that have been inspected as specified in Airworthiness Limitations Item (ALI) Task 533142–01–1, which was specified in the Airbus A319/A320/A321 ALI document up to Revision 05 inclusive; or as specified in Airbus A319/A320/A321 Maintenance Review Board (MRB) Report up to Revision 08 inclusive; or as specified in the instructions of Airbus Service Bulletin A320–53–1060, dated June 19, 2002, or Revision 01, dated April 2, 2004: At the later of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD.

(i) Within 4,300 flight cycles or 9,600 flight hours after the last inspection, whichever occurs first.

(ii) Within 30 days after the effective date of this AD.

(2) For airplanes other than those identified in paragraph (g)(1) of this AD: At the later of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) Prior to the accumulation of 24,200 total flight cycles, or 48,400 total flight hours, whichever occurs first.

(ii) Within 30 days after the effective date of this AD.

(h) Corrective Action for Cracking

(1) If any crack is found in Area A during any inspection required by paragraph (g) of this AD: Before further flight, repair the affected area, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A320–53–1060, Revision 04, dated September 13, 2012. Accomplishing a repair terminates the repetitive inspections of Area A required by paragraph (g) of this AD for that side of the keel beam.

(2) If any crack is found in Area B during any inspection required by this AD: Before further flight, repair the affected area in accordance with a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

(i) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using Airbus Mandatory Service Bulletin A320–53–1060, Revision 02, dated November 30, 2010; or Revision 03, dated January 20, 2012; which are not incorporated by reference in this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(k) Special Flight Permits

Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the airplane can be repaired (if the operator elects to do so), provided the conditions in paragraphs (k)(1), (k)(2), and (k)(3) of this AD are met. Areas A and B are defined in Airbus Mandatory Service Bulletin A320–53–1060, Revision 04, dated September 13, 2012.

(1) No multiple cracks in Area A.

(2) If there is a single crack in Area A, the length must be less than 20.0 millimeters (0.79 inch).

(3) No cracking in Area B.

(l) Related Information

(1) Refer to MCAI EASA Airworthiness Directive 2011–0134, dated July 15, 2011, for related information, which can be found in

the AD docket on the internet at *http://www.regulations.gov.*

(2) Service information identified in this AD that is not incorporated by reference may be obtained at the address specified in paragraphs (m)(3) and (m)(4) of this AD.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Airbus Mandatory Service Bulletin A320–53–1060, Revision 04, dated September 13, 2012.

(ii) Reserved.

(3) For service information identified in this AD, Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email account.airworth-eas@airbus.com; Internet *http://www.airbus.com.*

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 26, 2013.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–20105 Filed 8–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

32 CFR Part 199

[DoD–2010–HA–0072]

RIN 0720–AB41

TRICARE; Reimbursement of Sole Community Hospitals and Adjustment to Reimbursement of Critical Access Hospitals; Correction

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Final rule; correction.

SUMMARY: On Thursday, August 8, 2013 (78 FR 48303–48311), the Department of Defense published a final rule titled TRICARE; Reimbursement of Sole Community Hospitals and Adjustment to Reimbursement of Critical Access Hospitals. Subsequent to the publication of the final rule in the **Federal Register**, DoD discovered two errors. This rule corrects these errors.

DATES: Effective October 7, 2013.

FOR FURTHER INFORMATION CONTACT: Ann Fazzini, TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Branch, telephone (303) 676–3803.

SUPPLEMENTARY INFORMATION:

■ 1. On page 48308, in the first column, in the fifth and sixth lines from the top, ''Avera Queen of Peach'' should read ''Avera Queen of Peace.''

■ 2. On page 48309, in Table 2, in the State column, in the first entry, ''FL'' should read ''NC.''

Dated: August 14, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–20179 Filed 8–19–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2011–0563]

RIN 1625–AA01

Special Anchorage Areas; Port of New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing two special anchorage areas, Special Anchorage Area North and Special Anchorage Area South, along the Hudson River adjacent to Manhattan at the 79th Street Boat Basin; revising the New York City Harbor Master phone number for Sheepshead Bay, NY; and disestablishing the Captain of the Port New York Commercial Mooring Buoy permit regulations and table displaying the mooring anchor, chain, and pendant requirements. The Coast Guard is not establishing two special anchorage areas on Sandy Hook Bay or disestablishing the western special anchorage area in Sheepshead Bay, as originally proposed. This action is necessary to facilitate safe navigation in these areas and provide safe and secure anchorages for vessels not more than 65 feet in length. This action is intended to increase the safety of life and property in New York City, improve the safety of anchored vessels, and provide for the overall safe and efficient flow of vessel traffic and commerce.

DATES: This rule is effective September 19, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2011–0563]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Jeff Yunker, Waterways Management Division, Coast Guard Sector New York; telephone (718) 354–4195, email *Jeff.M.Yunker@uscg.mil* or Lieutenant Isaac Slavitt, Waterways Management Division at Coast Guard First District, telephone (617) 223–8385, email *Isaac.M.Slavitt@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
NYC PARKS New York City Department of Parks and Recreation

A. Regulatory History and Information

On February 6, 2012, we published a notice of proposed rulemaking (NPRM) entitled Special Anchorage Areas; Port of New York, NY in the **Federal Register** (77 FR 5743). We received 13 comments on the proposed rule. A public hearing was requested, but none was held since the written comments clearly expressed the views of the commenters and oral presentations would not aid in the rulemaking process.

B. Basis and Purpose

The legal basis for the rule is 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define anchorage grounds.

The specific reasons for this rulemaking are requests submitted by the local governments with jurisdiction over the current mooring fields and special anchorage areas to clarify their usage. Additionally, the removal of the

Captain of the Port New York Commercial Mooring Buoy permit regulations and table § 110.155(L)(7) displaying the mooring anchor, chain, and pendant requirements aligns these regulations with current U.S. Army Corps of Engineers permitting regulations.

The purpose of this rule is to facilitate safe navigation in these areas and provide safe and secure anchorages for vessels not more than 65 feet in length, increase the safety of life and property in New York City, improve the safety of anchored vessels, and provide for the overall safe and efficient flow of vessel traffic and commerce.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard received a total of 13 comments regarding the NPRM.

No comments were received regarding the establishment of the two special anchorage areas, Special Anchorage Area North and Special Anchorage Area South along the Hudson River adjacent to Manhattan at the 79th Street Boat Basin.

The Coast Guard received one comment from the U.S. Department of the Interior stating they had no comment at that time.

The Coast Guard received one comment that simply restated a portion of the proposed rulemaking.

The Coast Guard received ten comments regarding the establishment of the two special anchorage areas, Atlantic Highland North and Atlantic Highland South, on Sandy Hook Bay at Atlantic Highlands, NJ.

Of the ten comments relating to the Atlantic Highland areas, four comments simply expressed support of establishment of the special anchorage areas.

Four additional comments requested an expansion of the proposed boundaries of the special anchorage areas beyond the boundary initially proposed in the NPRM. The comments stated that the special anchorage areas with designated vessel mooring positions would create hazardous conditions by transient vessels anchoring outside of the special anchorage areas. The comments stated that transient vessels would deploy anchors and chain of various lengths within the special anchorage areas risking collisions between the vessels.

Two comments requested that the requirement for mariners using the Atlantic Highlands special anchorage areas to contact the local Harbor Master be deleted. One of these comments stated that the Municipal Harbor Master only has the authority to manage the 172 moorings within the special anchorage areas and that there is no law authorizing the Federal government to require mariners to notify the Harbor Master. One of these comments questioned whether the Federal government had authority to give navigational control of tidal waters to a municipal entity or to require mariners using the anchorage to notify the Harbor Master. Additionally, one of these comments stated that the channel markers installed by Atlantic Highlands Harbor are at odds with the boundary of the special anchorage areas, particularly the southeast corner of the northern special anchorage area. The lighted piling is approximately 80 feet northwest of the southeast corner of the proposed special anchorage area.

Based upon the comments received we conducted a site visit with the Atlantic Highlands Harbor Master on July 18, 2012. After reviewing the As-Built Mooring Field Construction Plan provided by the Harbor Master, we determined that eight helical anchors were installed outside of the proposed special anchorage areas and 28 of 29 unlit vessels would swing outside of the special anchorage areas. The presence of these unlit vessels outside of the special anchorage areas would create an unsafe condition for other vessels transiting the area.

Additionally, floating docks installed adjacent to the proposed northern special anchorage area are not depicted on the National Oceanic and Atmospheric Administration Chart. This further decreases the area available for vessels transiting between the proposed northern special anchorage area and the docking facilities.

Based upon these findings we are withdrawing the two proposed special anchorage areas in Atlantic Highlands, NJ from this rulemaking. The local Harbor Master will continue to resolve mooring location issues as they have done in previous years prior to requesting the establishment of these special anchorage areas. With regard to the comments regarding contacting the local Harbor Master, we note that that section has also been removed from this final rule, and thus the comments on that issue are moot.

We received one comment in opposition to the disestablishment of the western special anchorage area in Sheepshead Bay, NY. The comment stated that the western special anchorage area in Sheepshead Bay is useful for transients and visiting vessels under 65 ft in length because the yacht clubs and marinas within Sheepshead Bay have very few moorings capable of accommodating vessels greater than 40 ft in length; therefore visiting vessels with lengths between 40 and 65 feet must anchor outside of these mooring fields if they are to stay in Sheepshead Bay. The commenter also stated that Sheepshead Bay is located away from the major shipping channels of New York Harbor and accommodating transient boaters in the special anchorage area tends to keep them from interfering with the large commercial vessels. Additionally, the comment stated that the special anchorage area provides a relatively convenient access to public transportation, onshore shopping and amenities which facilitate interstate and international commerce.

Based upon this comment we are withdrawing the proposed disestablishment of the western special anchorage area in Sheepshead Bay, NY.

Finally, we are adding the contact phone number for moorings in Sheepshead Bay, NY, and clarifying language regarding the role of the local Harbor Masters.

Regulatory Analyses

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

1. Regulatory Planning and Review

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

We expect minimal additional cost impacts on fishing, or recreational boats anchoring because this rule will not affect normal surface navigation. Although this regulation may have some limited impact on the public due to the alteration of traffic patterns, the potential impact will be minimized for the following reasons: Normal surface navigation will not be affected as the special anchorage areas on the Hudson River have historically been used as mooring fields by NYC PARKS.

The regulation requiring all vessels anchoring in Sheepshead Bay, NY to remain entirely within the northern and southern special anchorage areas at all times has the potential to reduce the number of vessels that are able to anchor within the special anchorage

areas. However, this is necessary to maintain an open area for larger charter fishing vessels and event vessels transiting to and from NYC PARKS maintained fishing piers to the west.

We expect minimal additional cost (and the potential for reduced costs due to the removal of certain regulations) impacts on the tug and barge operators because this rule will disestablish USCG permitting regulations that are currently under the jurisdiction of the District Engineer, U.S. Army Corps of Engineers.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of recreational and small fishing vessels intending to anchor in the Hudson River and Sheepshead Bay, NY.

The rule will not have a significant economic impact on a substantial number of small entities for the same reasons outlined above in the ''*Regulatory Planning and Review*'' section.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, To Minimize Litigation, Eliminate Ambiguity, and Reduce Burden.

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 110

Anchorage Grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 110.60 by adding paragraphs (c)(12) and (13) and (d)(8)(i) and (ii) to read as follows:

§ 110.60 Captain of the Port, New York.

* * * * *

(c) * * *

(12) *79th Street Boat Basin South.* All waters of the Hudson River enclosed by a line beginning at the northwest corner of the 70th Street pier at approximate position 40°46′47.10″ N, 073°59′29.13″ W; thence to 40°47′02.60″ N, 073°59′17.88″ W; thence to 40°46′59.73″ N, 073°59′13.01″ W; thence along the shoreline and pier to the point of beginning.

(13) *79th Street Boat Basin North.* All waters of the Hudson River enclosed by a line beginning on the shoreline near West 110th Street at approximate position 40°48′21.06″ N, 073°58′15.72″ W; thence to 40°48′21.06″ N, 073°58′24.00″ W; thence to 40°47′14.70″ N, 073°59′09.00″ W; thence to 40°47′11.84″ N, 073°59′08.90″ W; thence along the breakwater and shoreline to the point of beginning.

(i) The anchoring of vessels and use of the moorings in anchorage areas described in paragraphs (c)(12) and (13) of this section will be under the supervision of the local Harbor Master appointed by the City of New York. Mariners may contact the boat basin on VHF CH 9 or at (212) 496–2105 for mooring and anchoring availability. All moorings or anchors shall be placed well within the anchorage areas so that no portion of the hull or rigging will at any time extend outside of the anchorage.

(ii) [Reserved.]

(d) * * *

(8) * * *

(i) The anchoring of vessels and use of the moorings in anchorage areas described in paragraphs (d)(6) through (8) of this section will be under the supervision of the local Harbor Master appointed by the City of New York. Mariners may contact the Harbor Master at (718) 478–0480. All moorings or anchors shall be placed well within the anchorage areas so that no portion of the hull or rigging will at any time extend outside of the anchorage. For guest moorings and access to and from the anchorage areas described in paragraphs (d)(6) through (8) mariners may contact the following boating clubs: Miramar Yacht Club (718) 769–3548; Port Sheepshead (917) 731–8607; or Sheepshead Yacht Club (718) 891–0991.

(ii) [Reserved].

* * * * *

■ 3. Amend § 110.155 by revising paragraph (l)(8) to read as follows:

§ 110.155 Port of New York.

* * * * *

(l) * * *

(8) Operations near commercial mooring buoys permitted by the District Engineer, U.S. Army Corps of Engineers.

(i) No vessel shall continuously occupy a mooring when a vessel in regular traffic requires the berth or when navigation would be menaced or inconvenienced thereby.

(ii) No vessel shall moor or anchor in any anchorage in such a manner as to interfere with the use of a duly authorized mooring buoy. Nor shall any vessel moored to a buoy authorized by the District Engineer, U.S. Army Corps of Engineers be moored such that any portion of that vessel comes within 50 feet of a marked or dredged channel.

(iii) No vessel shall be operated within the limits of an anchorage at speed exceeding 6 knots when in the vicinity of a moored vessel.

(iv) In an emergency the Captain of the Port may shift the position of any unattended vessel moored in or near any anchorage.

* * * * *

Dated: May 2, 2013.

D.B. Abel,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2013–19981 Filed 8–19–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0676]

RIN 1625–AA00

Safety Zone; Motion Picture Production; Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing five temporary safety zones on waterways near Chicago, IL. These safety zones are intended to restrict vessels from portions of Chicago waterways due to the filming of a motion picture. These temporary safety zones are necessary to protect the surrounding public and vessels from the hazards associated with the stunt work, low-flying helicopter, and other hazards involved in the filming of a motion picture.

DATES: This rule is effective from 6 a.m. on August 20, 2013, until 9 p.m. on September 30, 2013. This rule will be enforced from 6 a.m. to 9 p.m. on intermittent dates from August 20 through September 30, 2013. The Coast Guard will issue a Broadcast Notice to Mariners to provide the public with advanced notice of those days that these safety zones will be enforced. The Coast Guard on-scene Captain of the Port Representative will provide actual notice on-scene.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0676. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, contact or email MST1 Joseph McCollum, U.S. Coast Guard Sector Lake Michigan, at 414–747–7148 or *Joseph.P.McCollum@uscg.mil*. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C.

553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with the filming of a motion picture, which are discussed further below.

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

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

From August 20 through September 30, 2013 the Coast Guard anticipates that a motion picture corporation will film scenes for a motion picture on the Chicago River, Calumet Harbor, and Chicago Sanitary and Ship Canal. In late September, stunt work involving a crane is expected to be filmed at the North Slip, a waterway within Calumet Harbor north of the mouth of the Calumet River. During the last week of August and early September, the motion picture corporation is expected to film the length of the main Branch of the Chicago River using a low-flying helicopter and/or multiple boats. During that time, filming is also expected along the south branch of the Chicago River from the confluence of the branches then south to the vicinity of the West Van Buren Street Bridge. In mid-September, a low-flying helicopter is expected to film in the vicinity of West Roosevelt Road on the south branch of the river. In mid-September the Coast Guard also anticipates filming and stunt work on the Chicago Sanitary and Ship Canal in the vicinity of the South Damen Avenue bridge.

The Captain of the Port, Lake Michigan, has determined that this filming event—with associated stunt work and low-flying helicopters—will pose a significant risk to public safety and property. Such hazards include the collision of stunt, film, and spectator vessels in a congested area. Other hazards include falling wreckage, as well as injuries associated with debris propelled by helicopter rotor-wash.

The Coast Guard anticipates that the safety zones created by this temporary rule will not be enforced every day between August 20 and September 30, 2013. Because of the possibility of bad weather on one or more of the filming days listed above, and considering the unpredictability involved in filming a motion picture, this rule was written with a wider range of dates and times to give the Coast Guard flexibility to accommodate changes in the film schedule between August 20 and September 30, 2013.

C. Discussion of the Final Rule

With the aforementioned hazards in mind, the Captain of the Port, Lake Michigan, has determined that five temporary safety zones are necessary to ensure the safety of persons and vessels during the filming of a motion picture on the Chicago River, Chicago Sanitary and Ship Canal, and Calumet Harbor. This rule is effective from 6 a.m. on August 20 until 9 p.m. on September 30, 2013. This rule will be enforced from 6 a.m. to 9 p.m. on intermittent dates from August 20 through September 30, 2013.

During this date range, these safety zones will be enforced during the time of filming and associated stunt work, between 6 a.m. and 9 p.m. The Coast Guard will issue a Broadcast Notice to Mariners to provide the public with advanced notice of those days that these safety zones will be enforced. The Coast Guard on-scene Captain of the Port Representative will provide actual notice on-scene.

Five safety zones will be established as follows:

(1) All waters of Lake Michigan, Calumet Harbor west of an imaginary line connecting 41°44′29.4″ N, 087°31′33.9″ W and 41°44′21″ N, 087°31′47.12″ W (NAD 83).

(2) All waters of the South Branch of the Chicago River from position 41°52′19.03″ N, 087°38′08.7″ W, then approximately 1380 yards south to position 41°51′36.5″ N, 087°38′04.7″ W (NAD 83).

(3) All waters of the Chicago River from an imaginary line connecting positions 41°53′11.6″ N, 087°38′20.5″ W and 41°53′14.0″ N, 087°38′17.2″ W, then east to the North Orleans Street Bridge in position 41°53′15.84″ N, 087°38′09.16″ W, then south along the south branch of the river to the vicinity of the West Van Buren Street Bridge in position 41°52′36.4″ N, 087°38′15.8″ W (NAD 83).

(4) All waters of the Chicago River from the West Lake Street Bridge in position 41°53′8.6″ N, 087°38′15.9″ W, then north to an imaginary line connecting positions 41°53′11.6″ N, 087°38′20.5″ W and 41°53′14.0″ N, 087°38′17.2″ W, then east along the main branch of the river to a position of 41°53′19″ N, 087°36′33″ W (NAD 83) in the vicinity of the North Lake Shore Drive Bridge.

(5) All waters of the Chicago Sanitary and Ship Canal within a 1000 foot radius of a position at 41°50′28.5″ N, 087°40′22.7″ W (NAD 83) in the vicinity of the South Damen Avenue bridge.

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

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zones created by this rule will be small and enforced during for a limited time on a limited number of days in August and September of 2013. Under certain conditions, moreover, vessels may still transit through the safety zones when permitted by the Captain of the Port.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this temporary rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Chicago River, Chicago Harbor, or Chicago Sanitary and Ship Canal during the times in which the safety zones are enforced in August and September, 2013.

These safety zones will not have a significant economic impact on a substantial number of small entities for the reasons cited in the *Regulatory Planning and Review* section. Additionally, before the enforcement of these zones, we would issue local Broadcast Notice to Mariners so vessel owners and operators can plan accordingly.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0676 to read as follows:

§ 165.T09–0676 Safety Zone; Paramount Pictures Corporation; Chicago, IL.

(a) *Safety Zones.* The following are designated as safety zones:

(1) All waters of Lake Michigan, Calumet Harbor, west of an imaginary line connecting 41°44′29.4″ N, 087°31′33.9″ W and 41°44′21″ N, 087°31′47.12″ W (NAD 83).

(2) All waters of the South Branch of the Chicago River from position 41°52′19.03″ N, 087°38′08.7″ W, then approximately 1380 yards south to position 41°51′36.5″ N, 087°38′04.7″ W (NAD 83).

(3) All waters of the Chicago River from an imaginary line connecting positions 41°53′11.6″ N, 087°38′20.5″ W and 41°53′14.0″ N, 087°38′17.2″ W, then east to the North Orleans Street Bridge in position 41°53′15.84″ N, 087°38′09.16″ W, then south along the south branch of the river to the vicinity of the West Van Buren Street Bridge in position 41°52′36.4″ N, 087°38′15.8″ W (NAD 83).

(4) All waters of the Chicago River from the West Lake Street Bridge in position 41°53′8.6″ N, 087°38′15.9″ W, then north to an imaginary line connecting positions 41°53′11.6″ N, 087°38′20.5″ W and 41°53′14.0″ N, 087°38′17.2″ W, then east along the main branch of the river to a position of 41°53′19″ N, 087°36′33″ W (NAD 83) in the vicinity of the North Lake Shore Drive Bridge.

(5) All waters of the Chicago Sanitary and Ship Canal within a 1000 foot radius of a position at 41°50′28.5″ N, 087°40′22.7″ W (NAD 83) in the vicinity of the South Damen Avenue bridge.

(b) *Effective and enforcement periods.* This section is effective from 6 a.m. on August 20, 2013, until 9 p.m. on September 30, 2013. The zones described in paragraph (a) of this section will be enforced from 6 a.m. to 9 p.m. on intermittent dates between August 20 and September 30, 2013.

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

(2) These safety zones are closed to all vessel traffic, except as may be permitted by the Captain of the Port, Lake Michigan or his designated on-scene representative.

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

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

Dated: August 8, 2013.

M.W. Sibley,

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

[FR Doc. 2013–20241 Filed 8–19–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AO34

VA Health Professional Scholarship and Visual Impairment and Orientation and Mobility Professional Scholarship Programs

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its VA Health Professional Scholarship Program (HPSP) regulations. VA is also establishing regulations for a new program, the Visual Impairment and Orientation and Mobility Professional Scholarship Program (VIOMPSP). These regulations comply with and implement sections 302 and 603 of the Caregivers and Veterans Omnibus Health Services Act of 2010 (the 2010 Act). Section 302 of the 2010 Act established the VIOMPSP, which authorizes VA to provide financial assistance to certain students seeking a degree in visual impairment or orientation or mobility, in order to increase the supply of qualified blind rehabilitation specialists for VA and the United States. Section 603 of the 2010 Act reauthorized and modified HPSP, a program that provides scholarships for education or training in certain health care occupations.

DATES: *Effective Date:* This final rule is effective September 19, 2013.

FOR FURTHER INFORMATION CONTACT: Nicole Nedd, Healthcare Talent Management Office, Department of Veterans Affairs, 1250 Poydras Street, Suite 1000, New Orleans, LA 70113; (504) 565–4900. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Pursuant to 38 U.S.C. 7601 through 7619, 7633, 7634, and 7636, VA has promulgated regulations implementing the VA Health Professional Scholarship Program (HPSP), codified at 38 CFR 17.600 through 17.612. This rulemaking is amending the HPSP regulations in response to section 603 of the 2010 Act, Public Law 111–163, which amended the statutory authority for this program, particularly the eligibility requirements for the program and VA's obligations regarding employment of the program participants.

This rulemaking is also establishing new regulations to implement section 302 of the 2010 Act. Section 302 of the 2010 Act established chapter 75 of 38 U.S.C., which requires VA to create a scholarship program similar to the HPSP called the Visual Impairment and Orientation and Mobility Professional Scholarship Program (VIOMPSP). The purpose of the new program ''is to increase the supply of qualified blind rehabilitation specialists for [VA] and the Nation.'' 38 U.S.C. 7501(b). The statutory authority is substantively similar (and in many ways identical) to the existing authority governing the HPSP. To the maximum extent possible, we are utilizing, and amending as necessary, the existing HPSP regulations to govern the commonalities between both programs, and then adding additional regulations necessary to implement the new VIOMPSP. This will eliminate redundancies between the two programs, facilitate the administration of the program by VA, and make it easier for the public to understand the details of both programs. The HPSP is governed by current §§ 17.600 through 17.612, and the VIOMPSP is established as new §§ 17.625 through 17.636.

In a document published in the **Federal Register** on December 26, 2012 (77 FR 75918), VA proposed to amend part 17 of 38 CFR by amending the regulations that govern the HPSP and establishing regulations for the VIOMPSP. We provided a 60-day comment period, which ended on February 25, 2013. We received one comment from an official from the National Federation of the Blind.

The commenter was concerned that the rulemaking did not provide ''clear provisions regarding the eligibility of blind or low vision applicants to VIOMPSP.'' The commenter noted that the rulemaking was explicit regarding the availability of the program ''to institutions with high numbers of Hispanic students and to historically

black colleges and universities, but there is no emphasis on encouraging blind people to apply for the program.'' We included this reference to particular targeted audiences in § 17.625 because paragraph (c) of 38 U.S.C. 7501 mandates the Secretary to ''publicize the scholarship program to educational institutions throughout the United States, with an emphasis on disseminating information to such institutions with high numbers of Hispanic students and to Historically Black Colleges and Universities.'' Congress did not issue this mandate to prohibit VA from encouraging or accepting blind applicants to the VIOMPSP, and VA does not interpret, and will not apply, this regulatory emphasis in a way that will discriminate against blind applicants. Moreover, under 38 CFR part 15, VA is prohibited from ''discrimination on the basis of handicap in programs or activities conducted by Executive agencies'' under section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973. The VIOMPSP is a program offered by VA and subject to this prohibition against discrimination. As such, VA may not discriminate against blind individuals or individuals with other types of disabilities who wish to participate in the VIOMPSP. Although the commenter raised this issue only in regard to the VIOMPSP, we note that this prohibition against discrimination applies equally to the HPSP.

The commenter also stated that, in § 17.629, VA is obligated to provide applicants with the terms and conditions for participating in the VIOMPSP, but that these terms and conditions ''are not posted anywhere on the VA Web site, so there is no way to verify that sight is part of these terms and conditions.'' The commenter recommended that VA state in § 17.630(b) ''that blindness will not be a factor when accepting applicants.''

VA may not publish on its Web site the terms and conditions of the VIOMPSP until the regulations that govern this program are published as final in the **Federal Register**. In general, however, the terms and conditions for participating in the VIOMPSP are stated in proposed §§ 17.625 through 17.636. An amendment to § 17.630(b) is not needed to clarify our acceptance criteria as it applies to blind applicants because, as previously stated, VA may not discriminate against individuals with any type of disability. VA does not make any changes based on any of the commenter's concerns.

Based on the rationale set forth in the Supplementary Information to the proposed rule and in this final rule, VA is adopting the proposed rule as a final rule without any change.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. See also 5 CFR 1320.8(b)(3)(vi).

This final rule will impose the following new information collection requirements. The VA Health Professional Scholarship Program contained a collection control number 2900–0352, which expired on April 30, 1997. We have established a new collection control number for the revised VA Health Professional Scholarship Program and for the new Visual Impairment and Orientation and Mobility Professional Scholarship Program. Sections 17.604 and 17.629 contain collections of information under the Paperwork Reduction Act of 1995 for which we requested approval by OMB. As required by the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507(d)), VA submitted these information collections to OMB for its review. OMB approved these new information collection requirements associated with the final rule and assigned OMB control number 2900–0793.

Under §§ 17.612 and 17.636, a participant of the VA Health Professional Scholarship Program or Visual Impairment and Orientation and Mobility Professional Scholarship Program may seek a waiver or suspension of obligated service or payment under either program by submitting a written request to VA. The requirement for such a written request, however, does not constitute a collection of information under the Paperwork Reduction Act of 1995 requiring OMB approval because the anticipated number of respondents within a 12-month period is less than ten. See 5 CFR 1320.3(c).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will directly affect only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the 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 effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by OMB unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant

regulatory action under Executive Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers

There are no Catalog of Federal Domestic Assistance numbers and titles for this rule.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on August 6, 2013, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Dated: August 15, 2013.

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, the Department of Veterans Affairs amends 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

■ 2. Revise the authority citation preceding § 17.600 to read as follows:

Authority: 38 U.S.C. 7601–7619, 7633, 7634, and 7636.

■ 3. Revise § 17.600 to read as follows:

§ 17.600 Purpose.

The purpose of §§ 17.600 through 17.612 is to establish the requirements for the award of scholarships under the VA Health Professional Scholarship Program (HPSP) to students pursuing a course of study leading to a degree in certain health care occupations, listed in 38 U.S.C. 7401(1) and (3), to assist in providing an adequate supply of such personnel for VA. The HPSP allows VA to provide scholarship awards to facilitate recruitment and retention of employees in several hard-to-fill health care occupations.

(Authority: 38 U.S.C. 7601(b))

■ 4. Revise § 17.601 to read as follows:

§ 17.601 Definitions.

The following definitions apply to §§ 17.600 through 17.636:

Acceptable level of academic standing means the level at which a participant may continue to attend school under the standards and practices of the school at which a participant is enrolled in a course of study for which an HPSP or VIOMPSP scholarship was awarded.

Acceptance agreement means a signed legal document between VA and a participant of the HPSP or VIOMPSP that specifies the obligations of VA and the participant upon acceptance to the HPSP or VIOMPSP. An acceptance agreement must incorporate by reference, and cannot be inconsistent with, §§ 17.600 through 17.612 (for HPSP agreements) or §§ 17.626 through 17.636 (for VIOMPSP agreements), and must include:

(1) A mobility agreement.

(2) Agreement to accept payment of the scholarship.

(3) Agreement to perform obligated service.

(4) Agreement to maintain enrollment and attendance in the course of study for which the scholarship was awarded, and to maintain an acceptable level of academic standing.

Affiliation agreement means a legal document that enables the clinical education of trainees at a VA or non-VA medical facility. An affiliation agreement is required for all education or training that involves direct patient contact, or contact with patient information, by trainees from a non-VA institution.

Citizen of the United States means any person born, or lawfully naturalized, in the United States, subject to its jurisdiction and protection, and owing allegiance thereto.

Credential means the licensure, registration, certification, required education, relevant training and experience, and current competence necessary to meet VA's qualification standards for employment in certain health care occupations.

Degree represents the successful completion of the course of study for which a scholarship was awarded.

(1) *HPSP.* For the purposes of the HPSP, VA recognizes the following degrees: a doctor of medicine; doctor of osteopathy; doctor of dentistry; doctor of optometry; doctor of podiatry; or an associate, baccalaureate, master's, or doctorate degree in another health care discipline needed by VA.

(2) *VIOMPSP.* For the purposes of the VIOMPSP, VA recognizes a bachelor's, master's, education specialist or doctorate that meets the core curriculum and supervised practice requirements in visual impairment and blindness.

Full-time student means an individual who meets the requirements for full time attendance as defined by the school in which they are enrolled.

HPSP means the VA Health Professional Scholarship Program authorized by 38 U.S.C. 7601 through 7619.

Mobility agreement means a signed legal document between VA and a participant of the HPSP or VIOMPSP, in which the participant agrees to accept assignment at a VA facility selected by VA where he or she will fulfill the obligated service requirement. A mobility agreement must be included in the participant's acceptance agreement. Relocation to another geographic location may be required.

Obligated service means the period of time during which the HPSP or VIOMPSP participant must be employed by VA in a full-time clinical occupation for which the degree prepared the participant as a requirement of the acceptance agreement.

Part-time student—(1) *HPSP.* For the purposes of the HPSP, part-time student means an individual who is a VA employee, and who has been accepted for enrollment or enrolled for study leading to a degree on a less than full-time basis but no less than half-time basis.

(2) *VIOMPSP.* For the purposes of the VIOMPSP, part-time student means an individual who has been accepted for enrollment or enrolled for study leading to a degree on a less than full-time basis but no less than half-time basis.

Participant or scholarship program participant means an individual whose application to the HPSP or VIOMPSP

has been approved, whose acceptance agreement has been consummated by VA, and who has yet to complete the period of obligated service or otherwise satisfy the obligation or financial liabilities of such agreement.

Required fees means those fees which are charged by the school to all students pursuing a similar curriculum in the same school.

Scholarship Program means the VA Health Professional Scholarship Program (HPSP) authorized by 38 U.S.C. 7601 through 7619.

School means an academic institution that is accredited by a body or bodies recognized for accreditation by the U.S. Department of Education or by the Council for Higher Education Accreditation (CHEA), and that meets the following requirements:

(1) For the purposes of the HPSP, offers a course of study leading to a degree in a health care service discipline needed by VA.

(2) For the purposes of the VIOMPSP, offers a course of study leading to a degree in visual impairment or orientation and mobility.

School year means for purposes of the HPSP and its stipend payment, and the VIOMPSP, all or part of the 12-month period that starts on the date the participant begins school as a full-time student.

Secretary means the Secretary of Veterans Affairs or designee.

State means one of the several States, Territories and possessions of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

Under Secretary for Health means the Under Secretary for Health of the Department of Veterans Affairs or designee.

VA means the Department of Veterans Affairs.

VA employee means an individual permanently employed by VA. A VA employee does not include an individual who is employed temporarily or on a contractual basis.

VA health care facility means a VA medical center, independent outpatient clinic, domiciliary, nursing home (community living center), residential treatment program, and any of a variety of community based clinics (including community based outpatient clinics, rural health resource centers, primary care telehealth clinics, and Vet Centers), consolidated mail outpatient pharmacies, and research centers.

VIOMPSP means the Visual Impairment and Orientation and Mobility Professional Scholarship Program authorized by 38 U.S.C. 7501 through 7505.

(Authority: 38 U.S.C. 301, 7501(a)(1), 7504, 7602(a), 7604(1)(B), 7633)

■ 5. Amend § 17.602 by:
■ a. Revising paragraph (a)(1).
■ b. Adding paragraph (a)(6).
■ c. Revising the authority citation following paragraph (a).

The revisions and addition read as follows:

§ 17.602 Eligibility for the HPSP.

(a) * * *

(1) Be unconditionally accepted for enrollment or be enrolled as a full-time student in an accredited school located in a State;

* * * * *

(6) *Clinical tours.* An applicant for a scholarship under the HPSP must agree to perform clinical tours while enrolled in the course of education or training for which the scholarship is provided. VA will determine the assignments and locations of the clinical tour.

(Authority: 38 U.S.C. 7618(b))

* * * * *

■ 6. Revise § 17.603 to read as follows:

§ 17.603 Availability of HPSP scholarships.

(a) *General.* A HPSP scholarship will be awarded only when necessary to assist VA in alleviating shortages or anticipated shortages of personnel in the health professions stated in paragraph (b) of this section. VA will determine the existence of shortage of personnel in accordance with specific criteria for each health care profession. VA has the authority to establish the number of scholarships to be awarded in a fiscal year, and the number that will be awarded to full-time and part-time students.

(b) *Qualifying fields of education.* VA will grant HPSP scholarships in a course of study in those disciplines or programs where recruitment is necessary for the improvement of health care of veterans. Those disciplines or programs are listed in 38 U.S.C. 7401(1) and (3).

(Authority: 38 U.S.C. 7401(1), (3), 7612(b)(2), 7612(b)(4), and 7603(b)(1))

■ 7. Revise § 17.604 to read as follows:

§ 17.604 Application for the HPSP.

An applicant for the HPSP must submit an accurate and complete application, including a signed written acceptance agreement.

(Authority: 38 U.S.C. 7612(c)(1)(B))

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0793.)

■ 8. Amend § 17.605 by:
■ a. Revising paragraph (a) introductory text.
■ b. Redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively.
■ c. Adding a new paragraph (d).

The revisions and addition read as follows:

§ 17.605 Selection of HPSP participants.

(a) *General.* In deciding which HPSP application to approve, VA will first consider applications submitted by applicants entering their final year of education or training and applicants who previously received HPSP scholarships and who meet the conditions of paragraph (f) of this section. Except for paragraph (f) of this section, applicants will be evaluated and selected using the criteria specified in paragraph (b) of this section. If there are a larger number of equally qualified applicants than there are awards to be made, then VA will first select veterans, and then use a random method as the basis for further selection. In selecting participants to receive awards as part-time students, VA may, at VA's discretion—

* * * * *

(d) *Notification of approval.* VA will notify the individual in writing that his or her application has been accepted and approved. An individual becomes a participant in the program upon receipt of such approval by VA.

* * * * *

■ 9. Amend § 17.607 by:
■ a. Revising paragraph (b)(1).
■ b. Revising the authority citation at the end of paragraph (b).
■ c. Revising paragraphs (c) and (d).

The revisions read as follows:

§ 17.607 Obligated service.

* * * * *

(b) *Beginning of service*—(1)(i) *Date of employment.* Except as provided in paragraph (b)(2) of this section, a participant's obligated service will begin on the date VA appoints the participant as a full-time VA employee in a clinical occupation for which the degree prepared the participant. VA will appoint the participant to such position as soon as possible, but no later than 90 days after the date that the participant receives his or her degree, or the date the participant becomes licensed in a State or becomes certified, whichever is later. VA will actively assist and monitor participants to ensure State licenses or certificates are obtained in a minimal amount of time following graduation. If a participant fails to obtain his or her degree, or fails to become licensed in a State or become certified no later than 180 days after receiving the degree, the participant is

considered to be in breach of the acceptance agreement.

(ii) *Notification.* VA will notify the participant of the work assignment and its location no later than 60 days before the date on which the participant must begin work.

(iii) *VA mentor.* VA will ensure that the participant is assigned a mentor who is employed at the same facility where the participant performs his or her obligated service at the commencement of such service.

* * * * *

(Authority: 38 U.S.C. 7616(b), 7616(c), 7618(a))

(c) *Duration of service*—(1) *Full-time student.* A participant who attended school as a full-time student will agree to serve as a full-time clinical employee in the Veterans Health Administration for 1 calendar year for each school year or part thereof for which a scholarship was awarded, but for no less than 2 years.

(2) *Part-time student.* Obligated service to VA for a participant who attended school as a part-time student must be satisfied by full-time clinical employment. The period of obligated service will be reduced from that which a full-time student must serve under paragraph (c)(1) of this section in accordance with the proportion that the number of credit hours carried by the part-time student in any school year bears to the number of credit hours required to be carried by a full-time student who is pursuing the same degree; however, the period of obligated service will not be for less than 1 year.

(Authority: 38 U.S.C. 7612(c)(1)(B), 7612(c)(3)(A), 7618(c))

(d) *Location for service.* VA reserves the right to make final decisions on the location for service obligation. A participant who receives a scholarship as a full-time student must be willing to relocate to another geographic location to carry out his or her service obligation according to the participant's mobility agreement. A participant who received a scholarship as a part-time student may be allowed to serve the period of obligated service at the health care facility where the individual was assigned when the scholarship was authorized, if there is a vacant position which will satisfy the individual's mobility agreement at that facility.

(Authority: 38 U.S.C. 7616(a))

* * * * *

■ 10. Revise § 17.611 to read as follows:

§ 17.611 Bankruptcy.

Any payment obligation incurred may not be discharged in bankruptcy under title 11 U.S.C. until 5 years after the date on which the payment obligation is due. This section applies to participants in the HPSP and the VIOMPSP.

(Authority: 38 U.S.C. 7505(d), 7634(c))

■ 11. Amend § 17.612 by:
■ a. Revising paragraph (a).
■ b. Revising paragraph (b)(1).
■ c. Removing the authority citation at the end of paragraph (c).
■ d. Adding new paragraphs (e) and (f).
■ e. Revising the authority citation at the end of the section.

The revisions and additions read as follows:

§ 17.612 Cancellation, waiver, or suspension of obligation.

(a) *General.* (1) This section applies to participants in the HPSP or the VIOMPSP.

(2) Any obligation of a participant for service or payment will be cancelled upon the death of the participant.

(b) *Waivers or suspensions.* (1) A participant may seek a waiver or suspension of the obligated service or payment obligation incurred under this program by submitting a written request to VA setting forth the basis, circumstances, and causes which support the requested action. Requests for waivers or suspensions must be submitted to VA no later than 1 year after the date VA notifies the participant that he or she is in breach of his or her acceptance agreement. A participant seeking a waiver or suspension must comply with requests for additional information from VA no later than 30 days after the date of any such request.

(i) *Waivers.* A waiver is a permanent release by VA of the obligation either to repay any scholarship funds that have already been paid to or on behalf of the participant, or to fulfill any other acceptance agreement requirement. If a waiver is granted, then the waived amount of scholarship funds may be considered taxable income.

(ii) *Suspensions.* VA may approve an initial request for a suspension for a period of up to 1 year. A suspension may be extended for one additional year, after which time the participant will be in breach of his or her acceptance agreement. If a suspension is approved:

(A) VA will temporarily discontinue providing any scholarship funds to or on behalf of the participant while the participant's scholarship is in a suspended status; or

(B) VA will temporarily delay the enforcement of acceptance agreement requirements.

* * * * *

(e) *Eligibility to reapply for award.* Any previous participant of any federally sponsored scholarship program who breached his or her acceptance agreement or similar agreement in such scholarship program is not eligible to apply for a HPSP or VIOMPSP. This includes participants who previously applied for, and received, a waiver under this section.

(f) *Finality of decisions.* Decisions to approve or disapprove waiver requests are final and binding determinations. Such determinations are not subject to reconsideration or appeal.

(Authority: 38 U.S.C. 7505(c), 7634(a), 7634(b))

■ 12. Add an undesignated center heading and §§ 17.625 through 17.636 to read as follows:

Visual Impairment and Orientation and Mobility Professional Scholarship Program

Sec.
17.625 Purpose.
17.626 Definitions.
17.627 Eligibility for the VIOMPSP.
17.628 Availability of VIOMPSP scholarships.
17.629 Application for the VIOMPSP.
17.630 Selection of VIOMPSP participants.
17.631 Award procedures.
17.632 Obligated service.
17.633 Deferment of obligated service.
17.634 Failure to comply with terms and conditions of participation.
17.635 Bankruptcy.
17.636 Cancellation, waiver, or suspension of obligation.

Visual Impairment and Orientation and Mobility Professional Scholarship Program

§ 17.625 Purpose.

The purpose of §§ 17.625 through 17.636 is to establish the requirements for the award of scholarships under the Visual Impairment and Orientation and Mobility Professional Scholarship Program (VIOMPSP) to students pursuing a program of study leading to a degree in visual impairment or orientation and mobility. The scholarship is designed to increase the supply of qualified Blind Rehabilitation Specialists and Blind Rehabilitation Outpatient Specialists available to VA. The scholarship will be publicized throughout educational institutions in the United States, with an emphasis on disseminating information to such institutions with high numbers of Hispanic students and to historically black colleges and universities.

(Authority: 38 U.S.C. 7501)

§ 17.626 Definitions.

For the definitions that apply to §§ 17.625 through 17.636, see § 17.601.

(Authority: 38 U.S.C. 501)

§ 17.627 Eligibility for the VIOMPSP.

(a) *General.* To be eligible for the VIOMPSP, an applicant must meet the following requirements:

(1) Be unconditionally accepted for enrollment or currently enrolled in a program of study leading to a degree in orientation and mobility, low vision therapy, or vision rehabilitation therapy, or a dual degree (a program in which an individual becomes certified in two of the three professional certifications offered by the Academy for Certification of Visual Rehabilitation and Education Professionals) at an accredited educational institution that is in a State;

(2) Be a citizen of the United States; and

(3) Submit an application to participate in the VIOMPSP, as described in § 17.629.

(b) *Obligated service to another entity.* Any applicant who, at the time of application, owes a service obligation to any other entity to perform service after completion of the course of study is ineligible to receive a VIOMPSP scholarship.

(Authority: 38 U.S.C. 7501(a), 7502(a), 7504(3))

§ 17.628 Availability of VIOMPSP scholarships.

VA will make awards under the VIOMPSP only when VA determines it is necessary to assist in alleviating shortages or anticipated shortages of personnel in visual impairment or orientation and mobility programs. VA's determination of the number of VIOMPSP scholarships to be awarded in a fiscal year, and the number that will be awarded to full-time and/or part-time students, is subject to the availability of appropriations.

(Authority: 38 U.S.C. 7501(a), 7503(c)(2))

§ 17.629 Application for the VIOMPSP.

(a) *Application-general.* Each individual desiring a VIOMPSP scholarship must submit an accurate and complete application, including a signed written acceptance agreement.

(b) *VA's duties.* VA will notify applicants prior to acceptance in the VIOMPSP of the following information:

(1) A fair summary of the rights and liabilities of an individual whose application is approved by VA and whose acceptance agreement is consummated by VA; and

(2) Full description of the terms and conditions that apply to participation in the VIOMPSP and service in VA.

(Authority: 38 U.S.C. 501(a), 7502(a)(2))

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0793.)

§ 17.630 Selection of VIOMPSP participants.

(a) *General.* In deciding which VIOMPSP applications to approve, VA will first consider applications submitted by applicants entering their final year of education or training. Applicants will be evaluated and selected using the criteria specified in paragraph (b) of this section. If there are a larger number of equally qualified applicants than there are awards to be made, then VA will first select veterans, and then use a random method as the basis for further selection.

(b) *Selection criteria.* In evaluating and selecting participants, VA will take into consideration those factors determined necessary to assure effective participation in the VIOMPSP. These factors will include, but are not limited to, the following:

(1) Academic performance;

(2) Work/volunteer experience, including prior rehabilitation or health care employment and VA employment;

(3) Faculty and employer recommendations; or

(4) Career goals.

(c) *Notification of approval.* VA will notify the individual in writing that his or her application has been accepted and approved. An individual becomes a participant in the program upon receipt of such approval by VA.

(d) *Duration of VIOMPSP award.* VA will award a VIOMPSP scholarship for a period of time equal to the number of years required to complete a program of study leading to a degree in orientation and mobility, low vision therapy, or vision rehabilitation therapy, or a dual degree. The number of years covered by an individual scholarship award will be based on the number of school years that the participant has yet to complete his or her degree at the time the VIOMPSP scholarship is awarded. Subject to the availability of funds, VA will award the VIOMPSP as follows:

(1) *Full-time scholarship.* A full-time scholarship is awarded for a minimum of 1 school year to a maximum of 4 school years;

(2) *Part-time scholarships.* A part-time scholarship is awarded for a minimum of 1 school year to a maximum of 6 school years.

(Authority: 38 U.S.C. 7504(3))

§ 17.631 Award procedures.

(a) *Amount of scholarship.* (1) A VIOMPSP scholarship award will not exceed the total tuition and required fees for the program of study in which the applicant is enrolled. All such payments to scholarship participants are exempt from Federal taxation.

(2) The total amount of assistance provided under the VIOMPSP for an academic year to an individual who is a full-time student may not exceed $15,000.00.

(3) The total amount of assistance provided under the VIOMPSP for an academic year to a participant who is a part-time student shall bear the same ratio to the amount that would be paid under paragraph (a)(2) of this section if the participant were a full-time student as the coursework carried by the participant to full-time coursework.

(4) The total amount of assistance provided to an individual may not exceed $45,000.00.

(5) In the case of an individual enrolled in a program of study leading to a dual degree described in § 17.627(a)(1), such tuition and fees will not exceed the amounts necessary for the minimum number of credit hours to achieve such dual degree.

(6) Financial assistance may be provided to an individual under the VIOMPSP to supplement other educational assistance to the extent that the total amount of educational assistance received by the individual during an academic year does not exceed the total tuition and fees for such academic year.

(7) VA will make arrangements with the school in which the participant is enrolled to issue direct payment for the amount of tuition or fees on behalf of the participant.

(b) *Repeated course work.* Additional costs relating to the repeated course work will not be paid under this program. VA will resume any scholarship payments suspended under this section upon notification by the school that the participant has returned from the leave-of-absence or has satisfactorily completed the repeated course work and is pursuing the course of study for which the VIOMPSP was awarded.

(Authority: 38 U.S.C. 7503, 7504(3))

§ 17.632 Obligated service.

(a) *General provision.* Except as provided in paragraph (d) of this section, each participant is obligated to provide service as a full-time clinical VA employee in the rehabilitation practice of the participant's discipline in an assignment or location determined by VA.

(b) *Beginning of service.* A participant's obligated service will begin on the date on which the participant obtains any required applicable credentials and when appointed as a full-time clinical VA employee in a position for which the degree prepared the participant. VA will appoint the

participant to such position as soon as possible, but no later than 90 days after the date that the participant receives his or her degree, or the date the participant obtains any required applicable credentials, whichever is later. If a participant fails to obtain his or her degree, or fails to obtain any required applicable credentials within 180 days after receiving the degree, the participant is considered to be in breach of the acceptance agreement.

(c) *Duration of service.* The participant will agree to serve as a full-time clinical VA employee for 3 calendar years which must be completed no later than 6 years after the participant has completed the program for which the scholarship was awarded and received a degree referenced in § 17.627(a)(1).

(d) *Location and assignment of obligated service.* VA reserves the right to make final decisions on the location and assignment of the obligated service. A participant who receives a scholarship must agree as part of the participant's mobility agreement that he or she is willing to accept the location and assignment where VA assigns the obligated service. Geographic relocation may be required.

(e) *Creditability of advanced clinical training.* No period of advanced clinical training will be credited towards satisfying the period of obligated service incurred under the VIOMPSP.

(Authority: 38 U.S.C. 7504(2)(D), 7504(3))

§ 17.633 Deferment of obligated service.

Deferment of obligated service under the VIOMPSP is treated in the same manner as deferment of obligated service under the HPSP under § 17.608.

(Authority: 38 U.S.C. 7504(3))

§ 17.634 Failure to comply with terms and conditions of participation.

(a) *Participant refuses to accept payment of the VIOMPSP.* If a participant, other than one described in paragraph (b) of this section, refuses to accept payment or instructs the school not to accept payment of the VIOMPSP scholarship provided by VA, the participant must, in addition to any obligation incurred under the agreement, pay to the United States the amount of $1,500 in liquidated damages. Payment of this amount must be made no later than 90 days from the date that the participant fails to accept payment of the VIOMPSP or instructs the school not to accept payment.

(b) *Participant fails to complete course of study or does not obtain certification.* A participant described in paragraphs (b)(1) through (4) of this section must, instead of otherwise fulfilling the terms of his or her acceptance agreement, pay to the United States an amount equal to all VIOMPSP funds awarded under the acceptance agreement. Payment of this amount must be made no later than 1 year after the date that the participant meets any of the criteria described in paragraphs (b)(1) through (4) of this section, unless VA determines that a longer period is necessary to avoid hardship. No interest will be charged on any part of this indebtedness. A participant will pay such amount if one of the following criteria is met:

(1) The participant fails to maintain an acceptable level of academic standing;

(2) The participant is dismissed from the school for disciplinary reasons;

(3) The participant, for any reason, voluntarily terminates the course of study or program for which the scholarship was awarded including a reduction of course load from full-time to part-time before completing the course of study or program; or

(4) The participant fails to become certified in the discipline for which the degree prepared the participant, if applicable, no later than 180 days after the date such person becomes eligible to apply for certification.

(c) *Participant fails to perform all or any part of their service obligation.* (1) Participants who breach their agreements by failing to begin or complete their service obligation, for any reason, including the loss, revocation, suspension, restriction, or limitation of required certification, and other than provided for under paragraph (b) of this section, must repay the portion of all VIOMPSP funds paid to or on behalf of the participant, adjusted for the service that they provided. To calculate the unearned portion of VIOMPSP funds, subtract the number of months of obligated service rendered from the total months of obligated service owed, divide the remaining months by the total obligated service, then multiply by the total amount of VIOMPSP funds paid to or on behalf of the participant. The following formula may be used in determining the unearned portion:

A = P((t-s)/t) in which

''A'' is the amount the United States is entitled to recover;

''P'' is the amounts paid under the VIOMPSP, to or on behalf of the participant;

''t'' is the total number of months in the participant's period of obligated service; and

''s'' is the number of months of obligated service rendered.

(2) The amount that the United States is entitled to recover will be paid no later than 1 year after the date the applicant failed to begin or complete the period of obligated service, as determined by VA.

(Authority: 38 U.S.C. 7505(a), 7505(b))

§ 17.635 Bankruptcy.

Bankruptcy under the VIOMPSP is treated in the same manner as bankruptcy for the HPSP under § 17.611.

(Authority: 38 U.S.C. 7505(c), 7505(d))

§ 17.636 Cancellation, waiver, or suspension of obligation.

Cancellation, waiver, or suspension procedures under the VIOMPSP are the same as those procedures for the HPSP under § 17.612.

(Authority: 38 U.S.C. 7505(c))

[FR Doc. 2013–20255 Filed 8–19–13; 8:45 am]

BILLING CODE 8320–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2012–49, et al.]

Product List Update

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is updating the postal competitive product list. This action reflects the disposition of recent dockets, as reflected in Commission orders, and a publication policy adopted in a Commission order. The referenced policy assumes periodic updates. The updates are identified in the body of this document. The product lists, which are republished in their entirety, include these updates.

DATES: *Effective Date:* August 20, 2013.

Applicability Dates: October 11, 2012 (First-Class Package Service Contract 16 (MC2012–49 and CP2012–61)); (First-Class Package Service Contract 17) (MC2012–50 and CP2012–62)); (First-Class Package Service Contract 18 (MC2012–51 and CP2012–63)); (First-Class Package Service Contract 19 (MC2012–52 and CP2012–64)); (First-Class Package Service Contract 20 (MC2012–53 and CP2012–65)); (Express Mail & Priority Mail Contract 10 (MC2012–54 and CP2012–66)); and (Priority Mail Contract 44 (MC2013–2 and CP2013–2)); October 22, 2012 (Express Mail & Priority Mail Contract 11 (MC2013–1 and CP2013–1)).

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at *stephen.sharfman@prc.gov* or 202–789–6820.

SUPPLEMENTARY INFORMATION: This document identifies recent updates to the competitive product list, which appear as 39 CFR Appendix A to Subpart A of Part 3020—Mail Classification Schedule.[1] Publication of updated product lists in the **Federal Register** is consistent with the Postal Accountability and Enhancement Act (PAEA) of 2006.

Authorization. The Commission process for periodic publication of updates was established in Order No. 445, April 22, 2010.

Changes. Since publication of the product lists in the **Federal Register** on March 6, 2012 (77 FR 13198), the following changes to the competitive product list have been made:

1. First-Class Package Service Contract 16 (MC2012–49 and CP2012–61), added October 11, 2012 (Order No. 1494);

2. First-Class Package Service Contract 17 (MC2012–50 and CP2012–62), added October 11, 2012 (Order No. 1495);

3. First-Class Package Service Contract 18 (MC2012–51 and CP2012–63) (Order No. 1496);

4. First-Class Package Service Contract 19 (MC2012–52 and CP2012–64) added October 11, 2012 (Order No. 1497);

5. First-Class Package Service Contact 20 (MC2012–53 and CP2012–65), added October 11, 2012 (Order No. 1498);

6. Express Mail & Priority Mail Contract 10 (MC2012–54 and CP2012–66), added October 11, 2012 (Order No. 1499);

7. Priority Mail Contract 44 (MC2013–2 and CP2013–2) added October 11, 2012 (Order 1493); and

8. Express Mail & Priority Mail Contract 11 (MC2013–1 and CP2013–1) added October 22, 2012 (Order No. 1509).

Updated product lists. The referenced changes to the competitive product list are included in the product lists following the Secretary's signature.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

By the Commission.

Shoshana M. Grove,

Secretary.

For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

[1] Docket No. MC2012–16; and Docket No. CP2011–54.

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to Subpart A of Part 3020—Mail Classification Schedule to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products

1000 Market Dominant Product List

First-Class Mail
- Single-Piece Letters/Postcards
- Bulk Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

Standard Mail (Regular and Nonprofit)
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- Flats
- Not Flat-Machinables (NFMs)/Parcels

Periodicals
- Within County Periodicals
- Outside County Periodicals

Package Services
- Single-Piece Parcel Post
- Inbound Surface Parcel Post (at UPU rates)
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

Special Services
- Ancillary Services
- International Ancillary Services
- Address Management Services
- Caller Service
- Change-of-Address Credit Card Authentication
- Confirm
- Customized Postage
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service Stamp Fulfillment Services

Negotiated Service Agreements
- HSBC North America Holdings Inc. Negotiated Service Agreement
- Bookspan Negotiated Service Agreement
- Bank of America Corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement
- Inbound International
- Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services (MC2010–12 and R2010–2)
- The Strategic Bilateral Agreement Between United States Postal Service and Koninklijke TNT Post BV and TNT Postl pakketservice Benelux BV, collectively ''TNT Post'' and China Post Group–United States Postal Service Letter Post Bilateral Agreement (MC2010–35, R2010–5 and R2010–6)

Market Dominant Product Descriptions

First-Class Mail
- Single-Piece Letters/Postcards
- Bulk Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

Standard Mail (Regular and Nonprofit)
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- [Reserved for Product Description]
- Flats
- Not Flat-Machinables (NFMs)/Parcels

Periodicals
- Within County Periodicals
- Outside County Periodicals

Package Services
- Single-Piece Parcel Post
- Inbound Surface Parcel Post (at UPU rates)
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

Special Services
- Ancillary Services
- Address Correction Service
- Applications and Mailing Permits
- Business Reply Mail
- Bulk Parcel Return Service
- Certified Mail
- Certificate of Mailing
- Collect on Delivery
- Delivery Confirmation
- Insurance
- Merchandise Return Service
- Parcel Airlift (PAL)
- Registered Mail
- Return Receipt
- Return Receipt for Merchandise
- Restricted Delivery
- Shipper-Paid Forwarding
- Signature Confirmation
- Special Handling
- Stamped Envelopes
- Stamped Cards
- Premium Stamped Stationery
- Premium Stamped Cards
- International Ancillary Services
- International Certificate of Mailing
- International Registered Mail
- International Return Receipt
- International Restricted Delivery
- Address List Services
- Caller Service
- Change-of-Address Credit Card Authentication
- Confirm
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service
- [Reserved for Product Description]

Negotiated Service Agreements
- HSBC North America Holdings Inc. Negotiated Service Agreement
- Bookspan Negotiated Service Agreement
- Bank of America Corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement

Part B—Competitive Products

2000 Competitive Product List

Express Mail
Express Mail
Outbound International Expedited Services
Inbound International Expedited Services
Inbound International Expedited Services 1 (CP2008–7)
Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)
Inbound International Expedited Services 3 (MC2010–13 and CP2010–12)
Inbound International Expedited Services 4 (MC2010–37 and CP2010–126)
Priority Mail
Priority Mail
Outbound Priority Mail International
Inbound Air Parcel Post (at non-UPU rates)
Royal Mail Group Inbound Air Parcel Post Agreement
Inbound Air Parcel Post (at UPU rates)
Parcel Return Service
Parcel Select
International
International Priority Airlift (IPA)
International Surface Airlift (ISAL)
International Direct Sacks—M-Bags
Global Customized Shipping Services
Inbound Surface Parcel Post (at non-UPU rates)
Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2010–14 and CP2010–13—Inbound Surface Parcel Post at Non-UPU Rates and Xpresspost-USA)
International Money Transfer Service—Outbound
International Money Transfer Service—Inbound
International Ancillary Services
Special Services
Address Enhancement Service
Greeting Cards and Stationery
Premium Forwarding Service
Shipping and Mailing Supplies
Negotiated Service Agreements
Domestic
Express Mail Contract 1 (MC2008–5)
Express Mail Contract 2 (MC2009–3 and CP2009–4)
Express Mail Contract 3 (MC2009–15 and CP2009–21)
Express Mail Contract 4 (MC2009–34 and CP2009–45)
Express Mail Contract 5 (MC2010–5 and CP2010–5)
Express Mail Contract 6 (MC2010–6 and CP2010–6)
Express Mail Contract 7 (MC2010–7 and CP2010–7)
Express Mail Contract 8 (MC2010–16 and CP2010–16)
Express Mail Contract 9 (MC2011–1 and CP2011–2)
Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)
Express Mail & Priority Mail Contract 6 (MC2009–31 and CP2009–42)
Express Mail & Priority Mail Contract 7 (MC2009–32 and CP2009–43)
Express Mail & Priority Mail Contract 8 (MC2009–33 and CP2009–44)
Express Mail & Priority Mail Contract 10 (MC2012–54 and CP2012–66)
Express Mail & Priority Mail Contract 11 (MC2013–1 and CP2013–1)
First-Class Package Service Contract 16 (MC2012–49 and CP2012–61)
First-Class Package Service Contract 17 (MC2012–50 and CP2012–62)
First-Class Package Service Contract 18 (MC2012–51 and CP2012–63)
First-Class Package Service Contract 19 (MC2012–52 and CP2012–64)
First-Class Package Service Contract 20 (MC2012–53 and CP2012–65)
Parcel Select & Parcel Return Service Contract 1 (MC2009–11 and CP2009–13)
Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
Parcel Return Service Contract 2 (MC2011–6 and CP2011–33)
Parcel Select & Parcel Return Service Contract 2 (MC2009–40 and CP2009–61)
Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Priority Mail Contract 2 (MC2009–2 and CP2009–3)
Priority Mail Contract 3 (MC2009–4 and CP2009–5)
Priority Mail Contract 4 (MC2009–5 and CP2009–6)
Priority Mail Contract 5 (MC2009–21 and CP2009–26)
Priority Mail Contract 6 (MC2009–25 and CP2009–30)
Priority Mail Contract 7 (MC2009–25 and CP2009–31)
Priority Mail Contract 8 (MC2009–25 and CP2009–32)
Priority Mail Contract 9 (MC2009–25 and CP2009–33)
Priority Mail Contract 10 (MC2009–25 and CP2009–34)
Priority Mail Contract 11 (MC2009–27 and CP2009–37)
Priority Mail Contract 12 (MC2009–28 and CP2009–38)
Priority Mail Contract 13 (MC2009–29 and CP2009–39)
Priority Mail Contract 14 (MC2009–30 and CP2009–40)
Priority Mail Contract 15 (MC2009–35 and CP2009–54)
Priority Mail Contract 16 (MC2009–36 and CP2009–55)
Priority Mail Contract 17 (MC2009–37 and CP2009–56)
Priority Mail Contract 18 (MC2009–42 and CP2009–63)
Priority Mail Contract 19 (MC2010–1 and CP2010–1)
Priority Mail Contract 20 (MC2010–2 and CP2010–2)
Priority Mail Contract 21 (MC2010–3 and CP2010–3)
Priority Mail Contract 22 (MC2010–4 and CP2010–4)
Priority Mail Contract 23 (MC2010–9 and CP2010–9)
Priority Mail Contract 24 (MC2010–15 and CP2010–15)
Priority Mail Contract 25 (MC2010–30 and CP2010–75)
Priority Mail Contract 26 (MC2010–31 and CP2010–76)
Priority Mail Contract 27 (MC2010–32 and CP2010–77)
Priority Mail Contract 28 (MC2011–2 and CP2011–3)
Priority Mail Contract 29 (MC2011–3 and CP2011–4)
Priority Mail Contract 44 (MC2013–2 and CP2013–2)
Outbound International
Direct Entry Parcels Contracts
Direct Entry Parcels 1 (MC2009–26 and CP2009–36)
Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
Global Expedited Package Services (GEPS) Contracts
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23 and CP2008–24)
Global Expedited Package Services 2 (CP2009–50)
Global Expedited Package Services 3 (MC2010–28 and CP2010–71)
Global Expedited Package Services—Non-published Rates 2 (MC2010–29 and CP2011–45)
Global Plus Contracts
Global Plus 1 (CP2008–8, CP2008–46 and CP2009–47)
Global Plus 1A (MC2010–26, CP2010–67 and CP2010–68)
Global Plus 1B (MC2011–7, CP2011–39 and CP2011–40)
Global Plus 2 (MC2008–7, CP2008–48 and CP2008–49)
Global Plus 2A (MC2010–27, CP2010–69 and CP2010–70)
Global Plus 2B (MC2011–8, CP2011–41 and CP2011–42)
Inbound International
Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010–34 and CP2010–95)
Inbound Direct Entry Contracts with Foreign Postal Administrations
Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and MC2008–15)
Inbound Direct Entry Contracts with Foreign Postal Administrations 1 (MC2008–6 and CP2009–62)
International Business Reply Service Competitive Contract 1 (MC2009–14 and CP2009–20)
International Business Reply Service Competitive Contract 2 (MC2010–18, CP2010–21 and CP2010–22)
Competitive Product Descriptions
Express Mail
Express Mail
Outbound International Expedited Services
Inbound International Expedited Services
Priority
Priority Mail
Outbound Priority Mail International
Inbound Air Parcel Post
Parcel Select
Parcel Return Service
International
International Priority Airlift (IPA)
International Surface Airlift (ISAL)
International Direct Sacks—M-Bags
Global Customized Shipping Services

International Money Transfer Service
Inbound Surface Parcel Post (at non-UPU rates)
International Ancillary Services
International Certificate of Mailing
International Registered Mail
International Return Receipt
International Restricted Delivery
International Insurance
Negotiated Service Agreements
Domestic
Outbound International

Part C—Glossary of Terms and Conditions [Reserved]

Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. 2013–20186 Filed 8–19–13; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–8293]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

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

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR Part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State and Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current Effective Map Date	Date certain Federal assistance no longer available in SFHAs
Region I				
Rhode Island:				
Jamestown, Town of, Newport County	445399	November 20, 1970, Emerg; April 21, 1972, Reg; September 4, 2013, Susp.	September 4, 2013.	September 4, 2013.
Little Compton, Town of, Newport County.	440035	May 9, 1975, Emerg; August 17, 1981, Reg; September 4, 2013, Susp.	.....do*	Do.
Middletown, Town of, Newport County	445401	September 11, 1970, Emerg; April 9, 1971, Reg; September 4, 2013, Susp.	.....do	Do.
Newport, City of, Newport County	445403	June 19, 1970, Emerg; December 4, 1970, Reg; September 4, 2013, Susp.	.....do	Do.
Portsmouth, Town of, Newport County	445405	July 30, 1971, Emerg; August 24, 1973, Reg; September 4, 2013, Susp.	.....do	Do.
Tiverton, Town of, Newport County	440012	August 18, 1972, Emerg; May 2, 1977, Reg; September 4, 2013, Susp.	.....do	Do.
Region III				
Maryland:				
Charles County, Unincorporated Areas	240089	March 30, 1973, Emerg; June 5, 1985, Reg; September 4, 2013, Susp.	.....do	Do.
Indian Head, Town of, Charles County	240091	January 28, 1974, Emerg; October 15, 1985, Reg; September 4, 2013, Susp.	.....do	Do.
La Plata, Town of, Charles County	240092	January 21, 1974, Emerg; April 17, 1985, Reg; September 4, 2013, Susp.	.....do	Do.
Region V				
Minnesota:				
Adams, City of, Mower County	270308	February 12, 1974, Emerg; August 15, 1979, Reg; September 4, 2013, Susp.	.....do	Do.
Austin, City of, Mower County	275228	September 25, 1970, Emerg; May 14, 1971, Reg; September 4, 2013, Susp.	.....do	Do.
Brownsdale, City of, Mower County	270310	July 5, 1974, Emerg; March 18, 1985, Reg; September 4, 2013, Susp.	.....do	Do.
LeRoy, City of, Mower County	270583	May 2, 1974, Emerg; May 15, 1980, Reg; September 4, 2013, Susp.	.....do	Do.
Mapleview, City of, Mower County	270586	April 30, 1974, Emerg; May 15, 1984, Reg; September 4, 2013, Susp.	.....do	Do.
Mower County, Unincorporated Areas ..	270307	December 22, 1972, Emerg; July 16, 1979, Reg; September 4, 2013, Susp.	.....do	Do.
Rose Creek, City of, Mower County	270598	April 16, 1979, Emerg; July 16, 1979, Reg; September 4, 2013, Susp.	.....do	Do.
Waltham, City of, Mower County	270311	September 8, 1975, Emerg; October 16, 1979, Reg; September 4, 2013, Susp.	.....do	Do.
Region IX				
Nevada:				
Carlin, City of, Elko County	320009	February 11, 1975, Emerg; February 1, 1984, Reg; September 4, 2013, Susp.	.....do	Do.
Elko, City of, Elko County	320010	August 2, 1974, Emerg; February 1, 1984, Reg; September 4, 2013, Susp.	.....do	Do.
Elko County, Unincorporated Areas	320027	June 23, 1978, Emerg; February 1, 1984, Reg; September 4, 2013, Susp.	.....do	Do.
West Wendover, City of, Elko County ...	320037	N/A, Emerg; April 14, 2008, Reg; September 4, 2013, Susp.	.....do	Do.

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

Dated: July 22, 2013.

David L. Miller,

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

[FR Doc. 2013–20318 Filed 8–19–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1241

[Docket No. EP 706]

Reporting Requirements for Positive Train Control Expenses and Investments

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is amending its rules to require rail carriers that submit to the Board R–1 reports that identify information on capital and operating expenditures for Positive Train Control (PTC) to separately report those expenses so that they can be viewed both as component parts of, as well as separately from, other capital investments and expenses. PTC is an automated system designed to prevent train-to-train collisions and other accidents. Rail carriers with traffic routes that carry passengers and/or hazardous toxic-by-inhalation (TIH) or poisonous-by-inhalation (PIH) materials, as so designated under federal law, must implement PTC according to federal legislation. Pursuant to the notice of proposed rulemaking published in the **Federal Register** on October 13, 2011, we are adopting supplemental schedules to the R–1 to require financial disclosure with respect to PTC to help inform the Board and the public about the specific costs attributable to PTC implementation.

DATES: This rule is effective on September 19, 2013.

FOR FURTHER INFORMATION CONTACT: Paul Aguiar, (202) 245–0323. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Rail carriers must file with the Board an annual report containing ''an account, in as much detail as the Board may require, of the affairs of the rail carrier.'' 49 U.S.C. 11145(b)(1). As authorized by this provision, the Board requires large (Class I) [1] rail carriers to submit annual reports, known as R–1 reports. 49 CFR 1241.11.[2] The R–1 reports contain information about finances and operating statistics for each railroad. Currently, PTC expenditures are incorporated into the R–1 under the category of ''capital investments and expenses;'' however, PTC expenditures are not reported separately.

PTC is a system designed to prevent train-to-train collisions, over-speed derailments, incursions into established work zone limits, and the movement of a train through a switch left in the wrong position. 49 U.S.C. 20157(i)(3). PTC systems may include digital data link communications networks, positioning systems, on-board computers on locomotives, throttle-brake interfaces on locomotives, wayside interface units at switches and wayside detectors, and control center computers.[3] The Rail Safety Improvement Act of 2008 (RSIA) requires Class I rail carriers to implement PTC by December 31, 2015, on mainlines where intercity rail passenger transportation or commuter rail passenger transportation is regularly scheduled, and/or on mainlines over which TIH or PIH, as designated in 49 CFR 171.8, 173.115, and 173.132, are transported. 49 U.S.C. 20157(a)(1).[4] In complying with the RSIA, rail carriers are expected to make expenditures related to installation, operation, and maintenance of PTC.

On October 13, 2010, the Union Pacific Railroad Company (UP), a Class I rail carrier, filed a petition requesting that the Board institute a rulemaking proceeding to adopt supplemental schedules that would require Class I carriers to separately identify PTC expenditures in annual R–1 reports to the Board. Various parties filed comments supporting and opposing UP's petition. In *Reporting Requirements for Positive Train Control Expenses & Investments,* EP 706 (STB served Feb. 10, 2011), the Board instituted a rulemaking proceeding in response to UP's petition, but the Board made no determination about the merits of UP's specific proposal and stated that it would address the arguments raised by the parties in their filings in a subsequent decision. On October 13, 2011, the Board served a Notice of Proposed Rulemaking (*PTC NPRM*) announcing proposed changes to its reporting rules to supplement the R–1 with details of the expenditures attributable to the installation, operation, and maintenance of PTC systems. The Board explained that the proposed ''PTC Supplement,'' which would separately identify PTC-related expenses from the R–1 filings currently required, would provide it with important information that would help identify transportation industry changes that may require attention by the agency and would assist the Board in preparing financial and statistical summaries and abstracts to provide itself, Congress, other government agencies, the transportation industry, and the public with transportation data useful in making regulatory policy and business decisions.

The new rule will require a PTC Supplement [5] to be filed along with each carrier's R–1 annual report.[6] The supplement will provide for PTC versions of schedules 330 (road property and equipment improvements), 332 (depreciation base and rates—road property and equipment), 335 (accumulated depreciation), 352B (investment in railroad property), and 410 (railway operating expenses) containing dollar amounts that reflect only the amounts attributable to PTC for the filing year. The PTC Supplement will also contain PTC versions of schedules 700 (mileage operated at close of year), 710 (inventory of equipment), 710S (unit cost of equipment installed during the year), and 720 (track and traffic conditions). Railroads will also

[1] The Board designates three classes of freight railroads based upon their operating revenues, for three consecutive years, in 1991 dollars, using the following scale: Class I—$250 million or more; Class II—less than $250 million but more than $20 million; and Class III—$20 million or less. These operating revenue thresholds are adjusted annually for inflation. 49 CFR part 1201, 1–1. Adjusted for inflation, the revenue threshold for a Class I rail carrier using 2012 data is $452,653,248. Today, there are seven Class I carriers.

[2] Information about the R–1 report, including the schedules discussed in this rulemaking, past R–1 reports, and a blank R–1 form, is available on the Board's Web site. STB Industry Data, *http://www.stb.dot.gov/stb/industry/econ_reports.html.*

[3] The Federal Railroad Administration (FRA) provides more information online. Federal Railroad Administration, Positive Train Control, *http://www.fra.dot.gov/Page/P0152* (last visited Aug. 6, 2013).

[4] We note that in a 2012 report to Congress, the FRA indicated that it was not likely that all PTC implementation under the statute would be completed by the 2015 deadline, and made a series of recommendations to Congress on how to address emerging issues on implementation. FRA, *FRA Report to Congress: Positive Train Control: Implementation Status, Issues, and Impacts* (2012), *available at http://www.fra.dot.gov/eLib/Details/L03718* (last visited Aug. 13, 2013). *See also Rail Safety: Preliminary Observations on Federal Rail Safety Oversight & Positive Train Control Implementation Before the S. Comm. on Commerce, Science, & Transp.,* 113th Cong. 12–17 (2013) (statement of Susan A. Fleming, Dir. Physical Infrastructure Issues, Gov't Accountability Office), *available at http://www.gao.gov/assets/660/655298.pdf* (last visited Aug. 13, 2013).

[5] The PTC schedules are provided in Appendix A.

[6] The currently established R–1 will not change.

report, by footnote in each supplement schedule, PTC-related expenditures for passenger-only service not otherwise captured in the individual schedules to allow the Board to understand fully the railroads' PTC expenditures. In addition to separating capital expenses and operating expenses incurred by the railroad for PTC, the respondent entity will include by footnote disclosure the value of funds from non-government and government transfers, including grants, subsidies, and other contributions or reimbursements, used or designated to purchase or create PTC assets or to offset PTC costs.[7]

The American Chemistry Council and the Chlorine Institute (collectively, ACC/CI) jointly filed opening comments in response to the rules proposed in the *PTC NPRM.* UP and the Association of American Railroads (AAR) also filed opening comments. These same parties also filed reply comments.[8] We have considered the parties' arguments and will adopt final rules, accordingly. We address below the comments received on the *PTC NPRM.* The final rules are in full below.

Nature of PTC-related costs. ACC/CI argue that the Board should not adopt the PTC Supplement because the Board has not provided sufficient guidance about which PTC-related costs may be recorded, and how they should be recorded.[9] ACC/CI argue that a lack of guidance on how to separate PTC-related expenses from non-PTC expenses will result in inconsistent reporting, and speculate that, for example, one railroad might report as a PTC-related expense the entire cost of a PTC-equipped locomotive, while another might report as PTC-related only the expense of PTC equipment on the locomotive.[10] ACC/CI also claim that the potential for inconsistencies is shown in PTC implementation plans filed by carriers with the FRA, citing the differences among the carriers' FRA reports.[11]

AAR and UP reply that the rules at 49 CFR Part 1201 Subpart A—*Uniform System of Accounts,* independent auditing of the R–1, and the Board's monitoring of that auditing provide sufficient guidance and assurance that PTC-related expenses will be properly reported.[12] ACC/CI state that the comments of AAR and UP show that carrier accounting practices vary, citing AAR's comment that it will be ''difficult to decide'' on the appropriate PTC portion of maintenance expenses for wayside devices that also supply power to non-PTC equipment.[13] However, ACC/CI also state on reply that because UP is the only individual carrier that filed comments on the *PTC NPRM,* the record does not show the full diversity of carrier accounting practices.[14]

With respect to ACC/CI's argument that there is insufficient guidance on recording of PTC-related costs, the Board's Uniform System of Accounts (USOA) and the auditing process provide sufficient assurance of proper supplement reporting. The Board will address any questions railroads have about application of the USOA to the PTC supplement. If a railroad proposes an accounting treatment that varies from the USOA, Board review and approval is required. The example that ACC/CI give of potential improper reporting related to a PTC-equipped locomotive is not a realistic example of improper reporting because even if a railroad were to report an entire PTC-equipped locomotive as a PTC expense, the auditing process would address such a misallocation. ACC/CI also give an example of how carriers have reported PTC-related expenses differently in their ''PTC implementation plans,'' which they are required to file with the FRA indicating the sequence and schedule on which each railroad will install PTC equipment.[15] Specifically, ACC/CI note that railroads have chosen to include information on wayside devices in different sections of their reports.[16] ACC/CI do not explain why this or other differences among the carriers' FRA reports are significant or why the differences indicate potential problems with the PTC Supplement. ACC/CI do not indicate whether the FRA reports were subject to auditing as the PTC Supplement will be. While ACC/CI claim that the filings of AAR and UP show variations in carrier accounting practices, ACC/CI cite only one statement involving wayside devices by AAR to support the claim. However, with its statement about wayside devices, AAR merely argues that allocation of operating costs to the appropriate locations in PTC schedule 410 is a more difficult, and therefore more time-consuming, task than other PTC-related reporting and requests that mandatory filing of PTC schedule 410 be delayed.[17] AAR does not argue that carriers have insufficient guidance to make the allocations, and, as discussed below, mandatory reporting will not begin until the 2013 R–1 filings are due in 2014. Railroads should therefore have sufficient time to address this issue. The Board's Uniform System of Accounts and the auditing process will provide sufficient assurance of proper reporting, although some reporting tasks may be more time consuming than others.

Tracking benefits. ACC/CI argue that the Board should also require carriers to report any benefits of PTC, some of which, they argue, are clear.[18] ACC/CI claim that recording PTC costs but not benefits is a lopsided treatment that ignores the foreseeability of PTC benefits. ACC/CI express concern that carriers will place the burden of paying for PTC on TIH shippers and passenger rail, while, they argue, PTC benefits a wide range of shippers as well as the railroads.[19]

ACC/CI offer two approaches to measuring PTC benefits.[20] First, they suggest that currently reported performance measures be split into subsets of segments with and without PTC, and that ''[t]he relative changes in performance measures between the two groups could then be used to tease out productivity gains attributable to PTC.'' [21] Second, they suggest new measures, such as car miles per locomotive unit mile, carloads per train start, or carloads per crew start, to assess the extent to which PTC and related train management software allow more efficient use of equipment and personnel.[22] In reply, UP states that it would not oppose a separate proceeding to address the benefits from PTC, but UP opposes broadening this proceeding to require the reporting of benefits from PTC because it will add complications and delay.[23] UP argues the railroads are incurring measurable costs to install PTC now, while calculating benefits from PTC, which will occur in the future, would be speculative and complex.[24] UP claims that ACC/CI's proposals on how to measure PTC benefits are impractical and

[7] *See* App. A, Table Footnote: PTC Grants.

[8] UP also joins the comments of AAR on both opening and reply. UP Opening 2 n.1; UP Reply 2 n.1.

[9] ACC/CI Opening 4–6.

[10] *Id.* at V.S. Crowley & Mulholland 8.

[11] *Id.*

[12] AAR Reply 4–5; UP Reply 4–5.

[13] ACC/CI Reply 2 (citing AAR Opening 9 n.12).

[14] ACC/CI Reply 2.

[15] ACC/CI Opening, V.S. Crowley & Mulholland 6.

[16] *Id.* at 8.

[17] *See* AAR Opening 9 n.12.

[18] ACC/CI Opening 6, V.S. Crowley & Mulholland 14–15. ACC/CI also append two reports by L.E. Peabody & Associates, Inc., and claim that the reports support the argument that PTC has system-wide benefits. ACC/CI Opening 3, Attachment 2, Attachment 3.

[19] ACC/CI Opening 2–3; ACC/CI Reply 4.

[20] ACC/CI Opening, V.S. Crowley & Mulholland 15.

[21] *Id.*

[22] *Id.*

[23] UP Reply 5–6.

[24] *Id.* at 5.

underdeveloped.[25] AAR makes similar arguments for why ACC/CI's proposal should not be adopted, and claims that studies show that the benefits to railroads from PTC will be small in relation to costs.[26] On reply, ACC/CI, citing UP's statement that it ''could provide information about TIH traffic in a PTC version of schedule 755'' (which collects operating statistics), argue that UP and AAR's proposals to include a PTC schedule that collects operating statistics shows that the carriers' objective is to recover PTC costs from TIH shippers.[27]

We will not adopt ACC/CI's proposal. We considered a similar request in *PTC NPRM,* slip op. at 4–5, and, as the Board concluded there, we also conclude here that ACC/CI have not shown that the request to track benefits is practical or warranted at this time. While carriers state that they are incurring costs now to meet the 2015 implementation deadline, any efficiencies that arise will occur after implementation. Moreover, identifying the costs associated with implementing PTC appears to be relatively straightforward, and the revised rules represent a viable approach to supplement the R–1 and capture this data. By contrast, it is not clear how, at this point, we would identify those productivity gains that may arise as a result of PTC investments.

Abuse of reporting rules. ACC/CI propose that the Board not adopt the PTC Supplement because of the potential that the supplement will enable over-recovery of PTC costs from shippers.[28] Citing the Board's statement that failure to adopt the PTC Supplement will not deprive carriers of the opportunity to recover PTC costs, *PTC NPRM,* slip op. at 4 n.8, ACC/CI argue that carriers may still seek to recover legitimate costs without the PTC Supplement, and that failure to adopt the rule would therefore not injure carriers.[29] ACC/CI also claim that the benefits of reporting are speculative and slight.[30] They argue that the railroads' reason for seeking the PTC Supplement is to facilitate cost recovery and to enable double or triple recovery from shippers.[31] ACC/CI cite *Rail Fuel Surcharges,* EP 661, slip op. at 10–11 (STB served Jan. 26, 2007), where the Board found that certain fuel surcharges were ''double dipping'' and therefore an unreasonable practice for the proposition that the PTC Supplement may facilitate similar carrier actions in relation to PTC costs.[32]

AAR and UP reply that, as noted by the Board in the *PTC NPRM,* slip op. at 4 n.8, carriers may seek to recover PTC costs regardless of whether the Board adopts the PTC Supplement and that this proceeding will not determine whether or how the Board uses the data in proceedings.[33] AAR notes that the Board can investigate any claims of abuse.[34]

We disagree that the PTC Supplement will facilitate abuse by carriers. Because PTC reporting will be audited by the Board using the same processes currently in place for other Board reporting requirements, we have no reason to conclude that adding PTC reporting requirements would result in the railroads' over-recovery of PTC expenses. Further, as noted in *PTC NPRM,* slip op. at 4 n.8, carriers may seek to recover PTC costs regardless of the outcome of this rulemaking, and ACC/CI do not adequately explain how the PTC Supplement would enable abuse. Finally, as explained in *PTC NPRM,* slip op. at 3–4, we believe that the PTC Supplement will provide important information about current expenditures. Therefore, we conclude that the Board should begin collecting information on PTC costs now to identify transportation industry changes as they arise and to be prepared to provide interested parties with data useful in making regulatory policy and business decisions.

PTC grants. AAR and UP filed comments on the proposal in the *PTC NPRM* to collect information about PTC grants.[35] They argue that the footnote schedule should not be adopted because any grants would not be part of a railroad's net capital expenditures, and that the grants footnote is therefore unnecessary to separate PTC expenditures from total expenditures.[36] UP suggests, in the alternative, that the Board modify the proposal to require a carrier to disclose a transfer if the carrier includes the value of the transfer in its road and equipment property and depreciation schedules.[37] AAR's alternative suggestion is for the Board to require carriers to file the information in a separate report that, on the request of the carrier and approval by the Board, would remain confidential in order to protect sensitive security-related and commercial information.[38]

UP claims that the information sought by the grants footnote is available from public sources, and to the extent that it is not, reporting it in the R–1 would be inappropriate, as the Board stated in the *PTC NPRM,* slip op. at 4, that confidential filing of the supplemental PTC schedules is unnecessary.[39] Similarly, AAR proposes that if the Board chooses to require the grants footnote, the Board modify that footnote to protect potentially sensitive information by (1) requiring the ''location of the project funded'' information only at a state or regional level for projects not identified by FRA grant number and (2) allowing carriers to petition on a case-by-case basis for treatment of information as confidential.[40] Finally, AAR requests that the Board clarify what constitutes a ''government transfer,'' argues that the term should be limited to direct grants from departments or agencies of government, and claims that the term should exclude Amtrak or other quasi-public entities.[41]

We will adopt the proposal to require the grants footnote, and incorporate several recommendations offered by commenters, described below. This additional information will help the Board monitor the financing of PTC installation. The Board is aware that funds received by grant are not part of carriers' capital expenditures.

We also conclude that AAR and UP have not shown that the grants footnote will collect sensitive information, and therefore we will not eliminate the footnote on that basis or adopt the proposal to obtain the information through a separate, confidential filing. As UP points out, much of the information is available from public sources. The Board and public will find it informative to have the grant information related to each railroad aggregated on that railroad's PTC Supplement. However, recognizing that sufficiently detailed geographic information might reveal confidential information, we will adopt AAR's proposal to require that carriers provide the ''location of the project funded'' information only at a state or regional level for projects not identified by FRA grant number.[42]

[25] *Id.* at 6.

[26] AAR Reply 5–7.

[27] ACC/CI Reply 3 (citing UP Opening 12).

[28] ACC/CI Opening 7–8.

[29] *Id.* at 7.

[30] *Id.*

[31] *Id.* at 7–8.

[32] *Id.*

[33] AAR Reply 7–8; UP Reply 7.

[34] AAR Reply 8.

[35] AAR Opening 11–13; UP Opening 12–14.

[36] AAR Opening 12; UP Opening 12–13.

[37] UP Opening 13–14.

[38] AAR Opening 12.

[39] UP Opening 13 n.26.

[40] AAR Opening 13.

[41] *Id.*

[42] We will leave to individual states to determine whether any state-specific versions of the PTC Supplement implemented by their agencies will reveal sensitive information, and if so, to

We will also modify the language in the grants footnote schedule to address AAR's request that we clarify what grants must be reported. However, as we wish to receive the full scope of information available to inform the Board and the public, we will not adopt AAR's proposal to limit the sources of grants that must be reported to government agencies and departments. To clarify this and to make the change regarding project locations, we will modify the footnote language to state:

''In addition to separating capital expenses and operating expenses incurred by the railroad for PTC, the respondent entity shall include by footnote disclosure here the value of funds received from non-government and government transfers to include grants, subsidies, and other contributions or reimbursements that the respondent entity used to purchase or create PTC assets or to offset PTC costs. These amounts represent non-railroad monies that the respondent entity used or designated for PTC and would provide for full disclosure of PTC costs on an annual basis. This disclosure shall identify the nature and location of the project by FRA identification, if applicable. If FRA identification is not applicable, the disclosure shall identify the location at the state or regional level.''

See App. A, Table Footnote: PTC Grants. The final rule reflects corresponding changes.[43] *See* Regulatory Text below.

Operating statistics. In the *PTC NPRM,* slip op. at 5, the Board stated that it did not believe that a PTC schedule 755, which would collect information on PTC-related carloads, car-miles, and train-miles, would aid the Board in tracking expenditures made for PTC implementation at this time. However, the Board invited parties to comment on the issue. *Id.* at 5–6. AAR and UP argue that the Board should adopt a PTC schedule 755 because such statistics would be useful if the Board decides to modify the Uniform Railroad Costing System (URCS) regarding hazardous materials transportation costs.[44] AAR and UP argue that the operating statistics would inform the Board about the impacts of PTC and be useful in regulatory decision making.[45] They also argue that the burden will be on the carriers to submit the information, and that the carriers are willing to do so.[46]

We will not add a PTC schedule 755. As the Board explained in the *PTC NPRM,* the PTC Supplement's purpose is to collect information on PTC expenditures. AAR and UP offered no compelling justification for collecting the additional information. If the Board needs the information for changes to URCS or other purposes, it can seek the information at that time.

PTC schedule 352B. The Board stated in the *PTC NPRM,* slip op at 5, that the proposed supplement would include a PTC version of schedule 352B. AAR and UP note that PTC schedule 352B was not included in the *PTC NPRM* appendix that provided the proposed schedules.[47] PTC schedule 352B was mistakenly omitted from the *PTC NPRM* appendix and will be included in the final version of the PTC Supplement as shown in Appendix A.

PTC schedule 710S. The information reported on PTC schedule 710S, unit cost of equipment installed during the year, is: class of equipment, number of units, total weight, total cost, and method of acquisition. AAR and UP argue that the Board should not require a PTC schedule 710S because it would result in the duplication of information gathered by PTC schedule 330 (annual expenditures on property and equipment) and PTC schedule 710 (inventory of owned and leased equipment).[48] Alternatively, UP requests that the Board clarify what additional information it seeks from a PTC schedule 710S.[49]

PTC Schedule 710S is not duplicative, and we will include a PTC schedule 710S to determine PTC locomotive costs on a unit basis. PTC schedule 710S will gather unit cost information on locomotives and passenger train cars, while PTC schedule 710 will capture the number of units, and PTC schedule 330 will capture aggregate costs.

Grace period. AAR proposes that the Board allow a 90-day grace period following the filing of the R–1 for railroads to file the PTC Supplement.[50] AAR argues that preparation of the R–1 is time consuming for carriers, and that the grace period may be necessary for carriers to complete the supplement.[51]

We will not provide for a 90-day grace period. A grace period is not necessary, as the R–1 and the supplement are both computer generated. Given that much of the supplemental information will already be contained in the R–1 in aggregate form, the railroads' accounting systems should be able to be modified to capture or separate this information from the current R–1 reporting. AAR has not shown that carriers need additional time to complete the PTC Supplement.

Beginning of mandatory reporting. AAR and UP propose to delay mandatory filing of PTC schedule 410, which will collect operating expenses, until the 2014 calendar year.[52] AAR claims, and UP agrees, that because PTC-related operating expenses are unlikely to be incurred before PTC systems are in operation, allowing carriers additional time to develop systems for capturing PTC operating expenses would benefit carriers and the Board.[53] This is because, AAR argues, PTC-related operating expenses are more difficult to capture than PTC-related capital expenditures.[54] AAR gives the example of wayside devices; it claims it will be simple to identify the costs of adding PTC equipment to a wayside device, but more difficult to determine the proper allocation of maintenance activity costs that apply to the entire wayside device.[55] AAR also states that carriers must address more accounts when determining operating expenses.[56] AAR and UP suggest that carriers be allowed to file PTC schedule 410 on a voluntary basis for calendar years before 2014.[57]

We will not provide for delayed filing of the PTC schedule 410, and we will require carriers to file the full PTC Supplement with their next R–1 filings (this will be the filings regarding 2013, which will be due in 2014). We recognize that any PTC operating expenses may be minimal until carriers begin to use the PTC systems, but carriers can include PTC schedule 410 showing zero dollars of operating expenses. The minimal nature of current PTC operating statistics should ease the difficulties AAR and UP claim may occur in completing PTC schedule 410. Carriers have had ample notice of the new rule and time to develop compliance methods.

Voluntary reporting of calendar years before 2013. AAR and UP request that the Board allow carriers to voluntarily file PTC Supplements for prior calendar years.[58] We will permit carriers to

appropriately address that issue. *See* AAR Opening 6 n.8.

[43] In addition, in the final rule, we replace the word ''will'' with ''shall'' to make it clear that the information is required. The final rule states: ''The supplement *shall* include PTC-related expenditures for passenger-only service not otherwise captured in the individual schedules.'' *See* Regulatory Text below (emphasis added).

[44] AAR Opening 14; UP Opening 11–12.

[45] AAR Opening 14; UP Opening 11.

[46] AAR Opening 14; UP Opening 12.

[47] AAR Opening 4; UP Opening 10 n.23.

[48] AAR Opening 9 n.11; UP Opening 10 n.23.

[49] UP Opening 10 n.23.

[50] AAR Opening 10–11.

[51] *Id.*

[52] AAR Opening 9–10; UP Opening 14.

[53] AAR Opening 9–10; UP Opening 14.

[54] AAR Opening 9–10.

[55] *Id.* at 9 n.12.

[56] *Id.*

[57] *Id.* at 10; UP Opening 14.

[58] AAR Opening 10; UP Opening 3, 14.

voluntarily file PTC Supplements for the years 2008–2012. This information will be useful to fully inform the Board and the public about PTC expenditures. Because the RSIA was enacted in 2008, that is the earliest year for which carriers may voluntarily report.

Review of reporting requirements. AAR proposes that the Board provide for a mandatory reevaluation of the PTC Supplement within one year after the full implementation of PTC.[59] AAR suggests that such a review would be useful to reevaluate the PTC Supplement in light of experience. We will not adopt this proposal. The Board can undertake such a review any time at its discretion should experience demonstrate that it would be helpful.

Paperwork Reduction, Regulatory Flexibility, and Environmental Certifications

In the *PTC NPRM,* published in the **Federal Register** at 76 FR 63582 on October 13, 2011, the Board sought comments pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3549, and Office of Management and Budget (OMB) regulations at 5 CFR 1320.11, regarding: (1) Whether this collection of information, as modified in the proposed rule, is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Comments regarding the necessity, utility, and clarity of the information collection were received and are addressed above. No comments concerning the Board's burden estimates were received.

The proposed collection was submitted to OMB for review as required under the PRA, 44 U.S.C. 3507(d), and 5 CFR 1320.11. OMB withheld approval pending submission of the final rule. We are today submitting the collection contained in this final rule to OMB for approval. Once approval is received, we will publish a notice in the **Federal Register**. Unless renewed, OMB approval of this collection, including (if approved) the modifications here, expires on August 31, 2015. This collection (Class I Railroad Annual Report) has been assigned control number 2140–0009. The display of a currently valid OMB control number for this collection is required by law. Under the PRA and 5 CFR 1320.11, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. 5 U.S.C. 601–604. Under § 605(b), an agency is not required to perform an initial or final regulatory flexibility analysis if it certifies that the proposed or final rules will not have a ''significant impact on a substantial number of small entities.''

Because the goal of the RFA is to reduce the cost to small entities of complying with federal regulations, the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates those entities. In other words, the impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the proposed rule. *White Eagle Coop. Ass'n* v. *Conner,* 553 F.3d 467, 478, 480 (7th Cir. 2009). An agency has no obligation to conduct a small entity impact analysis of effects on entities that it does not regulate. *United Dist. Cos.* v. *FERC,* 88 F.3d 1105, 1170 (DC Cir. 1996).

The rule changes adopted here will not have a significant economic impact upon a substantial number of small entities, within the meaning of the RFA. The reporting requirements are applicable only to Class I rail carriers, which, under the Board's regulations, have annual carrier operating revenues of $250 million or more in 1991 dollars (adjusted for inflation using 2012 data, the revenue threshold for a Class I rail carrier is $452,653,248). Class I carriers generally do not fall within the Small Business Administration's definition of a small business for the rail transportation industry.[60] Therefore, the Board certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The rules set forth below are adopted as final rules.

2. Notice of this decision will be published in the **Federal Register**. The final rules will be effective on September 19, 2013.

3. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

List of Subjects in 49 CFR part 1241

Railroads, Reporting and recordkeeping requirements.

Decided: August 13, 2013.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey. Commissioner Mulvey dissented with a separate expression.

Jeffrey Herzig,

Clearance Clerk.

Commissioner Mulvey, dissenting:

I disagreed with the decision to propose the rules that the Board makes final today because I believed that doing so was premature. Nothing in this record has led me to a different conclusion. In *Class I Railroad Accounting and Financial Reporting—Transportation of Hazardous Materials,* Docket No. EP 681, the Board is considering whether and how it should update its railroad reporting requirements and the Uniform Railroad Costing System to better capture the operating costs of transporting hazardous materials. Yet in this decision, the Board begins to answer the ''how'' question without first determining ''whether'' it should even do so in the first place. The Board's decision to put the proverbial cart before the horse will likely create uncertainty and confusion. On the one hand, the Board will be requiring carriers to submit very specific segregated data on PTC-related expenditures but, on the other hand, we have given stakeholders no clear rule on how such data may be used in Board proceedings, particularly in rate reasonableness cases.

The question of whether the substantial cost of PTC installation should be borne by all shippers proportionally or only by TIH shippers (or something in between) is important. The Board took comments on this issue more than three years ago and still has

[59] AAR Opening 11.

[60] The Small Business Administration's Office of Size Standards has established a size standard for rail transportation, pursuant to which a line-haul railroad is considered small if its number of employees is 1,500 or less, and a short line railroad is considered small if its number of employees is 500 or less. 13 CFR 121.201 (industry subsector 482).

yet to propose rules to resolve it. The Board should have first resolved the cost allocation issue head-on and then used that resolution to guide any new reporting requirements. Accordingly, I respectfully dissent.

For the reasons set forth in the preamble, the Surface Transportation Board amends part 1241 of title 49, chapter X, subchapter C, of the Code of Federal Regulations as follows:

PART 1241—ANNUAL, SPECIAL, OR PERIODIC REPORTS—CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT

■ 1. The authority citation for part 1241 continues to read as follows:

Authority: 49 U.S.C. 11145.

■ 2. Amend § 1241.11 by adding paragraph (b) to read as follows:

§ 1241.11 Annual reports of class I railroads.

(a) * * *

(b) Expenditures and certain statistical information, as described below, for Positive Train Control (PTC) installation, maintenance, and operation shall be separately identified in a supplement to the Railroad Annual Report Form R–1 and submitted with the Railroad Annual Report Form R–1. This supplement shall identify PTC-related expenditures on road property and equipment improvements, depreciation of road property and equipment, accumulated depreciation, investment in railway property, and railway operating expenses. The supplement shall also identify the total mileage on which carriers install PTC and the number of locomotives equipped with PTC. The supplement shall include PTC-related expenditures for passenger-only service not otherwise captured in the individual schedules. In addition to separating capital expenses and operating expenses incurred by the railroad for PTC, the respondent entity shall include the value of funds received from non-government and government transfers to include grants, subsidies, and other contributions or reimbursements that the respondent entity used to purchase or create PTC assets or to offset PTC costs.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A—PTC Versions of Schedules: 330, 332, 335, 352B, 410, 700, 710, 710S, and 720

BILLING CODE 4915–01–P

PTC Supplement

Road Initials: Year

330. ROAD PROPERTY AND EQUIPMENT AND IMPROVEMENTS TO LEASED PROPERTY AND EQUIPMENT
(Dollars in Thousands)

Line No.	Cross No.	Account (a)	Balance at Beginning of year (b)	Expenditures during the year for original road & equipment & road extensions (c)	Expenditures during the year for purchase of existing lines, reorganizations, etc. (d)	Line No.
1		(2) Land for transportation purposes				1
2		(3) Grading				2
3		(4) Other right-of-way expenditures				3
4		(5) Tunnels and subways				4
5		(6) Bridges, trestles and culverts				5
6		(7) Elevated structures				6
7		(8) Ties				7
8		(9) Rail and other track material				8
9		(11) Ballast				9
10		(13) Fences, snowsheds and signs				10
11		(16) Station and office buildings				11
12		(17) Roadway buildings				12
13		(18) Water stations				13
14		(19) Fuel stations				14
15		(20) Shops and enginehouses				15
16		(22) Storage warehouses				16
17		(23) Wharves and docks				17
18		(24) Coal and ore wharves				18
19		(25) TOFC/COFC terminals				19
20		(26) Communications systems				20
21		(27) Signals and interlockers				21
22		(29) Power plants				22
23		(31) Power transmission systems				23
24		(35) Miscellaneous structures				24
25		(37) Roadway machines				25
26		(39) Public improvements - construction				26
27		(44) Shop machinery				27
28		(45) Power plant machinery				28
29		Other lease/rentals				29
30		TOTAL EXPENDITURES FOR ROAD				30
31		(52) Locomotives				31
32		(53) Freight train cars				32
33		(54) Passenger train cars				33
34		(55) Highway revenue equipment				34
35		(56) Floating equipment				35
36		(57) Work equipment				36
37		(58) Miscellaneous equipment				37
38		(59) Computer systems & word processing equipment				38
39		TOTAL EXPENDITURES FOR EQUIPMENT				39
40		(76) Interest during construction				40
41		(80) Other elements of investment				41
42		(90) Construction work in progress				42
43		GRAND TOTAL				43

PTC Supplement

Road Initials: **Year**

330. ROAD PROPERTY AND EQUIPMENT AND IMPROVEMENTS TO LEASED PROPERTY AND EQUIPMENT - (Continued)

(Dollars in Thousands)

Line No.	Cross No.	Expenditures for additions during the year (e)	Credits for property retired during the year (f)	Net changes during the year (g)	Balance at close of year (h)	Line No.
1						1
2						2
3						3
4						4
5						5
6						6
7						7
8						8
9						9
10						10
11						11
12						12
13						13
14						14
15						15
16						16
17						17
18						18
19						19
20						20
21						21
22						22
23						23
24						24
25						25
26						26
27						27
28						28
29						29
30						30
31						31
32						32
33						33
34						34
35						35
36						36
37						37
38						38
39						39
40						40
41						41
42						42
43						43

* PTC-related expenditures from passenger-only service not otherwise captured in this schedule shall be stated in the aggregate here:

PTC Supplement

Road Initials: **Year**

332. DEPRECIATION BASE AND RATES - ROAD AND EQUIPMENT OWNED AND LEASED FROM OTHERS
(Dollars in Thousands)

Line No.	Account (a)	OWNED AND USED Depreciation Base 1/1 At beginning of year (b)	OWNED AND USED Depreciation Base 12/1 At close of year (c)	OWNED AND USED Annual composite rate % (d)	LEASED FROM OTHERS Depreciation Base At beginning of year (e)	LEASED FROM OTHERS Depreciation Base At close of year (f)	LEASED FROM OTHERS Annual composite rate % (g)	Line No.
	ROAD							
1	(3) Grading							1
2	(4) Other right-of-way expenditures							2
3	(5) Tunnels and subways							3
4	(6) Bridges, trestles and culverts							4
5	(7) Elevated structures							5
6	(8) Ties							6
7	(9) Rail and other track material							7
8	(11) Ballast							8
9	(13) Fences, snowsheds and signs							9
10	(16) Station and office buildings							10
11	(17) Roadway buildings							11
12	(18) Water stations							12
13	(19) Fuel stations							13
14	(20) Shops and enginehouses							14
15	(22) Storage warehouses							15
16	(23) Wharves and docks							16
17	(24) Coal and ore wharves							17
18	(25) TOFC/COFC terminals							18
19	(26) Communications systems							19
20	(27) Signals and interlockers							20
21	(29) Power plants							21
22	(31) Power transmission systems							22
23	(35) Miscellaneous structures							23
24	(37) Roadway machines							24
25	(39) Public improvements - construction							25
26	(44) Shop machinery							26
27	(45) Power plant machinery							27
28	All other road accounts							28
29	Amortization (other than def. projects)							29
30	TOTAL ROAD							30
	EQUIPMENT							
31	(52) Locomotives							31
32	(53) Freight train cars							32
33	(54) Passenger train cars							33
34	(55) Highway revenue equipment							34
35	(56) Floating equipment							35
36	(57) Work equipment							36
37	(58) Miscellaneous equipment							37
38	(59) Computer systems & WP equipment							38
39	TOTAL EQUIPMENT							39
40	GRAND TOTAL			NA			NA	40

* PTC-related expenditures from passenger-only service not otherwise captured in this schedule shall be stated in the aggregate here:

PTC Supplement

Road Initials: **Year**

335. ACCUMULATED DEPRECIATION - ROAD AND EQUIPMENT OWNED AND USED

(Dollars in Thousands)

Line No.	Cross Check	Account (a)	Balance at beginning of year (b)	CREDITS TO RESERVE During the year: Charges to operating expenses (c)	CREDITS TO RESERVE During the year: Other credits (d)	DEBITS TO RESERVE During the year: Retirements (e)	DEBITS TO RESERVE During the year: Other debits (f)	Balance at close of year (g)	Line No.
1		ROAD (3) Grading							1
2		(4) Other right-of-way expenditures							2
3		(5) Tunnels and subways							3
4		(6) Bridges, trestles and culverts							4
5		(7) Elevated structures							5
6		(8) Ties							6
7		(9) Rail and other track material							7
8		(11) Ballast							8
9		(13) Fences, snowsheds and signs							9
10		(16) Station and office buildings							10
11		(17) Roadway buildings							11
12		(18) Water stations							12
13		(19) Fuel stations							13
14		(20) Shops and enginehouses							14
15		(22) Storage warehouses							15
16		(23) Wharves and docks							16
17		(24) Coal and ore wharves							17
18		(25) TOFC/COFC terminals							18
19		(26) Communications systems							19
20		(27) Signals and interlockers							20
21		(29) Power plants							21
22		(31) Power transmission systems							22
23		(35) Miscellaneous structures							23
24		(37) Roadway machines							24
25		(39) Public improvements - const.							25
26		(44) Shop machinery							26
27		(45) Power plant machinery							27
28		All other road accounts							28
29		Amortization (adjustments)							29
30		TOTAL ROAD							30
31		EQUIPMENT (52) Locomotives							31
32		(53) Freight train cars							32
33		(54) Passenger train cars							33
34		(55) Highway revenue equipment							34
35		(56) Floating equipment							35
36		(57) Work equipment							36
37		(58) Miscellaneous equipment							37
38		(59) Computer systems & WP equip.							38
39		Amortization (adjustments)							39
40		TOTAL EQUIPMENT							40
41		GRAND TOTAL							41

* PTC-related expenditures from passenger-only service not otherwise captured in this schedule shall be stated in the aggregate here:

PTC Supplement

Road Initials: **Year**

352B. INVESTMENT IN RAILROAD PROPERTY USED IN TRANSPORTATION SERVICE (By Property Account)
(Dollars in Thousands)

Line No.	Cross Check	Account (a)	Respondent (b)	Lessor Railroads (c)	Inactive (proprietary companies) (d)	Other leased properties (e)	Line No.
1		(2) Land for transportation purposes					1
2		(3) Grading					2
3		(4) Other right-of-way expenditures					3
4		(5) Tunnels and subways					4
5		(6) Bridges, trestles and culverts					5
6		(7) Elevated structures					6
7		(8) Ties					7
8		(9) Rail and other track material					8
9		(11) Ballast					9
10		(13) Fences, snowsheds and signs					10
11		(16) Station and office buildings					11
12		(17) Roadway buildings					12
13		(18) Water stations					13
14		(19) Fuel stations					14
15		(20) Shops and enginehouses					15
16		(22) Storage warehouses					16
17		(23) Wharves and docks					17
18		(24) Coal and ore wharves					18
19		(25) TOFC/COFC terminals					19
20		(26) Communications systems					20
21		(27) Signals and interlockers					21
22		(29) Power plants					22
23		(31) Power transmission systems					23
24		(35) Miscellaneous structures					24
25		(37) Roadway machines					25
26		(39) Public improvements - construction					26
27		(44) Shop machinery					27
28		(45) Power plant machinery					28
29		Leased property (capitalized rentals)					29
30		Other (specify and explain)					30
31		TOTAL ROAD					31
32		(52) Locomotives					32
33		(53) Freight train cars					33
34		(54) Passenger train cars					34
35		(55) Highway revenue equipment					35
36		(56) Floating equipment					36
37		(57) Work equipment					37
38		(58) Miscellaneous equipment					38
39		(59) Computer systems & WP equipment					39
40		TOTAL EQUIPMENT					40
41		(76) Interest during construction					41
42		(80) Other elements of investment					42
43		(90) Construction work in progress					43
44		GRAND TOTAL					44

* PTC-related expenditures from passenger-only service not otherwise captured in this schedule shall be stated in the aggregate here:

PTC Supplement

410. RAILWAY OPERATING EXPENSES
(Dollars in Thousands)

State the railway operating expenses on respondent's road for the year, classifying them in accordance with the Uniform System of Accounts for Railroad Companies, and allocate the common operating expenses in accordance with the Board's rules governing the separation of such expenses between freight and passenger services.

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels, & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No.
1		WAYS & STRUCTURES ADMINISTRATION Track								1
2		Bridge & building								2
3		Signal								3
4		Communication								4
5		Other								5
6		REPAIRS AND MAINTENANCE Roadway - running								6
7		Roadway - switching								7
8		Tunnels & subways - running								8
9		Tunnels & subways - switching								9
10		Bridges & culverts - running								10
11		Bridges & culverts - switching								11
12		Ties - running								12
13		Ties - switching								13
14		Rail & other track material - running								14
15		Rail & other track material - switching								15
16		Ballast - running								16
17		Ballast - switching								17
18		Road property damaged - running								18
19		Road property damaged - switching								19
20		Road property damaged - other								20
21		Signals & interlockers - running								21
22		Signals & interlockers - switching								22
23		Communications systems								23
24		Power systems								24
25		Highway grade crossings - running								25
26		Highway grade crossings - switching								26
27		Station & office buildings								27
28		Shop buildings - locomotives								28
29		Shop buildings - freight cars						N/A		29
30		Shop buildings - other equipment								30

Road Initials

Year

PTC Supplement

410. RAILWAY OPERATING EXPENSES - (Continued)
(Dollars in Thousands)

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels, & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No.
101		REPAIRS AND MAINTENANCE - (Continued) Locomotive servicing facilities								101
102		Miscellaneous buildings & structures								102
103		Coal terminals						N/A		103
104		Ore terminals						N/A		104
105		Other marine terminals						N/A		105
106		TOFC/COFC terminals						N/A		106
107		Motor vehicle loading & distribution facilities						N/A		107
108		Facilities for other specialized service operations						N/A		108
109		Roadway machines								109
110		Small tools & supplies								110
111		Snow removal								111
112		Fringe benefits - running	N/A	N/A	N/A					112
113		Fringe benefits - switching	N/A	N/A	N/A					113
114		Fringe benefits - other	N/A	N/A	N/A					114
115		Casualties & insurance - running	N/A	N/A	N/A					115
116		Casualties & insurance - switching	N/A	N/A	N/A					116
117		Casualties & insurance - other	N/A	N/A	N/A					117
118	*	Lease rentals - debit -running	N/A	N/A		N/A				118
119	*	Lease rentals - debit -switching	N/A	N/A		N/A				119
120	*	Lease rentals - debit -other	N/A	N/A		N/A				120
121	*	Lease rentals - (credit) - running	N/A	N/A	( )	N/A	( )	( )	( )	121
122	*	Lease rentals - (credit) - switching	N/A	N/A	( )	N/A	( )	( )	( )	122
123	*	Lease rentals - (credit) - other	N/A	N/A	( )	N/A	( )	( )	( )	123
124		Joint facility rent - debit - running	N/A	N/A		N/A				124
125		Joint facility rent - debit - switching	N/A	N/A		N/A				125
126		Joint facility rent - debit - other	N/A	N/A		N/A				126
127		Joint facility rent - (credit) - running	N/A	N/A	( )	N/A	( )	( )	( )	127
128		Joint facility rent - (credit) - switching	N/A	N/A	( )	N/A	( )	( )	( )	128
129		Joint facility rent - (credit) - other	N/A	N/A	( )	N/A	( )	( )	( )	129
130	*	Other rents - debit - running	N/A	N/A		N/A				130
131	*	Other rents - debit - switching	N/A	N/A		N/A				131
132	*	Other rents - debit - other	N/A	N/A		N/A				132
133	*	Other rents - (credit) - running	N/A	N/A	( )	N/A	( )	( )	( )	133

Road Initials

Year

PTC Supplement

410. RAILWAY OPERATING EXPENSES - (Continued)
(Dollars in Thousands)

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels, & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No.
		REPAIRS AND MAINTENANCE - (Continued)								
134	*	Other rents - (credit) - switching	N/A	N/A	( )	N/A	( )	( )	( )	134
135	*	Other rents - (credit) - other	N/A	N/A	( )	N/A	( )	( )	( )	135
136	*	Depreciation - running	N/A	N/A	N/A					136
137	*	Depreciation - switching	N/A	N/A	N/A					137
138	*	Depreciation - other	N/A	N/A	N/A					138
139		Joint facility - debit - running	N/A	N/A		N/A				139
140		Joint facility - debit - switching	N/A	N/A		N/A				140
141		Joint facility - debit - other	N/A	N/A		N/A				141
142		Joint facility - (credit) - running	N/A	N/A	( )	N/A	( )	( )	( )	142
143		Joint facility - (credit) - switching	N/A	N/A	( )	N/A	( )	( )	( )	143
144		Joint facility - (credit) - other	N/A	N/A	( )	N/A	( )	( )	( )	144
145		Dismantling retired road property - running								145
146		Dismantling retired road property - switching								146
147		Dismantling retired road property - other								147
148		Other - running								148
149		Other - switching								149
150		Other - other								150
151		TOTAL WAY AND STRUCTURES								151
		EQUIPMENT								
		LOCOMOTIVES								
201		Administration								201
202	*	Repair & maintenance								202
203	*	Machinery repair								203
204		Equipment damaged								204
205		Fringe benefits	N/A	N/A	N/A					205
206		Other casualties & insurance	N/A	N/A	N/A					206
207	*	Lease rentals - debit	N/A	N/A		N/A				207
208	*	Lease rentals - (credit)	N/A	N/A	( )	N/A	( )	( )	( )	208
209		Joint facility rent - debit	N/A	N/A		N/A				209
210		Joint facility rent - (credit)	N/A	N/A	( )	N/A	( )	( )	( )	210
211	*	Other rents - debit	N/A	N/A		N/A				211
212	*	Other rents - (credit)	N/A	N/A	( )	N/A	( )	( )	( )	212
213	*	Depreciation	N/A	N/A	N/A					213
214		Joint facility - debit	N/A	N/A		N/A				214
215		Joint facility - (credit)	N/A	N/A	( )	N/A	( )	( )	( )	215
216	*	Repairs billed to others - (credit)	N/A	N/A	( )	N/A	( )	( )	( )	216

Road Initials

Year

PTC Supplement

410. RAILWAY OPERATING EXPENSES - (Continued)
(Dollars in Thousands)

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels, & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No.
		LOCOMOTIVES - (Continued)								
217		Dismantling retired property								217
218		Other								218
219		TOTAL LOCOMOTIVES								219
		FREIGHT CARS								
220		Administration						N/A		220
221	*	Repair & maintenance						N/A		221
222	*	Machinery repair						N/A		222
223		Equipment damaged						N/A		223
224		Fringe benefits	N/A	N/A	N/A			N/A		224
225		Other casualties & insurance	N/A	N/A	N/A			N/A		225
226	*	Lease rentals - debit	N/A	N/A		N/A		N/A		226
227	*	Lease rentals - (credit)	N/A	N/A		N/A		N/A		227
228		Joint facility rent - debit	N/A	N/A		N/A		N/A		228
229		Joint facility rent - (credit)	N/A	N/A		N/A		N/A		229
230	*	Other rents - debit	N/A	N/A		N/A		N/A		230
231	*	Other rents - (credit)	N/A	N/A		N/A		N/A		231
232	*	Depreciation	N/A	N/A	N/A			N/A		232
233		Joint facility - debit	N/A	N/A		N/A		N/A		233
234		Joint facility - (credit)	N/A	N/A		N/A		N/A		234
235	*	Repairs billed to others - (credit)	N/A	N/A		N/A		N/A		235
236		Dismantling retired property						N/A		236
237		Other						N/A		237
238		TOTAL FREIGHT CARS						N/A		238
		OTHER EQUIPMENT								
301		Administration								301
		Repair & maintenance:								
302	*	Trucks, trailers, & containers - revenue service						N/A		302
303	*	Floating equipment - revenue service						N/A		303
304	*	Passenger & other revenue equipment								304
305	*	Computers and data processing equipment								305
306	*	Machinery								306
307	*	Work & other non-revenue equipment								307
308		Equipment damaged								308
309		Fringe benefits	N/A	N/A	N/A					309
310		Other casualties & insurance	N/A	N/A	N/A					310
311	*	Lease rentals - debit	N/A	N/A		N/A				311
312	*	Lease rentals - (credit)	N/A	N/A		N/A				312

Road Initials

Year

PTC Supplement

410. RAILWAY OPERATING EXPENSES - (Continued)
(Dollars in Thousands)

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels, & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No.
		OTHER EQUIPMENT (Continued)								
313		Joint facility rent - debit	N/A	N/A		N/A				313
314		Joint facility rent - (credit)	N/A	N/A		N/A				314
315		Other rents - debit	N/A	N/A		N/A				315
316		Other rents - (credit)	N/A	N/A		N/A				316
317		Depreciation	N/A	N/A	N/A					317
318		Joint facility - debit	N/A	N/A		N/A				318
319		Joint facility - (credit)	N/A	N/A		N/A				319
320		Repairs billed to others - (credit)	N/A	N/A		N/A				320
321		Dismantling retired property								321
322		Other								322
323		TOTAL OTHER EQUIPMENT								323
324		TOTAL EQUIPMENT								324
		TRANSPORTATION								
		TRAIN OPERATIONS								
401		Administration								401
402		Engine crews								402
403		Train crews								403
404		Dispatching trains								404
405		Operating signals & interlockers								405
406		Operating drawbridges								406
407		Highway crossing protection								407
408		Train inspection & lubrication								408
409		Locomotive fuel								409
410		Electric power electric power produced or purchased for motive power								410
411		Servicing locomotives								411
412		Freight lost or damaged - solely related	N/A	N/A	N/A					412
413		Clearing wrecks								413
414		Fringe benefits	N/A	N/A	N/A					414
415		Other casualties & insurance	N/A	N/A	N/A					415
416		Joint facility - debit	N/A	N/A		N/A				416
417		**Joint facility - (credit)**	N/A	N/A		N/A				417
418		Other								418
419		**TOTAL TRAIN OPERATIONS**								419
		YARD OPERATIONS								
420		Administration								420
421		Switch crews								421

Road Initials

Year

PTC Supplement

410. RAILWAY OPERATING EXPENSES - (Continued)
(Dollars in Thousands)

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels, & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No.
		YARD OPERATIONS (Continued)								
422		Controlling operations								422
423		**Yard and terminal clerical**								423
424		**Operating switches, signals, retarders, & humps**								424
425		Locomotive fuel								425
426		Electric power electric power produced or purchased for motive power								426
427		Servicing locomotives								427
428		**Freight lost or damaged - solely related**	N/A	N/A	N/A					428
429		**Clearing wrecks**								429
430		Fringe benefits	N/A	N/A	N/A					430
431		Other casualties & insurance	N/A	N/A	N/A					431
432		Joint facility - debit	N/A	N/A		N/A				432
433		**Joint facility - (credit)**	N/A	N/A		N/A				433
434		Other								**434**
435		**TOTAL YARD OPERATIONS**								435
		TRAIN & YARD OPERATIONS COMMON:								
501		Cleaning car interiors				N/A				501
502		Adjusting & transferring loads				N/A		N/A		502
503		Car loading devices & grain docks				N/A		N/A		503
504		**Freight lost or damaged - all other**	N/A	N/A	N/A					504
505		**Fringe benefits**	N/A	N/A	N/A					505
506		TOTAL TRAIN & YARD OPERATIONS COMMON:								506
		SPECIALIZED SERVICE OPERATIONS								
507	*	Administration						N/A		507
508	*	**Pickup & delivery and marine line haul**						N/A		508
509	*	Loading & unloading and local marine						N/A		**509**
510	*	**Protective services**						N/A		510
511	*	Freight lost or damaged - solely related	N/A	N/A	N/A			N/A		511
512	*	Fringe benefits	N/A	N/A	N/A			N/A		512
513	*	Casualties & insurance	N/A	N/A	N/A			N/A		513
514	*	Joint facility - debit	N/A	N/A		N/A		N/A		514
515	*	**Joint facility - (credit)**	N/A	N/A		N/A		N/A		515
516	*	Other						N/A		516
517	*	**TOTAL SPECIALIZED SERVICE OPERATIONS**						N/A		**517**

Road Initials

Year

PTC Supplement

410. RAILWAY OPERATING EXPENSES - (Continued)
(Dollars in Thousands)

Road Initials Year

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels, & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No.
518		ADMINISTRATIVE SUPPORT OPERATIONS: Administration								518
519		Employees performing clerical & accounting functions								519
520		Communication systems operations								520
521		Loss & damage claims processing								521
522		Fringe benefits	N/A	N/A	N/A					522
523		Casualties & insurance	N/A	N/A	N/A					523
524		Joint facility - debit	N/A	N/A		N/A				524
525		Joint facility - (credit)	N/A	N/A		N/A				525
526		Other								526
527		TOTAL ADMINISTRATIVE SUPPORT OPERATIONS								527
528		TOTAL TRANSPORTATION								528
601		GENERAL AND ADMINISTRATIVE Officers - general administration								601
602		Accounting, auditing, & finance								602
603		Management services & data processing								603
604		Marketing								604
605		Sales								605
606		Industrial development						N/A		606
607		Personnel & labor relations								607
608		Legal & secretarial								608
609		Public relations & advertising								609
610		Research & development								610
611		Fringe benefits	N/A	N/A	N/A					611
612		Casualties & insurance	N/A	N/A	N/A					612
613		Writedown of uncollectible accounts	N/A	N/A	N/A					613
614		Property taxes	N/A	N/A	N/A					614
615		Other taxes except on corporate income or payr	N/A	N/A	N/A					615
616		Joint facility - debit	N/A	N/A		N/A				616
617		Joint facility - (credit)	N/A	N/A		N/A				617
618		Other								618
619		TOTAL GENERAL AND ADMINISTRATIVE								619
620	*	TOTAL CARRIER OPERATING EXPENSE								620

* PTC-related expenditures from passenger-only service not otherwise captured in this schedule shall be stated in the aggregate here:

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Road Initials **Year**

700. MILEAGE OPERATED AT CLOSE OF YEAR

Line No.		Class (a)	Proportion owned or leased by respondent (b)	Running tracks, passing tracks, cross-overs, etc. Miles of road (c)	Miles of second main track (d)	Miles of all other main tracks (e)	Miles of passing tracks, cross-overs, and turnouts (f)	Miles of way switching tracks (g)	Miles of yard switching tracks (h)	TOTAL (i)	Line No.
1											1
2											2
3											3
4											4
5											5
6											6
7											7
8											8
9											9
10											10
11											11
12											12
13											13
14											14
15											15
16											16
17											17
18											18
19											19
20											20
21											21
22											22
23											23
24											24
25											25
26											26
27											27
28											28
29											29
30											30
31											31
32											32
33											33
34											34
35											35
36											36
37											37
38											38
39											39
40											40
41											41
42											42
43											43
44											44
45											45
46											46
47											47
48											48
49											49
50											50
51											51
52											52
53											53
54											54
55											55
56											56
57		TOTAL									57
58		Miles of electrified road or track included in the preceding grand total									58

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Road Initials Year

NOTES AND REMARKS

* PTC-related expenditures from passenger-only service not otherwise captured in this schedule shall be stated in the aggregate here:

PTC Supplement

710. INVENTORY OF EQUIPMENT
UNITS OWNED, INCLUDED IN INVESTMENT ACCOUNT, AND LEASED FROM OTHERS

Road Initials

Year

Line No.	Cross Check	Type or design of units (a)	Units in service of respondent at beginning of year (b)	Changes During the Year: Units Installed: New units purchased or built (c)	Changes During the Year: Units Installed: New units leased from others (d)	Changes During the Year: Units Installed: Rebuilt units acquired and rebuilt units rewritten into property accounts (e)	Changes During the Year: Units Installed: All other units including reclassification and second hand units purchased or leased from others (f)	Units retired from service of respondent whether owned or leased, including reclassification (g)	Units at Close of Year: Owned and used (h)	Units at Close of Year: Leased from others (i)	Units at Close of Year: Total in service of respondent [col (h) & (i)] (j)	Units at Close of Year: Aggregate capacity of units reported in col (j) (k)	Units at Close of Year: Leased to others (l)	Line No.
		Locomotive Units										(HP)		
1		Diesel-freight units												1
2		Diesel-passenger units												2
3		Diesel-multiple purpose units												3
4		Diesel-switching units												4
5	*	TOTAL (lines 1 to 4) units												5
6	*	Electric locomotives												6
7	*	Other self-powered units												7
8	*	TOTAL (lines 5, 6, and 7)												8
9	*	Auxiliary units										N/A		9
10	*	TOTAL LOCOMOTIVE UNITS (lines 8 and 9)										N/A		10

DISTRIBUTION OF LOCOMOTIVE UNITS IN SERVICE OF RESPONDENT AT CLOSE OF YEAR BUILT, DISREGARDING YEAR OF REBUILDING

Line No.	Cross Check	Type or design of units (a)	Before 1/1/1990 (b)	Between 1/1/1990 and 12/31/1994 (c)	Between 1/1/1995 and 12/31/1999 (d)	Between 1/1/2000 and 12/31/2004 (e)	Between 1/1/2005 and 12/31/2009 (f)	During Calendar Year: 2010 (g)	2011 (h)	2012 (i)	2013 (j)	2014 (k)	TOTAL (l)	Line No.
11	*	Diesel												11
12	*	Electric												12
13	*	Other self-powered units												13
14	*	TOTAL (lines 11 to 13)												14
15	*	Auxiliary units												15
16	*	TOTAL LOCOMOTIVE UNITS (lines 14 and 15)										N/A		16

PTC Supplement

710. INVENTORY OF EQUIPMENT (Continued)
UNITS OWNED, INCLUDED IN INVESTMENT ACCOUNT, AND LEASED FROM OTHERS

Road Initials

Year

Line No.	Cross Check	Type or design of units (a)	Units in service of respondent at beginning of year (b)	Changes During the Year: Units Installed: New units purchased or built (c)	Changes During the Year: Units Installed: New units leased from others (d)	Changes During the Year: Units Installed: Rebuilt units acquired and rebuilt units rewritten into property accounts (e)	Changes During the Year: Units Installed: All other units including reclassification and second hand units purchased or leased from others (f)	Units retired from service of respondent whether owned or leased, including reclassification (g)	Units at Close of Year: Owned and used (h)	Units at Close of Year: Leased from others (i)	Units at Close of Year: Total in service of respondent [col (h) & (i)] (j)	Units at Close of Year: Aggregate capacity of units reported in col (j) (k)	Units at Close of Year: Leased to others (l)	Line No.
		Passenger-Train Cars												
		Non-Self-Propelled												
17		Coaches (PA, PB, PBO)												17
18		Combined cars (All class C, except CSB)												18
19		Parlor cars (PBC, PC, PL, PO)												19
20		Sleeping cars (PS, PT, PAS, PDS)												20
21		Dining, grill, & tavern cars (All class D, PD)										N/A		21
22		Nonpassenger carrying cars (All class B, CSB, M, PSA, IA)										N/A		22
23		TOTAL (Lines 17 to 22)												23
		Self-Propelled												
24		Electric passenger cars (EP, ET)												24
25		Electric combined cars (EC)												25
26		Internal combustion rail motorcars (ED, EG)												26
27		Other self-propelled cars (Specify types)												27
28		TOTAL (Lines 24 to 27)												28
29		TOTAL (Lines 23 and 28)												29
		Company Service Cars												
30		Business cars (PV)										N/A		30
31		Board outfit cars (MWX)										N/A		31
32		Derrick & snow removal cars (MWU, MWV, MWW, MWK)										N/A		32
33		Dump and ballast cars (MWB, MWD)										N/A		33
34		Other maintenance and service equipment cars										N/A		34
35		TOTAL (Lines 30 to 34)										N/A		35

* PTC-related expenditures from passenger-only service not otherwise captured in this schedule shall be stated in the aggregate here:

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Road Initials Year

710S. UNIT COST OF EQUIPMENT INSTALLED DURING THE YEAR

(Dollars in Thousands)

NEW UNITS

Line No.	Class of equipment	Number of Units	Total Weight (Tons)	Total Cost	Method of Acquisition	Line No.
1						1
2						2
3						3
4						4
5						5
6						6
7						7
8						8
9						9
10						10
11						11
12						12
13						13
14						14
15						15
16						16
17						17
18						18
19						19
20						20
21						21
22						22
23						23
24						24
25						25
	REBUILT UNITS					
26						26
27						27
28						28
29						29
30						30
31						31
32						32
33						33
34						34
35						35
36						36
37						37
38						38
39						39

* PTC-related expenditures from passenger-only service not otherwise captured in this schedule shall be stated in the aggregate here:

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720. TRACK AND TRAFFIC CONDITIONS

Line No.	Track category (a)	Mileage of tracks at end of period (whole numbers) (b)	Average annual traffic density in millions of gross ton-miles per track-mile* (use two decimal places) (c)	Average running speed limit (use two decimal places) (d)	Track miles under slow orders at end of period (e)	Line No.
1	A					1
2	B					2
3	C					3
4	D					4
5	E		XXXXXXXXXX	XXXXXXXX		5
6	TOTAL					6
7	F		XXXXXXXXXX	XXXXXXXX		7
8	Potential abandonments					8

* To determine average density, total track-miles (route-miles times number of tracks), rather than route-miles, shall be used.

* PTC-related expenditures from passenger-only service not otherwise captured in this schedule shall be stated in the aggregate here:

Road Initials Year

Footnote: PTC Grants

In addition to separating capital expenses and operating expenses incurred by the railroad for PTC, the respondent entity shall include by footnote disclosure here the value of funds received from non-government and government transfers to include grants, subsidies, and other contributions or reimbursements that the respondent entity used to purchase or create PTC assets or to offset PTC costs. These amounts represent non-railroad monies that the respondent entity used or designated for PTC and would provide for full disclosure of PTC costs on an annual basis. This disclosure shall identify the nature and location of the project by FRA identification, if applicable. If FRA identification is not applicable, the disclosure shall identify the location at the state or regional level.						
Line No.	Entity Receiving Funds	Entity Dispensing Funds	Name of Program Providing Funding	Location(s) of the Project Funded	Amount of Funding Received	Line No.
1						1
2						2
3						3
4						4
5						5
6						6
7						7
8						8
9						9
10						10
11						11
12						12
13						13
14						14
15						15
16						16
17						17
18						18
19						19
20						20
21						21
22						22
23						23
24						24

[FR Doc. 2013–20116 Filed 8–19–13; 8:45 am]
BILLING CODE 4915–01–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 111220786–1781–01]

RIN 0648–XC811

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for the Commonwealth of Massachusetts

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the 2013 summer flounder commercial quota allocated to the Commonwealth of Massachusetts has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Massachusetts for the remainder of calendar year 2013, unless additional quota becomes available through a transfer from another state. Regulations governing the summer flounder fishery require publication of this notification to advise Massachusetts that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no Federal commercial quota is available for landing summer flounder in Massachusetts.

DATES: Effective August 23, 2013, through December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Carly Bari, (978) 281–9224, or *Carly.Bari@noaa.gov.*

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

The initial total commercial quota for summer flounder for the 2013 fishing year is 11,793,596 lb (5,349,575 kg) (77 FR 76942, December 31, 2012). The percent allocated to vessels landing summer flounder in Massachusetts is 6.82046 percent, resulting in a commercial quota of 804,377 lb (364,866 kg). The 2013 allocation was adjusted to 791,236 lb (358,899 kg) after deduction of research set-aside, adjustment for 2012 quota overages, and an adjustment for a quota transfer between states.

The Administrator, Northeast Region, NMFS (Regional Administrator), monitors the state commercial quotas and determines when a state's commercial quota has been harvested. NMFS is required to publish notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined based upon dealer reports and other available information that Massachusetts has harvested its quota for 2013.

Section 648.4(b) provides that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, August 23, 2013, landings of summer flounder in Massachusetts by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2013 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, August 23, 2013,

federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in Massachusetts for the remainder of the calendar year, or until additional quota becomes available through a transfer from another state.

Classification

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

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

Dated: August 15, 2013.

James P. Burgess,

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

[FR Doc. 2013–20300 Filed 8–19–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 121210694–3514–02]

RIN 0648–XC783

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific sardine off the coasts of Washington, Oregon and California. This action is necessary because the directed harvest allocation total for the second seasonal period (July 1–September 14) is projected to be reached by the effective date of this rule. From the effective date of this rule until September 15, 2013, Pacific sardine may be harvested only as part of the live bait fishery or incidental to other fisheries; the incidental harvest of Pacific sardine is limited to 40-percent by weight of all fish per trip. Fishing vessels must be at shore and in the process of offloading at 12:01 a.m. Pacific Daylight Time, August 22, 2013.

DATES: Effective 12:01 a.m. Pacific Daylight Time (PDT) August 22, 2013, through 11:59 p.m., September 14, 2013.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, Southwest Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: This document announces that based on the best available information recently obtained from the fishery and information on past fishing effort, the directed fishing harvest allocation for the second allocation period (July 1–September 14) will be reached and therefore directed fishing for Pacific sardine is being closed until September 15, 2013. Fishing vessels must be at shore and in the process of offloading at the time of closure. From 12:01 a.m., August 22, through September 14, 2013, Pacific sardine may be harvested only as part of the live bait fishery or incidental to other fisheries, with the incidental harvest of Pacific sardine limited to 40-percent by weight of all fish caught during a trip.

NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the Pacific coast (California, Oregon, and Washington) in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). Annual specifications published in the **Federal Register** establish the allowable harvest levels (ie. annual catch limit/harvest guideline (HG)) for each Pacific sardine fishing season (January 1–December 31). If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken, and the fishery is closed, only incidental harvest is allowed. For the remainder of the period, any incidental Pacific sardine landings will be counted against that period's incidental set aside. In the event that an incidental set-aside is projected to be attained, all fisheries will be closed to the retention of Pacific sardine for the remainder of the period via appropriate rulemaking.

Under 50 CFR 660.509, if the total HG or these apportionment levels for Pacific sardine are reached at any time, NMFS is required to close the Pacific sardine fishery via appropriate rulemaking and it is to remain closed until it re-opens either per the allocation scheme or the beginning of the next fishing season. In accordance with § 660.509 the Regional Administrator shall publish a notice in the **Federal Register** announcing the date of the closure of the directed fishery for Pacific sardine.

The above in-season harvest restrictions are not intended to affect the prosecution of the live bait portion of the Pacific sardine fishery.

Classification

This action is required by 50 CFR 660.509 and is exempt from Office of Management and Budget review under Executive Order 12866.

NMFS finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) for the closure of the directed harvest of Pacific sardine. For the reasons set forth below, notice and comment procedures are impracticable and contrary to the public interest. For the same reasons, NMFS also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this action. This measure responds to the best available information and is necessary for the conservation and management of the Pacific sardine resource. A delay in effectiveness would cause the fishery to exceed the in-season harvest level. These seasonal harvest levels are important mechanisms in preventing overfishing and managing the fishery at optimum yield. The established directed and incidental harvest allocations are designed to allow fair and equitable opportunity to the resource by all sectors of the Pacific sardine fishery and to allow access to other profitable CPS fisheries, such as squid and Pacific mackerel. Many of the same fishermen who harvest Pacific sardine rely on these other fisheries for a significant portion of their income.

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

Dated: August 15, 2013.

James P. Burgess,

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

[FR Doc. 2013–20303 Filed 8–19–13; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 161
Tuesday, August 20, 2013

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Doc. No. AMS–FV–13–0041; FV13–922–2 PR]

Apricots Grown in Designated Counties in Washington; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the assessment rate established for the Washington Apricot Marketing Committee (Committee) for the 2013–2014 and subsequent fiscal periods from $0.50 to $1.50 per ton of Washington apricots handled. The Committee locally administers the marketing order, which regulates the handling of apricots grown in designated counties in Washington. Assessments upon apricot handlers are used by the Committee to fund reasonable and necessary expenses of the marketing order. The fiscal period begins April 1 and ends March 31. The higher rate is deemed necessary to fund an increase in the Committee's proposed budget and replenish its reserve. The proposed assessment rate would remain in effect indefinitely unless modified or suspended, or if the marketing order were terminated.

DATES: Comments must be received by September 4, 2013.

ADDRESSES: Interested persons are invited to submit written comments on this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or internet: *http://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Manuel Michel or Gary D. Olson, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Manuel.Michel@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement No. 132 and Order No. 922, as amended (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order now in effect, apricot handlers in designated counties in Washington are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate, as proposed herein, would be applicable to all assessable Washington apricots beginning April 1, 2013, and continue until amended or suspended, or until the order is terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of entry of the ruling.

This proposed rule would increase the assessment rate for the Committee for the 2013–2014 and subsequent fiscal periods from $0.50 to $1.50 per ton for Washington apricots handled under the order.

The order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are growers and handlers of apricots in designated counties in Washington. They are familiar with the Committee's needs, and with the costs of goods and services in their local area, and are therefore in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on May 13, 2013, and unanimously recommended expenditures of $5,370 for the 2013–2014 fiscal period. In comparison, the Committee's budgeted expenditures for the previous fiscal period were $4,995. The Committee also unanimously recommended an assessment rate of $1.50 per ton of Washington apricots.

The recommended assessment rate of $1.50 is $1.00 higher than the rate currently in effect. The higher assessment rate is needed to fund a proposed increase in administrative costs and to replenish the reserve. The increased assessment rate is the same rate that was in effect in 2011 and previous years.

The major expenditures recommended by the Committee for the 2013–2014 fiscal period include $2,500 for the management fee; $1,200 for Committee travel; $1,000 for the annual audit; and $670 for office supplies, insurance, and miscellaneous expenses. In comparison, major expenditures for the 2012–2013 fiscal period included $2,400 for the management fee; $1,300 for Committee travel; $750 for the annual audit; and $545 for office supplies, insurance, and miscellaneous expenses. The proposed expenses for 2013–2014 fiscal period are comparable to the expenses from last year, with a slight increase in management fees, offset by an equal reduction in travel expenses. Higher audit and insurance fees account for the majority of the remaining $375 difference in the year-over-year budget increase.

The Committee's recommended assessment rate was derived by dividing the 2013–2014 anticipated expenses by the expected shipments of Washington apricots, while also taking into account the Committee's monetary reserve.

Committee members estimated the 2013 fresh apricot production to be approximately 5,950 tons, which would be smaller than the 2012 production of 6,700 tons. The smaller crop is attributed to the effects of weather, pollination and tree health.

The recommended assessment rate of $1.50 per ton, when multiplied by the 5,950 tons of estimated 2013 Washington apricot shipments, is expected to generate $8,925 in handler assessments. The projected revenue from handler assessments would be adequate to cover the 2013–2014 budgeted expenses of $5,370, with a $3,555 surplus that would be added to the reserve. The Committee plans to increase its monetary reserve from $1,733 at the beginning of the 2013–2014 fiscal period to approximately $5,288 at the end of the fiscal period. That amount would be within the provisions of the order and would provide the Committee with greater ability to withstand fluctuations in assessment income and expenses in the future.

The proposed assessment rate would continue in effect indefinitely unless modified or suspended, or until the order is terminated by USDA upon recommendation and information submitted by the Committee, or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of the Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed and further rulemaking would be undertaken as necessary. The Committee's 2013–2014 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 20 handlers of Washington apricots who are subject to regulation under the order and approximately 94 apricot growers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural growers are defined as those having annual receipts of less than $750,000.

The National Agricultural Statistics Service (NASS) reports that the 2012 total production and utilization (including both fresh and processed markets) of Washington apricots was approximately 6,700 tons, the average price was $1,250 per ton, and the total farm-gate value was approximately $8,371,000. Based on these reports and the number of apricot growers within the production area, it is estimated that the 2012 average revenue from the sale of apricots was approximately $89,000. In addition, based on information from the USDA's Market News Service, 2012 f.o.b. prices for WA No.1 apricots ranged from $16.00 to $24.00 per 24-pound loose-pack container, and from $18.00 to $27.00 for 2-layer tray-pack containers. Using average prices and shipment information provided by the Committee, it is determined that each of the Washington apricot handlers currently ship less than $7,000,000 worth of apricots on an annual basis. In view of the foregoing, it is concluded that the majority of handlers and growers of Washington apricots may be classified as small entities.

This proposal would increase the assessment rate established for the Committee, and collected from handlers, for the 2013–2014 and subsequent fiscal periods from $0.50 to $1.50 per ton of Washington apricots handled. The Committee unanimously recommended 2013–2014 expenditures of $5,370 and an assessment rate of $1.50 per ton. Although the proposed assessment rate of $1.50 is $1.00 higher than the rate established for the 2012–2013 fiscal period, it is the same rate as was established in 2011 and prior years.

The Committee estimates that the 2013–2014 Washington apricot crop will be 5,950 tons. At the proposed $1.50 per ton assessment rate, the Committee anticipates assessment income of approximately $8,925, which would be adequate to cover budgeted expenses for the 2013–2014 fiscal period. In addition, at the proposed assessment rate and expense level, the Committee anticipates that $3,555 would be added to its monetary reserve, which it estimates would be $5,288 on March 30, 2014. That reserve level is within the maximum permitted by the order of approximately one fiscal period's operational expenses (§ 922.42(a)(2)).

The major expenditures recommended by the Committee for the 2013–2014 fiscal period include $2,500 for the management fee; $1,200 for Committee travel; $1,000 for the annual audit; and $670 for office supplies, insurance, and miscellaneous expenses. In comparison, major budgeted expenditures for the 2012–2013 fiscal period included $2,400 for the management fee; $1,300 for Committee travel; $750 for the annual audit; and $545 for office supplies, insurance, and miscellaneous expenses.

The Committee discussed alternatives to this action, including recommending alternative expenditure levels and assessment rates. Although lower assessment rates were considered, none were selected because they would not have generated sufficient income to administer the order. Committee members also discussed reasons for and against regulatory suspension, order suspension, and order termination. The result of these discussions was the Committee's recommendation to maintain the order's administrative

functions and to increase the assessment rate.

This action would increase the assessment obligation imposed on handlers. While the increase would impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Additionally, these costs would be offset by the benefits derived from the operation of the order.

Like all Committee meetings, the May 13, 2013, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee's meeting was widely publicized throughout the Washington apricot industry and all interested persons were invited to attend and participate in the Committee's deliberations. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large Washington apricot handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this action.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2013–2014 fiscal period began on April 1, 2013, and the order requires that the assessment rate for each fiscal period apply to all assessable Washington apricots handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; (3) handlers are already shipping Washington apricots from the 2013 crop; and (4) handlers are aware of this action, which was unanimously recommended by the Committee at a public meeting, and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 922 is proposed to be amended as follows:

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 1. The authority citation for 7 CFR Part 922 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 922.235 is revised to read as follows:

§ 922.235 Assessment rate.

On or after April 1, 2013, an assessment rate of $1.50 per ton is established for Washington apricots handled in the production area.

Dated: August 14, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–20264 Filed 8–19–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 429

[Docket No. EERE–2013–BT–NOC–0023]

Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Open Teleconference/Webinar

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open Teleconference/Webinar.

SUMMARY: This notice announces a meeting of the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC). The Federal Advisory Committee Act, requires that agencies publish notice of an advisory committee meeting in the **Federal Register**.

DATES: Thursday, September 12, 2013 at 1:00 p.m.–5:00 p.m. (EDT).

ADDRESSES: Webinar Only, you may register at *https://www1.gotomeeting.com/register/304561617*.

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, ASRAC Designated Federal Officer, Program Manager for Appliance Standards and Building Codes, U.S. Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy, 950 L'Enfant Plaza SW., Washington, DC 20024. Email: *asrac@ee.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and recommendations to the Energy Department on the development of standards and test procedures for residential appliances and commercial equipment, certification and enforcement of standards, and product labeling.

Tentative Agenda: (Subject to change; final agenda will be posted at *http://www1.eere.energy.gov/buildings/appliance_standards/asrac.html*:

- Update on Commercial HVAC, Water Heating, and Refrigeration Certification Working Group efforts.
  - ○ Openly review and deliberate on working group's formed recommendations.
- Discussion regarding commercial/industrial pumps working group.
- Any new business as discussed by the ASRAC committee members.

Public Participation: Members of the public are welcome to observe the business of the meeting and, if time allows, may make oral statements during the specified period for public comment. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, email *asrac@ee.doe.gov.* In the email, please indicate your name, organization (if appropriate), citizenship, and contact information. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures.

Members of the public will be heard in the order in which they sign up for the Public Comment Period. Time allotted per speaker will depend on the number of individuals who wish to speak but will not exceed five minutes. Reasonable provision will be made to include the scheduled oral statements on the agenda. The co-chairs of the

Committee will make every effort to hear the views of all interested parties and to facilitate the orderly conduct of business.

Participation in the meeting is not a prerequisite for submission of written comments. ASRAC invites written comments from all interested parties. Any comments submitted must identify the ASRAC, and provide docket number EERE–2013–BT–NOC–0005. 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: ASRAC@ee.doe.gov*. Include docket number EERE–2013–BT–NOC–0005 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 compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies 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.

No telefacsimilies (faxes) will be accepted.

Docket: The docket is available for review at *www.regulations.gov*, including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The Secretary of Energy has approved publication of today's notice of proposed rulemaking.

Issued in Washington, DC, on August 13, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2013–20273 Filed 8–19–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 6

[Docket ID OCC–2013–0008]

RIN 1557–AD69

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 217

[Regulation H and Q; Docket No. R–1460]

RIN 7100–AD 99

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064–AE01

Regulatory Capital Rules: Regulatory Capital, Enhanced Supplementary Leverage Ratio Standards for Certain Bank Holding Companies and Their Subsidiary Insured Depository Institutions

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

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are seeking comment on a proposal that would strengthen the agencies' leverage ratio standards for large, interconnected U.S. banking organizations. The proposal would apply to any U.S. top-tier bank holding company (BHC) with at least $700 billion in total consolidated assets or at least $10 trillion in assets under custody (covered BHC) and any insured depository institution (IDI) subsidiary of these BHCs. In the revised capital approaches adopted by the agencies in July, 2013 (2013 revised capital approaches), the agencies established a minimum supplementary leverage ratio of 3 percent (supplementary leverage ratio), consistent with the minimum leverage ratio adopted by the Basel Committee on Banking Supervision (BCBS), for banking organizations subject to the advanced approaches risk-based capital rules. In this notice of proposed rulemaking (proposal or proposed rule), the agencies are proposing to establish a ''well capitalized'' threshold of 6 percent for the supplementary leverage ratio for any IDI that is a subsidiary of a covered BHC, under the agencies' prompt corrective action (PCA) framework. The Board also proposes to establish a new leverage buffer for covered BHCs above the minimum supplementary leverage ratio requirement of 3 percent (leverage buffer). The leverage buffer would function like the capital conservation buffer for the risk-based capital ratios in the 2013 revised capital approaches. A covered BHC that maintains a leverage buffer of tier 1 capital in an amount greater than 2 percent of its total leverage exposure would not be subject to limitations on distributions and discretionary bonus payments. The proposal would take effect beginning on January 1, 2018. The agencies seek comment on all aspects of this proposal.

DATES: Comments must be received by October 21, 2013.

ADDRESSES: Comments should be directed to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title ''Regulatory Capital Rules: Regulatory Capital, Enhanced Supplementary Leverage Ratio Standards for Certain Bank Holding Companies and Their Subsidiary Insured Depository Institutions'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''regulations.gov'':* Go to *http://www.regulations.gov.* Enter ''Docket ID OCC–2013–0008'' in the Search Box and click ''Search''. Results can be filtered using the filtering tools on the left side of the screen. Click on ''Comment Now'' to submit public comments.
- Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2013–0008'' in your comment.

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

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically:* Go to *http://www.regulations.gov.* Enter ''Docket ID OCC–2013–0008'' in the Search box and click ''Search''. Comments can be filtered by Agency using the filtering tools on the left side of the screen.
- Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

Board: When submitting comments, please consider submitting your comments by email or fax because paper mail in the Washington, DC area and at the Board may be subject to delay. You may submit comments, identified by Docket No. R–1460, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert de V. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Street NW., Washington, DC 20551) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN 3064–AE01, by any of the following methods:

Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html. Follow instructions for submitting comments on the Agency Web site.

- *Email: Comments@fdic.gov.* Include the RIN 3064–AE01 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received must include the agency name and RIN 3064–AE01 for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226 by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT:

OCC: Roger Tufts, Senior Economic Advisor, (202) 649–6981; Nicole Billick, Risk Expert, (202) 649–7932, Capital Policy; or Ron Shimabukuro, Senior Counsel; or Carl Kaminski, Senior Attorney, Legislative and Regulatory Activities Division, (202) 649–5490, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Anna Lee Hewko, Deputy Associate Director, (202) 530–6260; Constance M. Horsley, Manager, (202) 452–5239; Juan C. Climent, Senior Supervisory Financial Analyst, (202) 872–7526; or Holly Kirkpatrick, Senior Financial Analyst, (202) 452–2796, Capital and Regulatory Policy, Division of Banking Supervision and Regulation; or Benjamin McDonough, Senior Counsel, (202) 452–2036; April C. Snyder, Senior Counsel, (202) 452–3099; Christine Graham, Senior Attorney, (202) 452–3005; or David Alexander, Senior Attorney, (202) 452–2877, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

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SUPPLEMENTARY INFORMATION:

I. Background

The recent financial crisis showed that some financial companies had grown so large, leveraged, and interconnected that their failure could pose a threat to overall financial stability. The sudden collapses or near-collapses of major financial companies were among the most destabilizing events of the crisis. As a result of the imprudent risk taking of major financial companies and the severe consequences to the financial system and the economy associated with the disorderly failure of these companies, the U.S. government (and many foreign governments in their home countries) intervened on an unprecedented scale to reduce the impact of, or prevent, the failure of these companies and the attendant consequences for the broader financial system.

A perception continues to persist in the markets that some companies remain ''too big to fail,'' posing an ongoing threat to the financial system. First, the existence of the ''too big to fail'' problem reduces the incentives of shareholders, creditors and counterparties of these companies to

discipline excessive risk-taking by the companies. Second, it produces competitive distortions because companies perceived as ''too big to fail'' can often fund themselves at a lower cost than other companies. This distortion is unfair to smaller companies, damaging to fair competition, and tends to artificially encourage further consolidation and concentration in the financial system.

An important objective of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) is to mitigate the threat to financial stability posed by systemically-important financial companies.[1] The agencies have sought to address this problem through enhanced supervisory programs, including heightened supervisory expectations for large, complex institutions and stress testing requirements. The Dodd-Frank Act further addresses this problem with a multi-pronged approach: a new orderly liquidation authority for financial companies (other than banks and insurance companies); the establishment of the Financial Stability Oversight Council (Council) empowered with the authority to designate nonbank financial companies for Board oversight; stronger regulation of major BHCs and nonbank financial companies designated for Board oversight; and enhanced regulation of over-the-counter (OTC) derivatives, other core financial markets, and financial market utilities.

This proposal would build on these efforts by increasing leverage standards for the largest and most interconnected U.S. banking organizations. The agencies have broad authority to set regulatory capital standards.[2] As a general matter, the agencies' authority to set regulatory capital requirements for the institutions they regulate derives from the International Lending Supervision Act (ILSA)[3] and the PCA provisions[4] of Federal Deposit Insurance Corporation Improvement Act (FDICIA). In establishing ILSA, Congress codified its intentions, providing, ''It is the policy of the Congress to assure that the economic health and stability of the United States and the other nations of the world shall not be adversely affected or threatened in the future by imprudent lending practices or inadequate supervision.''[5] ILSA encourages the agencies to work with their international counterparts to establish effective and consistent supervisory policies and practices and specifically provides the agencies authority to set broadly applicable minimum capital levels[6] as well as individual capital requirements.[7] Additionally, ILSA specifically calls on U.S. regulators to encourage governments, central banks, bank regulatory authorities, and other major banking countries to work toward maintaining, and where appropriate, strengthening the capital bases of banking institutions involved in international banking.[8] With its focus on international lending and the safety of the broader financial system, ILSA provides the agencies with the authority to consider an institution's interconnectedness and other systemic factors when setting capital standards.

As part of the overall prudential framework for bank capital, the agencies have long expected institutions to maintain capital well above regulatory minimums and have monitored banking organizations' capital adequacy through the supervisory process in accordance with this expectation. Additionally, this expectation is codified for IDIs in the statutory PCA requirements, which require the agencies to establish ratio thresholds for both leverage and risk-based capital that banks have to meet to be considered ''well capitalized.''

Additionally, section 165 of the Dodd-Frank Act requires the Board to impose a package of enhanced prudential standards on BHCs with total consolidated assets of $50 billion or more and nonbank financial companies the Council has designated for supervision by the Board.[9] The prudential standards for covered companies required under section 165 of the Dodd-Frank Act must include enhanced leverage requirements. In general, the Dodd-Frank Act directs the Board to implement enhanced prudential standards that strengthen existing micro-prudential supervision and regulation of individual companies and incorporate macro-prudential considerations so as to reduce threats posed by covered companies to the stability of the financial system as a whole. The enhanced standards must increase in stringency based on the systemic footprint and risk characteristics of individual covered companies. When differentiating among companies for purposes of applying the standards established under section 165, the Board may consider the companies' size, capital structure, riskiness, complexity, financial activities, and any other risk-related factors the Board deems appropriate.

In the agencies' experience, strong capital is an important safeguard that helps financial institutions navigate periods of financial or economic stress. Maintenance of a strong base of capital at the largest, systemically important institutions is particularly important because capital shortfalls at these institutions can contribute to systemic distress and can have material adverse economic effects. Further, higher capital standards for these institutions would place additional private capital at risk before the Federal deposit insurance fund and the Federal government's resolution mechanisms would be called upon, and reduce the likelihood of economic disruptions caused by problems at these institutions. The agencies believe that higher standards for the supplementary leverage ratio would reduce the likelihood of resolutions, and would allow regulators more time to tailor resolution efforts in the event those are needed. By further constraining their use of leverage, higher leverage standards could offset possible funding cost advantages that these institutions may enjoy as a result of the ''too big to fail'' problem, as discussed above.

A. Scope of the Proposal

In November 2011, the BCBS[10] released a document entitled, *Global systemically important banks: assessment methodology and the additional loss absorbency*

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] The agencies have authority to establish capital requirements for depository institutions under the prompt corrective action provisions of the Federal Deposit Insurance Act (12 U.S.C. 1831o). In addition, the Federal Reserve has broad authority to establish various regulatory capital standards for BHCs under the Bank Holding Company Act and the Dodd-Frank Act. *See,* for example, sections 165 and 171 of the Dodd-Frank Act (12 U.S.C. 5365 and 12 U.S.C. 5371).

[3] 12 U.S.C. 3901–3911.

[4] 12 U.S.C. 1831o.

[5] 12 U.S.C. 3901(a).

[6] ''Each appropriate Federal banking agency shall cause banking institutions to achieve and maintain adequate capital by establishing levels of capital for such banking institutions and by using such other methods as the appropriate Federal banking agency deems appropriate.'' 12 U.S.C. 3907(a)(1).

[7] Each appropriate Federal banking agency shall have the authority to establish such minimum level of capital for a banking institution as the appropriate Federal banking agency, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the banking institution.'' 12 U.S.C. 3907(a)(2).

[8] 12 U.S.C. 3907(b)(3)(C).

[9] *See* 12 U.S.C. 5365; 77 FR 593 (January 5, 2012); and 77 FR 76627 (December 28, 2012).

[10] The BCBS is a committee of banking supervisory authorities, which was established by the central bank governors of the G–10 countries in 1975. It currently consists of senior representatives of bank supervisory authorities and central banks from Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong SAR, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. Documents issued by the BCBS are available through the Bank for International Settlements Web site at *http://www.bis.org.*

requirement,[11] which sets out a framework for a new capital surcharge for global systemically important banks (BCBS framework). The BCBS framework is intended to strengthen the capital position of the global systemically important banking organizations (G–SIBs) beyond the requirements for other banking organizations by expanding the capital conservation buffer for these organizations.

The BCBS framework incorporates five broad characteristics of a banking organization that the agencies consider to be good proxies for, and correlated with, systemic importance—size, complexity, interconnectedness, lack of substitutes, and cross-border activity. The Board believes that the criteria and methodology used by the BCBS to identify G–SIBs are consistent with the criteria it must consider under the DFA when tailoring enhanced prudential standards based on the systemic footprint and risk characteristics of individual covered companies.

In November 2012 the FSB and BCBS published a list of banks that meet the BCBS definition of a G–SIB based on year-end 2011 data.[12] Each of these organizations has more than $700 billion in consolidated assets or more than $10 trillion in assets under custody. For the reasons described in this notice, the agencies are proposing to modify the 2013 revised capital approaches [13] to implement enhanced leverage standards for the largest, most interconnected U.S. BHCs (that have been, and are likely to continue to be identified as G–SIBs) and their subsidiary IDIs.[14] Accordingly, the agencies propose to use these thresholds to identify covered BHCs and their IDI subsidiaries to which the higher leverage requirements would apply. Over time, as the G–SIB risk-based capital framework is implemented in the United States or revised by the BCBS, the agencies may consider modifying the scope of application of the proposed leverage requirements. In addition, independent of the G–SIB capital framework implementation, the agencies will continue to evaluate the proposed applicability thresholds and may consider revising them to ensure they remain appropriate.

B. The Supplementary Leverage Ratio

The 2013 revised capital approaches comprehensively revise and strengthen the capital regulations applicable to banking organizations. The 2013 revised capital approaches strengthen the definition of regulatory capital, increase the minimum risk-based capital requirements for all banking organizations, and modify the way banking organizations are required to calculate risk-weighted assets. The 2013 revised capital approaches also establish a minimum tier 1 leverage ratio requirement [15] of 4 percent applicable to all IDIs, which is the ''generally applicable'' leverage ratio for purposes of section 171 of the Dodd-Frank Act. Accordingly, the minimum tier 1 leverage requirement for depository institution holding companies is also 4 percent.[16]

In addition, for advanced approaches banking organizations, the 2013 revised capital approaches establish a minimum requirement of 3 percent of tier 1 capital to total leverage exposure (supplementary leverage ratio). Total leverage exposure includes all on-balance sheet assets and many off-balance sheet exposures for banking organizations subject to the agencies' advanced approaches risk-based capital rules. The supplementary leverage ratio is consistent with the minimum leverage ratio requirement adopted by the BCBS (Basel III leverage ratio).[17]

Because total leverage exposure includes off-balance sheet exposures, for any given company with material off-balance sheet exposures, the minimum amount of capital required to meet the supplementary leverage ratio would substantially exceed the amount of capital that would be required to meet the generally applicable leverage ratio, assuming that both ratios were set at the same level. Based on recent supervisory estimates, the 6 percent proposed supplementary leverage ratio for subsidiary IDIs of covered BHCs corresponds to roughly an 8.6 percent generally applicable leverage ratio, while the proposed 5 percent buffer level of the supplementary leverage ratio for covered BHCs corresponds to a roughly 7 percent generally applicable leverage ratio, as shown in Table 1.

TABLE 1—GENERALLY APPLICABLE LEVERAGE RATIO EQUIVALENTS FOR VARIOUS VALUES OF THE SUPPLEMENTARY LEVERAGE RATIO

Leverage concept	Supplementary leverage ratio level:					
	3%	4%	5%	6%	7%	8%
Implied generally applicable ratio*	4.3%	5.7%	7.2%	8.6%	10.0%	11.4%
Current BHC minimum**	4					
Current IDI minimum	4					
Current IDI well-capitalized threshold	5					

*Assumes total leverage exposure for the supplementary leverage ratio is $143 for every $100 of current generally applicable leverage exposure based on a group of advanced approaches banking organizations as of 3Q 2012. Amounts by which total leverage exposure exceeds balance sheet amounts will vary across banking organizations depending on the composition of their off-balance sheet assets.

**Under the 2013 revised capital approaches, the minimum leverage ratio for BHCs is 4 percent.

[11] Available at *http://www.bis.org/publ/bcbs207.pdf.*

[12] The U.S. banking organizations that are currently identified as G–SIBs and that would be subject to the proposal are Citigroup Inc., JP Morgan Chase & Co., Bank of America Corporation, The Bank of New York Mellon Corporation, Goldman Sachs Group, Inc., Morgan Stanley, State Street Corporation, and Wells Fargo & Company. Available at *http://www.financialstabilityboard.org/publications/r_121031ac.pdf.*

[13] The 2013 revised capital approaches would revise and replace the agencies' risk-based and leverage capital standards and establish a 3 percent minimum supplementary leverage ratio for banking organizations subject to the agencies' advanced approaches risk-based capital rules. The Board adopted the 2013 revised capital approaches as final on July 2, 2013. *See http://www.federalreserve.gov/newsevents/press/bcreg/20130702a.htm.* The OCC adopted the 2013 revised capital approaches as final on July 9, 2013. *See http://www.occ.gov/news-issuances/news-releases/2013/nr-occ-2013-110.html.* The FDIC adopted the 2013 revised capital approaches on an interim basis on July 9, 2013.

[14] Under the 2013 revised capital approaches, a ''subsidiary'' is defined as a company controlled by another company, and a person or company ''controls'' a company if it: (1) owns, controls, or holds with power to vote 25 percent or more of a class of voting securities of the company; or (2) consolidates the company for financial reporting purposes. *See* section 2 of the 2013 revised capital approaches.

[15] The generally applicable leverage ratio under the 2013 revised capital approaches is the ratio of a banking organization's tier 1 capital to its average total consolidated assets as reported on the banking organization's regulatory report minus amounts deducted from tier 1 capital.

[16] 12 U.S.C. 5371.

[17] *See* BCBS, ''Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems'' (December 2010), available at *http://www.bis.org/publ/bcbs189.htm.*

The introduction of the Basel III leverage ratio as a minimum standard is an important step in improving the BCBS framework for international capital standards (Basel capital framework), and the BCBS described it as a backstop to the risk-based capital ratios and an overall constraint on leverage. The agencies believe the leverage requirement should produce a simple and transparent measure of capital adequacy that will be credible to market participants and ensure a meaningful amount of capital is available to absorb losses. The Basel III leverage ratio is a non-risk-based measure of capital adequacy that measures both on- and off-balance sheet exposures relative to tier 1 capital.[18] This is particularly important for large, complex organizations that often have substantial off-balance sheet exposures. The financial crisis demonstrated the risks from off-balance sheet exposures that can require capital support, especially during a period of stress. The agencies note that the BCBS has committed to collecting additional data and potentially recalibrating the Basel III leverage ratio requirements. The agencies will review any modifications to the Basel III leverage ratio made by the BCBS and consider proposing revisions to the U.S. requirements, as appropriate.

II. Proposed Revisions to Strengthen the Supplementary Leverage Ratio Standards

A. Factors Contributing to the Proposed Revisions

In developing this proposal, the agencies considered various factors, including comments regarding the supplementary leverage ratio when the agencies proposed revisions to their capital standards in 2012,[19] and the calibration objectives and methodologies of the agencies in developing the risk-based capital and leverage requirements in the 2013 revised capital approaches.

Some commenters on the supplementary leverage ratio in the 2012 proposal recommended that the agencies implement a higher minimum requirement. These commenters argued that the risk-based capital ratios are less transparent and more subject to manipulation than leverage ratios and therefore should not be the binding requirement. Other commenters recommended that the agencies wait to implement a supplementary leverage ratio until the BCBS completes any refinements to the Basel III leverage ratio.[20] Some commenters stated that if a leverage ratio is the binding regulatory capital requirement, banking organizations may have incentives to increase their holdings of riskier assets.

In calibrating the revised risk-based capital framework, the BCBS identified those elements of regulatory capital that would be available to absorb unexpected losses on a going-concern basis. The BCBS agreed that an appropriate regulatory minimum level for the risk-based capital requirements should force banking organizations to hold enough loss-absorbing capital to provide market participants a high level of confidence in their viability. The BCBS also determined that a buffer above the minimum risk-based capital requirements would enhance stability, and that such a buffer should be calibrated to allow banking organizations to absorb a severe level of loss, while still remaining above the regulatory minimum requirements. The buffer is conceptually similar, but not identical in function, to the PCA ''well capitalized'' category for IDIs.

The BCBS's approach for determining the minimum level of the Basel III leverage ratio was different than the calibration approach described above for the risk-based capital ratios. The BCBS used the most loss-absorbing measure of capital, common equity tier 1 capital, as the basis for calibration for the risk-based capital ratios, but not for the Basel III leverage ratio. In addition, the BCBS did not calibrate the minimum Basel III leverage ratio to meet explicit loss absorption and market confidence objectives as it did in calibrating the minimum risk-based capital requirements and did not implement a capital conservation buffer level above the minimum leverage ratio. Rather, the BCBS focused on calibrating the Basel III leverage ratio to be a backstop to the risk-based capital ratios and an overall constraint on leverage. The agencies believe that while the establishment of the Basel III leverage ratio internationally is an important achievement, further steps could be taken to ensure that the risk-based and leverage capital requirements effectively work together to enhance the safety and soundness of the largest, most systemically important banking organizations.

An estimated half of the covered BHCs that were BHCs in 2006 would have met or exceeded a 3 percent minimum supplementary leverage ratio at the end of 2006, and the other half were quite close to the minimum. This suggests that the minimum requirement would not have placed a significant constraint on the pre-crisis buildup of leverage at the largest institutions. Based on their experience during the financial crisis, the agencies believe that there could be benefits to financial stability and reduced costs to the deposit insurance fund by requiring these banking organizations to meet a well-capitalized standard or capital buffer in addition to the 3 percent minimum supplementary leverage ratio requirement.

The agencies have also considered the complementary nature of leverage capital requirements and risk-based capital requirements as well as the potential complexity and burden of additional leverage standards. From a safety-and-soundness perspective, each type of requirement offsets potential weaknesses of the other, and the two sets of requirements working together are more effective than either would be in isolation. In this regard, the agencies note that the 2013 revised capital approaches strengthen U.S. banking organizations' risk-based capital requirements considerably more than it strengthens their leverage requirements. Relative to the new supplementary leverage ratio in the 2013 revised capital approaches, the tier 1 risk-based capital requirements under the 2013 revised capital approaches will be proportionately stronger than was the case under the previous rules.[21] At the same time, the degree to which banking organizations could potentially benefit from active management of risk-weighted assets before they breach the leverage requirements may be greater. Such potential behavior suggests that the increase in stringency of the leverage and risk-based standards should be more closely calibrated to each other so that they remain in an

[18] The BCBS recently published a consultative paper seeking comment on a number of specific changes to the supplementary leverage ratio denominator. If and when any of these changes are finalized, the agencies would consider the appropriateness of their application in the United States.

[19] *See* 77 FR 52792 (August 30, 2012) (2012 proposal).

[20] If the BCBS finalizes changes in the definition of the total leverage exposure measure, the agencies will consider the appropriateness of incorporating those changes into the definition of the supplementary leverage ratio and its appropriate levels for purposes of U.S. regulation. Any such changes would be based on a notice and comment rulemaking process.

[21] *See* section 10 of the 2013 revised capital approaches. The agencies' current risk-based capital rules are at 12 CFR part 3, appendix A and 12 CFR part 167 (OCC); 12 CFR part 208, appendix A and 12 CFR part 225, appendix A (Board); and 12 CFR part 325, appendix A and 12 CFR part 390, subpart Z (FDIC). The agencies' current leverage rules are at 12 CFR 3.6(b) and 3.6(c), and 12 CFR 167.6 (OCC); 12 CFR part 208, appendix B and 12 CFR part 225, appendix D (Board); and 12 CFR 325.3 and 12 CFR 390.467 (FDIC).

effective complementary relationship. This was an important factor the agencies considered in identifying the proposed levels for the well-capitalized and buffer levels of the supplementary leverage ratio.

This proportionality rationale applies to all banking organizations and to both the generally applicable and supplementary leverage ratios. However, the agencies believe it is appropriate to weigh the burden and complexity of imposing a leverage buffer and enhanced PCA standards against the benefits to financial stability and addressing the concern that some institutions benefit from a real or perceived implicit Federal safety net subsidy or may be viewed as ''too big to fail.'' The agencies are therefore proposing to apply enhanced leverage standards only to those U.S. banking organizations that pose the greatest potential risk to financial stability, which are covered BHCs and their subsidiary IDIs.

In this regard, the proposed heightened standards for the supplementary leverage ratio for covered BHCs and their subsidiary IDIs should provide meaningful incentives to encourage these banking organizations to conserve capital, thereby reducing the likelihood of their instability or failure and consequent negative external effects on the financial system. The calibration of the proposed heightened standards is based on consideration of all of the factors described in this section.

B. Description of the Proposed Revisions

In the 2013 revised capital approaches, the agencies established a minimum supplementary leverage ratio requirement of 3 percent for advanced approaches banking organizations based on the Basel III leverage ratio. The supplementary leverage ratio is defined as the simple arithmetic mean of the ratio of the banking organization's tier 1 capital to total leverage exposure calculated as of the last day of each month in the reporting quarter.

Under this proposal, a covered BHC would be subject to a leverage buffer of tier 1 capital in addition to the minimum supplementary leverage ratio requirement established in the 2013 revised capital approaches. Similar to the capital conservation buffer in the 2013 revised capital approaches, under the proposal, a covered BHC that maintains a leverage buffer of tier 1 capital in an amount greater than 2 percent of its total leverage exposure would not be subject to limitations on its distributions and discretionary bonus payments.[22] If the BHC maintains a leverage buffer of 2 percent or less, it would be subject to increasingly stricter limitations on such payouts. The proposed leverage buffer would follow the same general mechanics and structure as the capital conservation buffer contained in the 2013 revised capital approaches.[23] The leverage buffer constraints on distributions and discretionary bonus payments would be independent of any constraints imposed by the capital conservation buffer or other supervisory or regulatory measures.

In the 2013 revised capital approaches, the agencies incorporated the 3 percent supplementary leverage ratio minimum requirement into the PCA framework as an adequately capitalized threshold for IDIs subject to the agencies' advanced approaches risk-based capital rules, but did not establish an explicit well-capitalized threshold for this ratio. Under the proposal, an IDI that is a subsidiary of a covered BHC would be required to satisfy a 6 percent supplementary leverage ratio to be considered well capitalized for PCA purposes. The leverage ratio thresholds under the 2013 revised capital approaches and this proposal are shown in Table 2.

TABLE 2—PCA LEVELS IN THE 2013 REVISED CAPITAL APPROACHES FOR ADVANCED APPROACHES BANKING ORGANIZATIONS THAT ARE IDIS AND PROPOSED WELL-CAPITALIZED LEVEL FOR SUBSIDIARY IDIS OF COVERED BHCS

PCA category	Generally applicable leverage ratio (percent)	Supplementary leverage ratio (percent)	Proposed supplementary leverage ratio for subsidiary IDIs of covered BHCs (percent)
Well Capitalized	≥ 5	Not applicable	≥ 6.
Adequately Capitalized	≥ 4	≥ 3	≥ 3.
Undercapitalized	< 4	< 3	< 3.
Significantly Undercapitalized	< 3	Not applicable	Not applicable.
Critically Undercapitalized	Tangible equity (defined as tier 1 capital plus non-tier 1 perpetual preferred stock) to Total Assets ≤ 2	Not applicable	Not applicable.

Note: The supplementary leverage ratio includes many off-balance sheet assets in its denominator; the generally applicable leverage ratio does not. See the supplementary leverage ratio under section I.B. of this preamble for additional information.

Consistent with the transition provisions set forth in subpart G of the 2013 revised capital approaches, the agencies propose to adopt the leverage buffer for covered BHCs and the 6 percent well-capitalized threshold for subsidiary IDIs of covered BHCs beginning on January 1, 2018.

The agencies note that by setting the minimum supplementary leverage ratio plus leverage buffer at 5 percent for covered BHCs and the well-capitalized

[22] *See* section 11(a)(4) of the 2013 revised capital approaches.

[23] *See* section 11(a) of the 2013 revised capital approaches.

threshold for subsidiary IDIs of covered BHCs at 6 percent, the proposal would be structurally consistent with the current relationship between the generally applicable leverage ratio requirements applicable to IDIs and BHCs under section 10 of the 2013 revised capital approaches. Under the 2013 revised capital approaches, IDIs must maintain a 5 percent generally applicable leverage ratio to be well capitalized for PCA purposes, whereas BHCs must maintain a minimum 4 percent generally applicable leverage ratio under separate BHC regulations.

Under this proposed rule, the well-capitalized supplementary leverage ratio standard for subsidiary IDIs of covered BHCs would become a more stringent requirement than the current 5 percent well-capitalized standard under PCA with respect to the generally applicable leverage ratio. Accordingly, the agencies are considering eliminating the 5 percent well-capitalized standard for the generally applicable leverage ratio for subsidiary IDIs of covered BHCs if the agencies finalize the 6 percent well-capitalized threshold for the supplementary leverage ratio as proposed.

C. Required Capital and Credit Availability

In developing this proposal, the agencies analyzed its potential impact on the amount of capital the covered organizations would be required to hold and, in general terms, factors relevant to the potential effects on credit availability.

Some perspective on the potential effects of the proposed rule can be gained by considering information obtained from the Board's Comprehensive Capital Analysis and Review (CCAR) process in which all of the agencies participate. This information reflects banking organizations' own projections of their Basel III capital ratios under the supervisory baseline scenario, including institutions' own assumptions about earnings retention and other strategic actions. It does not reflect supervisory views. In the 2013 CCAR, all 8 covered BHCs met the 3 percent supplementary leverage ratio as of third quarter 2012, and almost all projected that their supplementary leverage ratios would exceed 5 percent at year-end 2017.

If the proposed supplementary leverage ratio thresholds had been in effect as of third quarter 2012, covered BHCs under the proposal that did not meet a 5 percent supplementary leverage ratio would have needed to increase their tier 1 capital by about $63 billion to meet that ratio. The incremental capital needs associated with higher supplementary leverage ratios need to be evaluated in the context of the proposed 2018 effective date and institutions' efforts to build their capital to meet Basel III requirements and for other purposes. Given these capital-building activities, it is likely that incremental capital needs to meet a 5 percent supplementary leverage ratio would be significantly less as the effective date approaches than if the requirements had been in place in September 2012. While projections and future economic conditions are subject to considerable uncertainty, covered BHCs' 2013 CCAR projections are currently the best available evidence on which to base an estimate of the ultimate incremental capital needs of the proposed rule. Based on these projections, achieving the proposed 5 percent supplementary leverage ratio for covered BHCs appears generally in line with current and planned capital strengthening initiatives and within the financial capacity of these organizations.

Because CCAR is focused on the consolidated capital of BHCs, BHCs did not project future Basel III leverage ratios for their IDIs. To estimate the impact of the proposal on the lead IDIs of covered BHCs, the agencies assumed that an IDI has the same ratio of total leverage exposure to total assets as its BHC. Using this assumption and CCAR 2013 projections, all 8 lead IDIs of covered BHCs are estimated to meet the 3 percent supplementary leverage ratio as of third quarter 2012. If the proposed supplementary leverage ratio thresholds had been in effect as of third quarter 2012, the lead IDIs that did not meet a 6 percent ratio would have needed to increase their tier 1 capital by about $89 billion to meet that ratio.[24] The agencies believe that the CCAR projections made by covered BHCs under the proposal in many cases reflect similar anticipated capital trends at these BHCs' lead IDIs and that affected IDIs under the proposal would be able to effectively manage their capital structures to meet a 6 percent supplementary leverage ratio at year-end 2017.

In short, the agencies' assessment of the capital impact of the proposed rule is that it would formalize and preserve a strengthening of U.S. systemically important banking organizations' capital that is already underway and anticipated to continue.

[24] The $89 billion estimate was calculated by assuming that CCAR results were proportionally applied based upon the total assets of the lead IDI relative to the BHC.

The agencies considered a number of broad considerations relevant to the potential effects of the proposal on credit availability. Roughly speaking, banking organizations fund themselves with debt and equity, and both funding sources support lending. The agencies believe the effect of higher banking organization capital requirements on lending would likely depend on a number of factors. First, if the higher capital requirement is less than the banking organization's planned capital holdings, the higher capital requirement may not directly affect lending. If the higher capital requirement does exceed planned capital levels, but the increase in capital does not increase overall funding costs (perhaps because the risk premium demanded by counterparties is sufficiently reduced), the higher capital requirement may not affect lending. If actual capital held increases and this causes overall funding costs to increase, and if these costs are passed on to borrowers, then there would likely be an increase in the cost of credit that could affect lending, in an amount that depends on the materiality of the increase in the cost of funding.

The proposed rule would permit covered BHCs and their IDI subsidiaries to fund themselves more than 90 percent with debt while still satisfying the proposed leverage thresholds. In the extreme, if an organization had to increase its actual capital holdings by a full 3 percentage points of its total leverage exposures, corresponding to the establishment of a 6 percent well-capitalized threshold above the 3 percent adequately-capitalized threshold, the remainder of its funding sources would be expected to carry the same or possibly lower cost (lower if counterparty-demanded risk premiums come down) while a small percentage of its funding sources, in an amount equal to 3 percent of total leverage exposure, could come at a higher cost reflecting the replacement of debt with equity. The agencies note that to the extent that higher capital standards increase the cost of credit and reduce the volume of lending, this effect should be weighed against the potential long-term benefits to the availability of credit resulting from a better capitalized and more stable banking system that is less prone to crises. Historically, banking crises are often followed by long periods of diminished lending and economic growth.

III. Request for Comment

The agencies seek comment on all aspects of the proposed strengthening of the leverage standards for covered BHCs and their subsidiary IDIs. Comments are

requested about the potential advantages of the proposal in strengthening the individual safety and soundness of these banking organizations and the stability of the financial system. Comments are also requested about the calibration and capital impact of the proposal, including whether the proposal maintains an appropriately complementary relationship between the risk-based and leverage capital requirements, and the nature and extent of any costs to the affected institutions or the broader economy. While the proposal references the supplementary leverage ratio defined in the 2013 revised capital approaches, comments are also sought about alternative definitions. Finally, the agencies seek commenters' views about future rulemaking efforts that should be considered for simplification or other improvements to the agencies' regulatory capital rules generally.

Question 1: How would proposed strengthening of the supplementary leverage ratio for covered BHCs and their subsidiary IDIs contribute to financial stability and thus economic growth?

Question 2: Would the proposed strengthening of the leverage ratio mitigate public-policy concerns about the regulatory treatment of banking organizations that may pose risks to the broader economy?

Question 3: The agencies solicit commenters' views on what economic data suggest about leverage ratios and risk-based capital ratios as predictors of bank distress and thus tools to prevent the failure of large systemically-important banking organizations.

Question 4: Would the proposal create any risk-reducing incentives and around what specific activities? Would the proposal create incentives for subject banking organizations to take additional risk and if so, would this effect be expected to limit the safety-and-soundness benefits of the proposal?

Question 5: What are commenters' views on the proposed calibration of the leverage standards? Is the proposed 6 percent well-capitalized standard for subsidiary IDIs and the proposed 5 percent minimum supplementary leverage ratio plus leverage buffer for covered BHCs appropriate or should these requirements be higher or lower? In particular with regard to covered BHCs, what are the advantages and disadvantages of establishing the minimum supplementary leverage ratio plus leverage buffer at 5 percent for all covered BHC's versus establishing the amount between 4 and 5.5 percent according to each covered BHC's risk-based capital surcharge (that is, to reflect the minimum supplementary leverage ratio of 3 percent plus between 1 and 2.5 percent depending upon each covered BHC's risk-based capital surcharge)? With respect to the subsidiary IDIs of covered BHCs, the agencies seek commenters' views on what, if any, specific challenges these institutions would face in meeting the proposed well-capitalized threshold of 6 percent beginning on January 1, 2018.

Question 6: The agencies solicit commenters' views on whether a strengthened leverage ratio requirement would enhance the competitive position of U.S. banking organizations relative to foreign banking organizations by enhancing the relative safety of the U.S. banking system. Alternatively, could the proposed strengthened leverage ratio requirement place U.S. banking organizations at a competitive disadvantage relative to foreign banking organizations and if so, in what areas?

Question 7: How would this proposal affect counterparty incentives and behavior?

Question 8: The agencies seek commenters' views on the macroeconomic implications of the proposal, particularly the potential effects the proposal could have on the allocation of credit and the volume of lending. For example, could a strengthened leverage ratio requirement as proposed cause a shift in favor of lending to individuals and businesses as opposed to markets- based activity by banking organizations? If covered BHCs were better capitalized as a group, to what extent would this improve their ability to serve as a source of credit to the economy during periods of economic stress? Conversely, to what extent would the proposal create incentives for banking organizations to shrink or otherwise modify their activities?

Question 9: What are the incremental costs to banking organizations of the proposed rule compared to the costs of currently anticipated and planned capitalization initiatives?

Question 10: The agencies are interested in comment on the appropriate measure of capital that should be used as the numerator of the supplementary leverage ratio. Among the many measures of capital used by banks, regulators and the market, the agencies considered the following measures: (1) Common equity tier 1 capital, (2) tier 1 capital, (3) total capital, and (4) tangible equity (as these terms are defined in the agencies' capital regulations as of the date of the issuance of this proposed rule, including the 2013 revised capital approaches). What are the advantages and disadvantages of each of these as well as alternative measures?

Question 11: What, if any, alternatives to the definition of total leverage exposure should be considered and why?

Question 12: In light of the proposed enhanced leverage requirement and ongoing standardized risk-based capital floors, should the agencies consider, in some future regulatory action, simplifying or eliminating portions of the advanced approaches rule if they are unnecessary or duplicative? Are there opportunities to simplify the standardized risk-based capital framework that would be consistent with safety and soundness or other policy objectives?

Question 13: The proposed scope of application is U.S. top-tier BHCs with more than $700 billion in total assets or more than $10 trillion in assets under custody and their subsidiary IDIs. Should the proposed requirements also be applied to other advanced approaches banking organizations? Why or why not? Should all IDI subsidiaries of a covered BHC be subject to the proposed well-capitalized standard, and if not, why? Please provide specific factors and the associated rationale the agencies should consider in establishing any exemption from the proposed well-capitalized standard.

IV. Regulatory Analysis:

A. Paperwork Reduction Act (PRA)

There is no new collection of information pursuant to the PRA (44 U.S.C. 3501 *et seq.*) contained in this proposed rule.

B. Regulatory Flexibility Act Analysis

OCC

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires an agency to provide an initial regulatory flexibility analysis (IRFA) with a proposed rule or to certify that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banking entities with total assets of $175 million or less, and, after July 22, 2013, total assets of $500 million or less).

As described in sections I. and II. of this preamble, the proposal would strengthen the supplementary leverage ratio standards for U.S. top-tier bank holding companies with total assets of more than $700 billion or assets under custody of more than $10 trillion and their IDI subsidiaries. Using the Small Business Administration's (SBA) recently issued size standards, as of

December 31, 2012, the OCC supervised approximately 1,291 small entities.[25] Because the proposed rule only applies to large internationally active banks, it does not impact any OCC-supervised small entities. Therefore, the OCC does not believe that the proposed rule will result in a significant economic impact on a substantial number of small entities under its supervisory jurisdiction.

The OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of small national banks and small Federal savings associations.

Board

The Board is providing an initial regulatory flexibility analysis with respect to this proposed rule. As discussed above, this proposed rule is designed to enhance the safety and soundness of U.S. top-tier bank holding companies with at least $700 billion in consolidated assets or at least $10 trillion in assets under custody (covered BHCs), and the IDI subsidiaries of covered BHCs. Under regulations issued by the SBA, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $500 million or less (a small banking organization).[26] As of March 31, 2013, there were approximately 636 small state member banks. As of December 31, 2012, there were approximately 3,802 small bank holding companies.[27]

The proposal would apply only to very large bank holding companies and their IDI subsidiaries. Currently, no small top-tier bank holding company would meet the threshold criteria provided in this NPR, so there would be no additional projected compliance requirements imposed on small bank holding companies. One covered bank holding company has one small state member bank subsidiary, which would be covered by this proposal. The Board expects that this entity would rely on its parent banking organization for compliance and would not bear additional costs. The Board is aware of no other Federal rules that duplicate, overlap, or conflict with the proposed rule. The Board believes that the proposed rule will not have a significant economic impact on small banking organizations supervised by the Board and therefore believes that there are no significant alternatives to the proposed rule that would reduce the economic impact on small banking organizations supervised by the Board.

The Board welcomes comment on all aspects of its analysis. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

FDIC

The RFA requires an agency to provide an IRFA with a proposed rule or to certify that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banking entities with total assets of $175 million or less, and, after July 22, 2013, total assets of $500 million or less).[28]

As described in sections I. and II. of this preamble, the proposal would strengthen the supplementary leverage ratio standards for U.S. top-tier bank holding companies with total assets of more than $700 billion or assets under custody of more than $10 trillion and their IDIs subsidiaries. As of March 31, 2013, based on a $175 million threshold, 1 (out of 2,453) small state nonmember bank and no (out of 159) small state savings associations were subsidiaries of a covered BHC. As of March 31, 2013, based on a $500 million threshold, 2 (out of 3,398) small state nonmember banks and no (out of 316) small state savings associations were subsidiaries of a covered BHC. Therefore, the FDIC does not believe that the proposed rule will result in a significant economic impact on a substantial number of small entities under its supervisory jurisdiction.

The FDIC certifies that the NPR would not have a significant economic impact on a substantial number of small FDIC-supervised institutions.

C. OCC Unfunded Mandates Reform Act of 1995 Determination

The Unfunded Mandates Reform Act of 1995 (UMRA) requires federal agencies to prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any one year. The current inflation-adjusted expenditure threshold is $141 million. If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

In conducting the regulatory analysis, UMRA requires each federal agency to provide:

- The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need;
- An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions;
- An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, a quantification of those benefits;
- An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs;
- An assessment, including the underlying analysis, of costs and benefits of potentially effective and

[25] The OCC based the estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which as of July 21, 2013 will be $500 million and $35.5 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining whether to classify a banking organization as a ''small entity'' for the purposes of the Regulatory Flexibility Act. The OCC used December 31, 2012, to determine size because the SBA has provided that a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See,* footnote 8 to the SBA's *Table of Size Standards.*

[26] *See* 13 CFR 121.201. Effective July 22, 2013, the SBA revised the size standards for banking organizations to $500 million in assets from $175 million in assets. 78 FR 37409 (June 20, 2013).

[27] Under the prior SBA threshold of $175 million in assets, as of March 31, 2013 the Board supervised approximately 369 small state member banks. As of December 31, 2012, there were approximately 2,259 small bank holding companies.

[28] Effective July 22, 2013, the SBA revised the size standards for banking organizations to $500 million in assets from $175 million in assets. 78 FR 37409 (June 20, 2013).

reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable non-regulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives;

- An estimate of any disproportionate budgetary effects of the federal mandate upon any particular regions of the nation or particular State, local, or tribal governments, urban or rural or other types of communities, or particular segments of the private sector; and
- An estimate of the effect the rulemaking action may have on the national economy, if the OCC determines that such estimates are reasonably feasible and that such effect is relevant and material.

Need for Regulatory Action

For the reasons set forth in the Supplementary Information section, the agencies are proposing to strengthen the agencies' leverage ratio standards for large, interconnected U.S. banking organizations. The agencies believe that the maintenance of a strong base of capital at the largest and most systemically important institutions is particularly important because capital shortfalls at these institutions can contribute to systemic distress and can have material adverse economic effects. Further, higher capital standards for these institutions would place additional private capital at risk before the federal deposit insurance fund and the federal government's resolution mechanisms would be called upon, and reduce the likelihood of economic disruptions caused by problems at these institutions.

The Proposed Rule

The proposed rule would require the covered banking organizations to maintain higher supplementary leverage ratios. The supplementary leverage ratio is the ratio of tier 1 capital to total leverage exposure, where total leverage exposure is the sum of (1) on-balance sheet assets less amounts deducted from tier 1 capital, (2) potential future exposure from derivative contracts, (3) ten percent of the bank's notional amount of unconditionally cancellable commitments, and (4) the notional amount of all other off-balance sheet exposures except securities lending, securities borrowing, reverse repurchase transactions, derivatives, and unconditionally cancellable commitments. The regulatory metric will be the mean of the supplementary leverage ratios calculated as of the last day of each month in the reporting quarter. For instance, the supplementary leverage ratio (SLR) calculated when the 2013 revised capital approaches go into effect on January 1, 2018, will be as follows:

$$SLR_{Jan.1,2018} = \frac{SLR_{Oct.31,2017} + SLR_{Nov.30,2017} + SLR_{Dec.31,2017}}{3}$$

The SLR, which captures off-balance sheet and on-balance sheet assets in the denominator, would supplement the current U.S. leverage ratio, which is the ratio of tier 1 capital to on-balance sheet assets. The U.S. leverage ratio applies to all national banks and federal savings associations, and must be at least four percent for an institution to be ''adequately capitalized'' and five percent to be ''well capitalized'' under the OCC's prompt corrective action regulations.[29] The proposed rule would set a six percent SLR threshold for IDIs to be well-capitalized.[30]

The following table shows the transition table for leverage ratio requirements. The last row of the table indicates the proposed supplemental leverage ratio.

TRANSITION SCHEDULE FOR LEVERAGE REQUIREMENTS

[In Percent]

	Jan. 1, 2014	Jan. 1, 2015	Jan. 1, 2016	Jan. 1, 2017	Jan. 1, 2018	Jan. 1, 2019	PCA	
							Adq.	Well
Applies to All Banks:								
Minimum Common Equity + Conservation Buffer	4.0	4.5	5.125	5.75	6.375	7.0	4.5	6.5
Minimum Tier 1 + Conservation Buffer	5.5	6.0	6.625	7.25	7.875	8.5	6	8
Minimum Total Capital + Conservation Buffer	8.0	8.0	8.625	9.25	9.875	10.5	8	10
U. S. Leverage Ratio	4.0	4.0	4.0	4.0	4.0	4.0	4	5
Advanced Approaches Banks:								
Maximum Countercyclical Buffer			0.625	1.25	1.875	2.5		
Basel III Supplemental Leverage Ratio		Start to Report			3.0	3.0		
U.S. Banking Organizations with $700 billion in total assets or $10 trillion in custody assets								
Proposed Rule Supplemental Basel III Leverage Ratio for Well Capitalized Banks					6	6	3	6

[29] 12 CFR part 6.

[30] Given the usual fluctuations in capital and assets, well-capitalized banks would, in particular, hold their SLR at least slightly above the six percent threshold level.

Institutions Affected by the Proposed Rule

The proposed rule currently would apply to eight U.S. banking organizations, which have at least $700 billion in consolidated assets or at least $10 trillion in assets under custody. These thresholds capture the eight U.S. bank holding companies that the Financial Stability Board designated as G–SIBs on November 1, 2012.[31] Of the eight U.S. bank holding companies that would be subject to the rule, six have subsidiary IDIs that are supervised by the OCC.

Estimated Costs and Benefits of the Proposed Rule

The proposed rule could affect costs in two ways: (1) the cost of the additional capital institutions will need to meet the higher minimum leverage ratio, and (2) potential spillover costs into various markets for bank products and economic growth in general. Under the 2013 revised capital approaches, all advanced approach banks must compute a supplementary leverage ratio. Therefore, the OCC estimates that there are no additional compliance costs associated with establishing systems to determine the proposed supplementary leverage ratio.

Benefits of the Proposed Rule

The proposed rule would produce the following benefits:

- It would increase the amount of loss absorbing capital held by covered BHCs and their IDI subsidiaries.
- Consequently, it would increase the likelihood that loss absorbing capital in the U.S. banking system will dampen negative economic shocks as they pass through the U.S. financial system, thereby diminishing the negative effect of the shock on growth in the broader U.S. and global economies.
- It would help mitigate the threat to financial stability posed by systemically important financial companies.
- It places additional private capital ahead of the deposit insurance fund and the federal government's resolution mechanisms.
- It offsets possible funding cost advantages that some institutions may enjoy as a result of real or perceived implicit federal support.

Costs of the Proposed Rule

To estimate the impact of the proposed rule on bank capital requirements, the OCC estimated the amount of additional tier 1 capital banks will need to meet the six percent supplementary leverage ratio relative to the amount of tier 1 capital currently reported. To estimate new capital ratios and requirements, the OCC used data from a quantitative impact study (QIS) from the fourth quarter of 2012 and data from the Board's most recent Comprehensive Capital Analysis and Review (CCAR) program. These data collection exercises gather holding company data.

The estimates based on QIS data are likely to be conservative. They include denominator elements that are relevant internationally but that are not part of the domestic rule. Their inclusion for the purposes of this analysis along with the CCAR data generates a range of cost estimates.

To estimate the effect of the proposed rule on IDIs, the OCC adjusted bank-level Call Report data by applying scalars created by comparing QIS and CCAR holding company data to Y9 data. In particular, the adjustment factor for each IDI's reported tier 1 capital is equal to the ratio of the holding company's Basel III tier 1 capital reported in the QIS and CCAR to the holding company's tier 1 capital reported in Y9 data. Similarly, the adjustment factor for each IDI's reported average assets for leverage ratio purposes is equal to the ratio of the holding company's Basel III leverage exposure reported in the QIS or CCAR to the holding company's average assets for leverage ratio purposes reported in Y9 data. In effect, this approach assumes (1) that the ratio of tier 1 capital as determined under the 2013 revised capital approaches to tier 1 capital determined under previous rules is the same at the bank and the bank holding company, and (2) that the ratio of the denominator of the supplemental leverage ratio to the denominator of the leverage ratio is the same at the bank and the bank holding company.

The following tables show the OCC's estimates, using QIS and CCAR data, of the total shortfall in tier 1 capital at various levels of the supplementary leverage ratio for the six covered BHCs that control OCC-regulated IDIs. As the tables show, at the five percent supplementary leverage ratio for holding companies, QIS and CCAR data suggest that the capital shortfall will range between $63 billion and $113 billion.[32] After making the scalar adjustments to estimate IDI data, at the six percent supplementary leverage ratio for IDIs, QIS and CCAR data suggest that the bank-level capital shortfall will range between $84 billion and $123 billion.

To estimate the cost to IDIs of additional capital associated with the proposed supplemental leverage ratio requirement, the OCC examined the effect of this requirement on capital structure and the overall cost of capital.[33] The cost of financing a bank or any firm is the weighted average cost of its various financing sources, which amounts to a weighted average cost of capital reflecting many different types of debt and equity financing. Because interest payments on debt are tax deductible, a more leveraged capital structure reduces corporate taxes, thereby lowering funding costs, and the weighted average cost of financing tends to decline as leverage increases. Thus, an increase in required equity capital would require a bank to deleverage and—all else equal—would increase the cost of capital for that bank.

This increased cost would be tax benefits foregone: the additional capital requirement (between $84 billion and $123 billion), multiplied by the interest rate on the debt displaced and by the effective marginal tax rate for the banks affected by the proposed rule. The effective marginal corporate tax rate is affected not only by the statutory federal and state rates, but also by the probability of positive earnings (since there is no tax benefit when earnings are negative), and the offsetting effects of personal taxes on required bond yields. Graham (2000) considers these factors and estimates a median marginal tax benefit of $9.40 per $100 of interest. So, using an estimated interest rate on debt of 6 percent, the OCC estimates that the annual tax benefits foregone on between $84 billion and $123 billion of capital switching from debt to equity is between $474 million and $694 million per year ($474 million = $84 billion * 0.06 (interest rate) * 0.094 (median marginal tax savings)).[34]

[31] To measure custody assets, the OCC used custody and safekeeping accounts non-managed assets (RCFDB898) from Call Report Schedule RC–T: Fiduciary and Related Services.

[32] Because the 2013 revised capital approaches require advanced approaches banks to maintain a minimum supplementary leverage ratio of at least 3 percent, and all covered BHCs are advanced approaches banks, the OCC estimates the capital shortfall related to the proposed rule as the difference between the leverage ratio threshold shown and any shortfall at the 3 percent ratio. With QIS data, there is a shortfall at the three percent ratio of approximately $5 billion. Thus, the shortfall shown is approximately $5 billion less than the actual shortfall. There is no adjustment with CCAR data as this data shows no shortfall at the three percent threshold.

[33] *See,* Merton H. Miller, (1995), ''Do the M & M propositions apply to banks?'' *Journal of Banking & Finance,* Vol. 19, pp. 483–489.

[34] *See,* John R. Graham, (2000), ''How Big Are the Tax Benefits of Debt?'' *Journal of Finance,* Vol. 55, No. 5, pp. 1901–1941. Graham points out that ignoring the offsetting effects of personal taxes

Continued

The OCC does not anticipate any additional compliance costs for banks or costs to the agencies. Thus, the overall cost estimate for OCC-regulated banking organizations under the proposed rule is between $474 million and $694 million per year.

Potential Costs

In addition to costs associated with increasing minimum capital levels, the proposed rule could affect competition, and it could have some effect on lending and other bank activities.

Because the proposed rule would not take effect until January 1, 2018, institutions subject to the proposed rule would have roughly four years to accumulate the additional capital needed to meet the new requirements. In most instances, this transition period should allow for institutions to adjust smoothly to the proposed requirements, should they become final in their current form, without disruption to bank lending and other banking activities.

The proposed rule would strengthen the capital position of covered U.S. banking organizations. If other foreign and domestic banks did not follow suit, the market share of these covered institutions might conceivably expand because they might be relatively well-positioned to invest and make acquisitions, especially in a downturn.

However, the direct effect of the proposed rule on competition is more likely to be to reduce the market share of the covered institutions. If they met with any difficulty in accumulating or raising additional tier 1 capital, then they would have to decrease the size of their supplementary leverage ratio denominator to meet the new standards. Such an adjustment to the denominator could affect on-balance sheet assets, exposure to derivative contracts, or commitments and other off-balance sheet exposures.[35] Should such an adjustment to the denominator be necessary at one or more institutions affected by the proposed rule, it is likely that another unrestricted financial institution would provide these products or services, which could mitigate any associated disruption to financial markets in general.

This potential shift in banking activities away from institutions affected by the proposed rule, while not likely, does highlight the potential for the proposed rule to have some effect on competition, both foreign and domestic. Again, should affected banking organizations need to contract their banking activities in order to meet the new supplementary leverage ratio, foreign-owned G–SIBs or other large U.S. banking organizations would likely expand to take their place.. The proposed rule is not likely to have an adverse effect on financial markets generally, but it could affect the competitive standing of particular institutions.

U.S. Banking Organizations With OCC-Regulated IDIs Short of the Supplementary Leverage Ratio, QIS Data, December 31, 2012

[$ in thousands]

Supplementary leverage ratio	BHC Tier 1 capital shortfall	Proposed rule BHC marginal shortfall	Annual cost of capital for marginal shortfall
3%	$5,137,830	$0	$0
4%	21,786,760	16,648,930	93,900
5%	118,503,000	113,365,170	639,380
6%	235,270,200	230,132,370	1,297,947
7%	361,547,477	356,409,647	2,010,150
8%	497,877,831	492,740,001	2,779,054
9%	634,208,185	629,070,355	3,547,957

U.S. Banking Organizations With OCC-Regulated IDIs Short of the Supplementary Leverage Ratio, CCAR Data, September 30, 2012

[$ in thousands]

Supplementary leverage ratio	BHC Tier 1 capital shortfall	Proposed rule BHC marginal shortfall	Annual cost of capital for marginal shortfall
3%	$0	$0	$0
4%	7,528,091	7,528,091	42,458
5%	62,722,407	62,722,407	353,754
6%	167,020,534	167,020,534	941,996
7%	281,777,638	281,777,638	1,589,226
8%	405,078,110	405,078,110	2,284,641
9%	528,378,583	528,378,583	2,980,055

Comparison Between the Proposed Rule and the Baseline

Under the baseline scenario, minimum supplementary leverage requirements set forth in the 2013 revised capital approaches would continue to take effect. Thus, under the baseline, the minimum supplementary leverage ratio requirement of three percent would take effect, and the only costs associated with the supplemental leverage ratio requirement would be those related to the 2013 revised capital approaches.[36] Under the baseline, however, there would also be no added

would increase the median marginal tax rate to $31.5 per $100 of interest.

[35] Affected banking organizations do have some potential for lost revenue should they elect to shed assets as part of their strategy to meet the new minimum supplementary leverage ratio requirement.

[36] The OCC estimates this cost to be between zero and $29 million.

benefits stemming from the protection provided by additional tier 1 capital.

Comparison Between the Proposed Rule and Alternatives

The above tables provide several alternative scenarios for varying requirements of the supplementary leverage ratio. As these tables suggest, increasing the supplementary leverage ratio increases the total amount of additional tier 1 capital required and the corresponding cost of the proposal. Similarly, decreasing the total asset and total custody asset size thresholds that determine applicability of the proposed rule would capture a larger number of institutions, and would thereby increase the capital costs of the proposed rule. Increasing the total asset and total custody asset size thresholds capture a smaller number of institutions, and would thereby decrease the costs of the proposed rule. The benefits from additional protection provided by the additional tier 1 capital would also increase with the supplementary leverage ratio. While the optimal leverage ratio is the subject of some debate, the BCBS selected 3 percent as a test minimum during the parallel run period between January 1, 2013, and January 1, 2017. During the parallel run period, the BCBS will assess whether the leverage ratio definition and regulatory minimum are appropriate. The agencies have indicated in the proposed rule that they will review any modifications to the Basel III leverage ratio made by the BCBS.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the proposed rule in a simple and straightforward manner, and invite comment on the use of plain language. For example:

- Have the agencies organized the material to suit your needs? If not, how could they present the proposed rule more clearly?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the agencies incorporate to make the regulation easier to understand?

End of the Common Preamble.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 6

National banks.

12 CFR Part 165

Administrative practice and procedure, Savings associations.

12 CFR Part 167

Capital, Reporting and recordkeeping requirements, Risk, Savings associations.

12 CFR Part 208

Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Capital, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Risk.

12 CFR Part 324

Administrative practice and procedure, Banks, banking, Capital Adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the common preamble and under the authority of 12 U.S.C. 93a, 1831o, and 5412(b)(2)(B), the Office of the Comptroller of the Currency proposes to amend part 6 of chapter I of title 12, Code of Federal Regulations as follows:

PART 6—PROMPT CORRECTIVE ACTION

■ 1. Revise the authority of part 6 to read as follows:

Authority: 12 U.S.C. 93a, 1831o, 5412(b)(2)(B).

■ 2. In § 6.4, remove and reserve paragraphs (a) and (b) and revise paragraph (c) to read as follows:

§ 6.4 Capital measures and capital category definition.

* * * * *

(c) *Capital categories applicable on and after January 1, 2015.* On January 1, 2015, and thereafter, for purposes of the provisions of section 38 and this part, a national bank or Federal savings association shall be deemed to be:

(1) Well capitalized if:

(i) [Reserved]

(ii) [Reserved]

(iii) [Reserved]

(iv) Leverage Measure:

(A) The national bank or Federal savings association has a leverage ratio of 5.0 percent or greater; and

(B) With respect to a national bank or Federal savings association that is a subsidiary of a U.S. top-tier bank holding company that has more than $700 billion in total assets as reported on the company's most recent Consolidated Financial Statement for Bank Holding Companies (FR Y–9C) or more than $10 trillion in assets under custody as reported on the company's most recent Banking Organization Systemic Risk Report (Y–15), on January 1, 2018 and thereafter, the national bank or Federal savings association has a supplementary leverage ratio of 6.0 percent or greater; and

(v) [Reserved]

(2) [Reserved]

* * * * *

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the common preamble, chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 3. The authority citation for part 208 is revised to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, 3905–3909, and 5371; 15 U.S.C. 78b, 78l(b), 781(i), 780–4(c)(5), 78q, 78q–1, and 78w, 1681s, 1681w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

■ 4. In § 208.41, remove the alphabetical paragraph designations and arrange definitions in alphabetical order and add in alphabetical order a definition of ''covered BHC'' to read as follows:

§ 208.41 Definitions for purposes of this subpart.

* * * * *

Covered BHC means a covered BHC as defined in § 217.2 of Regulation Q (12 CFR 217.2).

* * * * *

■ 5. Revise § 208.43 to read as follows:

§ 208.43 Capital measures and capital category definitions.

(a) *Capital measures.*

(1) [Reserved]

(2) Capital measures applicable after January 1, 2015. On January 1, 2015, and thereafter, for purposes of section 38 and this subpart, the relevant capital measures are:

(i) [Reserved]

(ii) [Reserved]

(iii) [Reserved]

(iv) Leverage Measure:

(A) [Reserved]

(B) [Reserved]

(C) With respect to any bank that is a subsidiary (as defined in § 217.2 of Regulation Q (12 CFR 217.2)) of a covered BHC, on January 1, 2018, and thereafter, the supplementary leverage ratio.

(b) [Reserved]

(c) *Capital categories applicable to advanced approaches banks and to all member banks on and after January 1, 2015.* On January 1, 2015, and thereafter, for purposes of section 38 and this subpart, a member bank is deemed to be:

(1) ''Well capitalized'' if:

(i) [Reserved]

(ii) [Reserved]

(iii) [Reserved]

(iv) Leverage Measure:

(A) The bank has a leverage ratio of 5.0 percent or greater; and

(B) Beginning on January 1, 2018, with respect to any bank that is a subsidiary of a covered BHC under the definition of ''subsidiary'' in section 2 of part 217 (12 CFR 217.2), the bank has a supplementary leverage ratio of 6.0 percent or greater; and

(v) [Reserved]

(2) [Reserved]

6. Add part 217 to read as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

Sec.

Subpart A—General Provisions

217.1 Purpose, applicability, reservations of authority, and timing.
217.2 Definitions.

Subpart B—Capital Ratio Requirements and Buffers

217.11 Capital conservation buffer and countercyclical capital buffer amount.

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–1, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5371.

Subpart A—General Provisions

§ 217.1 Purpose, applicability, reservations of authority, and timing.

(a) [Reserved]

(b) [Reserved]

(c) [Reserved]

(d) [Reserved]

(e) [Reserved]

(f) *Timing.* (1) Subject to the transition provisions in subpart G of this part, an advanced approaches Board-regulated institution that is not a savings and loan holding company must:

(i) [Reserved]

(ii) [Reserved]

(iii) Beginning on January 1, 2014, calculate and maintain minimum capital ratios in accordance with subparts A, B, and C of this part, provided, however, that such Board-regulated institution must:

(A) [Reserved]

(B) [Reserved]

(C) Beginning January 1, 2018, a covered BHC as defined in § 217.2 is subject to the lower of the maximum payout amount as determined under paragraph (a)(2)(ii) of § 217.11 and the maximum leverage payout amount as determined under paragraph (c)(3) of § 217.11.

§ 217.2 Definitions.

Covered BHC means a U.S. top-tier bank holding company that has more than $700 billion in total assets as reported on the company's most recent Consolidated Financial Statement for Bank Holding Companies (FR Y–9C) or more than $10 trillion in assets under custody as reported on the company's most recent Banking Organization Systemic Risk Report (FR Y–15).

Subpart B—Capital Ratio Requirements and Buffers

§ 217.11 Capital conservation buffer and countercyclical capital buffer amount.

(a) *Capital conservation buffer.*

(1) [Reserved]

(2) *Definitions.* For purposes of this section, the following definitions apply:

(i) [Reserved]

(ii) [Reserved]

(iii) [Reserved]

(iv) [Reserved]

(v) *Maximum leverage payout ratio.* The maximum leverage payout ratio is the percentage of eligible retained income that a covered BHC can pay out in the form of distributions and discretionary bonus payments during the current calendar quarter. The maximum leverage payout ratio is based on the covered BHC's leverage buffer, calculated as of the last day of the previous calendar quarter, as set forth in Table 2.

(vi) *Maximum leverage payout amount.* A covered BHC's maximum leverage payout amount for the current calendar quarter is equal to the covered BHC's eligible retained income, multiplied by the applicable maximum leverage payout ratio, as set forth in Table 2.

(3) [Reserved]

(4) *Limits on distributions and discretionary bonus payments.*

(i) [Reserved]

(ii) A Board-regulated institution that has a capital conservation buffer that is greater than 2.5 percent plus 100 percent of its applicable countercyclical capital buffer, in accordance with paragraph (b) of this section, and, if applicable, that has a leverage buffer that is greater than 2.0 percent, in accordance with paragraph (c) of this section, is not subject to a maximum leverage payout amount under this section.

(iii) *Negative eligible retained income.* Except as provided in paragraph (a)(4)(iv) of this section, a Board-regulated institution may not make distributions or discretionary bonus payments during the current calendar quarter if the Board-regulated institution's:

(A) Eligible retained income is negative; and

(B) Capital conservation buffer was less than 2.5 percent, or, if applicable, leverage buffer was less than 2.0 percent, as of the end of the previous calendar quarter.

(iv) [Reserved]

(v) [Reserved]

(b) [Reserved]

(c) *Leverage buffer.* (1) *General.* A covered BHC is subject to the lower of

the maximum payout amount as determined under paragraph (a)(2)(ii) of this section and the maximum leverage payout amount as determined under paragraph (a)(2)(vi) of this section.

(2) *Composition of the leverage buffer.* The leverage buffer is composed solely of tier 1 capital.

(3) *Calculation of leverage buffer.* (i) A covered BHC's leverage buffer is equal to the covered BHC's supplementary leverage ratio minus 3 percent, calculated as of the last day of the previous calendar quarter based on the covered BHC's most recent Consolidated Financial Statement for Bank Holding Companies (FR Y–9C).

(ii) Notwithstanding paragraph (c)(3)(i) of this section, if the covered BHC's supplementary leverage ratio is less than or equal to 3 percent, the covered BHC's leverage buffer is zero.

TABLE 2 TO § 217.11—CALCULATION OF MAXIMUM LEVERAGE PAYOUT AMOUNT

Leverage buffer	Maximum leverage payout ratio (as a percentage of eligible retained income)
Greater than 2.0 percent	No payout ratio limitation applies.
Less than or equal to 2.0 percent, and greater than 1.5 percent	60 percent.
Less than or equal to 1.5 percent, and greater than 1.0 percent	40 percent.
Less than or equal to 1.0 percent, and greater than 0.5 percent	20 percent.
Less than or equal to 0.5 percent	0 percent.

Federal Deposit Insurance Corporation

12 CFR chapter III

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to add part 324 of chapter III of Title 12, Code of Federal Regulations to read as follows:

PART 324—CAPITAL ADEQUACY

Sec.

Subparts A–G [Reserved]

Subpart H—Prompt Corrective Action

324.403 Capital measures and capital category definitions.

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note).

Subparts A–G [Reserved]

Subpart H—Prompt Corrective Action

§ 324.403 Capital measures and capital category definitions.

(a) [Reserved]

(b) *Capital categories.* For purposes of section 38 of the FDI Act and this subpart, an FDIC-supervised institution shall be deemed to be:

(1) ''Well capitalized'' if it:

(i) [Reserved]

(ii) [Reserved]

(iii) [Reserved]

(iv) [Reserved]

(v) Beginning on January 1, 2018 and thereafter, an FDIC-supervised institution that is a subsidiary of a covered BHC will be deemed to be ''well capitalized'' if the FDIC-supervised institution satisfies paragraphs (b)(1)(i)–(iv) of this paragraph and has a supplementary leverage ratio of 6.0 percent or greater. For purposes of this paragraph, a covered BHC means a U.S. top-tier bank holding company with more than $700 billion in total assets as reported on the company's most recent Consolidated Financial Statement for Bank Holding Companies (FR Y–9C) or more than $10 trillion in assets under custody as reported on the company's most recent Banking Organization Systemic Risk Report (FR Y–15); and

(vi) [Reserved]

(2) [Reserved]

Dated: July 9, 2013.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, July 8, 2013.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 9th day of July, 2013.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–20143 Filed 8–19–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0737; Directorate Identifier 2012–SW–111–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Eurocopter France (Eurocopter) Model AS332C, AS332L, AS332L1, AS332L2, and SA330J helicopters. This proposed AD would require inspecting the crimping of the ball joint of the upper- and lower- end-fittings of the main servo-control and, depending on findings, replacing the main servo-control or repairing the ball joint. This proposed AD is prompted by incidents of missing crimping on the ball joints of servo-control end-fittings. The proposed actions are intended to prevent failure of a main servo-control upper end fitting, and subsequent failure of the flight controls and loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by October 21, 2013.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.

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

• *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

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

FOR FURTHER INFORMATION CONTACT: Matt Wilbanks, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *matt.wilbanks@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite 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, explain the reason for any recommended change, and include supporting data. 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.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2012–0248, dated November 20, 2012, to correct an unsafe condition for Eurocopter AS 332 C, AS 332 C1, AS 332 L, AS 332 L1, AS 332 L2, and SA 330 J helicopters with certain part-numbered main servo-controls installed. EASA advises that several occurrences were reported to Eurocopter of missing crimping on ball joints of servo-control end-fittings. EASA states that while slipping of the ball joint of the lower end-fitting does not affect its service life, slipping of the ball joint of the upper end-fitting can lead to a significant reduction of the service life of this end-fitting. As a result, the EASA AD requires inspecting each ball joint for crimping and, depending on the findings, replacing the main servo-control.

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

Related Service Information

Eurocopter issued one Emergency Alert Service Bulletin (EASB) with three different numbers, all Revision 1, and all dated December 5, 2012. EASB No. 67.00.45 applies to civilian Model AS332C, AS332C1, AS332L, AS332L1, AS332L2, and military Model AS332B, AS332B1, AS332M, AS332M1, and AS332F1 helicopters. EASB No. 67.00.31 applies to military Model AS532AC, AS532AL, AS532SC, AS532UC, AS532UE, AS532UL, AS532A2, and AS532U2 helicopters. EASB No. 67.19 applies to civilian Model SA330J and military Model SA330Ba, SA330Ca, SA330Ea, SA330L, SA330Jm, SA330S1, and SA330Sm helicopters. The EASB specifies visually checking for crimping of the ball joints of the upper- and lower- servo control end-fittings and informing the Eurocopter Technical Support Department of any ball joint that is not crimped. For an upper end-fitting ball joint that is not crimped and slips one millimeter (mm) or greater, the EASB specifies returning the servo-control for replacement of the ball joint and the end-fitting. For an upper end-fitting ball joint that is not crimped and slips less than one mm, the EASB specifies either crimping the ball joint or returning the servo-control for ball joint crimping. For a lower end-fitting ball joint that is not crimped, the EASB states to crimp the ball joint. The EASB also states that if a ball joint is crimped, no action on that ball joint is required in regard to this unsafe condition.

Proposed AD Requirements

This proposed AD would require visually inspecting the applicable ball joint of the upper and lower end-fittings of the main servo control for crimping. If the ball joint of the upper end-fitting is not crimped and the slipping of the ball joint is one mm or greater, then this proposed AD would require replacing the servo-control with an airworthy servo-control. If the ball joint of the upper end-fitting is not crimped and the slipping of the ball joint is less than one mm, then this proposed AD would require replacing the servo-control with an airworthy servo-control or crimping the ball joint. If the ball joint of the lower end-fitting is not crimped, this proposed AD would require crimping the ball joint.

Costs of Compliance

We estimate that this proposed AD would affect 18 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. We estimate it would take 1 work-hour to inspect the ball joint for crimping at an average labor cost of $85 per work-hour. Based on these figures, it would cost about $85 per helicopter for the inspection, or $1,530 for U.S. operators. We estimate it would take 4 work-hours to replace a servo-control and parts would cost approximately $60,358 for a total estimated cost of $60,698 for replacement.

According to Eurocopter's service information some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage by

Eurocopter or UTC Actuation Systems/Goodrich Actuation Systems. Accordingly, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Eurocopter France (Eurocopter) Helicopters: Docket No. FAA–2013–0737; Directorate Identifier 2012–SW–111–AD.

(a) Applicability

This AD applies to the following model helicopters, certificated in any category, with a part-numbered main servo-control listed below: overhauled or repaired by UTC Actuation Systems/Goodrich Actuation Systems between June 1, 2008, and September 15, 2012, inclusive; or with a serial number listed in Appendix 1 of Eurocopter Emergency Alert Service Bulletin Nos. 67.00.45 or 67.19, both Revision 1, and both dated December 5, 2012 (EASB):

(1) Model AS332C, AS332L, AS332L1, and AS332L2 helicopters with main servo-control, part number (P/N) SC7202, SC7202–(all dash numbers), SC7203, SC7203–(all dash numbers), SC7221, or SC7221–(all dash numbers), installed; and

(2) Model SA330J helicopters with main servo-control P/N SC7111, SC7111–(all dash numbers) SC7112, or SC7112–(all dash numbers), installed.

(b) Unsafe Condition

This AD defines the unsafe condition as missing crimping on a ball joint of a main servo-control end-fitting. This condition could result in failure of a main servo-control upper end fitting, failure of the flight controls, and loss of control of the helicopter.

(c) Comments Due Date

We must receive comments by October 21, 2013.

(d) Compliance

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

(e) Required Actions

(1) Within 85 hours time-in-service (TIS):

(i) Using a light source, inspect the ball joint of the upper end-fitting of the main servo control for crimping in accordance with Detail A and Detail B, Figure 1, of the EASB applicable to your model helicopter.

(A) If the upper ball joint is not crimped and the ball joint slips a distance of 1 millimeter (mm) or greater, replace the servo-control with an airworthy servo-control.

(B) If the upper ball joint is not crimped and the ball joint slips a distance of less than 1mm, either crimp the ball joint or replace the servo-control with an airworthy servo-control.

(ii) Using a light source, inspect the ball joint of the lower end-fitting of the main servo-control for crimping in accordance with Detail A and Detail B, Figure 1, of the EASB applicable to your model helicopter. If the lower ball joint is not crimped, crimp the ball joint.

(2) Prior to installing any servo-control that is affected by this AD, perform the required actions in accordance with paragraphs (e)(1) of this AD.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Wilbanks, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *matt.wilbanks@faa.gov.*

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

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2012–0248, dated November 20, 2012. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2013–0737.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6730, Rotor Flight Control—Rotorcraft Servo System.

Issued in Fort Worth, Texas, on August 12, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–20312 Filed 8–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0698; Directorate Identifier 2012–NM–136–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede airworthiness directive (AD) 2006–06–14, that applies to certain Airbus Model

A318–100 and A319–100 series airplanes, A320–111 airplanes, A320–200 series airplanes, and A321–100 and A321–200 series airplanes. AD 2006–06–14 requires operators to review the airplane's maintenance records to determine the part numbers of the magnetic fuel level indicators (MFLIs) of the wing fuel tanks, and related investigative and corrective actions if necessary. Since we issued AD 2006–06–14, we received information that the related investigative actions of the existing AD are not fully effective and that an affected MFLI could still be installed on airplanes on which the related investigative actions were accomplished. This proposed AD would also require an inspection (improved method) to determine the part numbers of the MFLIs, and, if necessary, replacement of the MFLI or repair. We are proposing this AD to prevent an ignition source in the wing fuel tank in the event of a lightning strike, which could result in a fire or explosion.

DATES: We must receive comments on this proposed AD by October 4, 2013.

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

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

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0698; Directorate Identifier 2012–NM–136–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On March 10, 2006, we issued AD 2006–06–14, Amendment 39–14523 (71 FR 15023, March 27, 2006), (''AD 2006–06–14''). That AD required actions intended to address an unsafe condition on Airbus Model A318–111 and –112 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; A320–111 airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; Model A321–111, –112, and –131 airplanes; and Model A321–211, –212, –213, –231, and –232 airplanes.

Since we issued AD 2006–06–14, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0119, dated July 4, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

In 2005, several in-service occurrences were reported of finding wear and/or detachment of the top stop of magnetic fuel level indicators (MFLI), either observed during tank maintenance activities, or on MFLI returned to the MFLI manufacturer. The investigation results indicated that the wear of the top stop retaining 'S' shaped wire had been caused by repetitive impact with the float, resulting in complete detachment of the top stop.

This condition, if not detected and corrected, could lead an MFLI top stop to come into contact with a probe, which could, in the event of a lightning strike, create an ignition source in the fuel tank vapour space, possibly resulting in a fuel tank explosion and consequent loss of the aeroplane.

DGAC France issued AD F–2005–108 (EASA approval 2005–6026) [*http://ad.easa.europa.eu/ad/F–2005–108*] [corresponding FAA AD 2006–06–14] to require identification (by inspection) and replacement of the affected metallic MFLI (3508802-xx series with the 'S' shaped retaining wire) with a metallic MFLI with the top stop retained by a 'trapped wire', or with a composite MFLI.

Since that [French] AD was issued, it has been identified that the inspection procedure (visual check) detailed in Airbus Service Bulletin (SB) A320–28–1138 was not fully effective, and that affected MFLI could still be fitted on aeroplanes which have passed the inspection in accordance with the instructions of this SB.

For the reasons described above, this [EASA] AD, which supersedes DGAC France AD F–2005–108, requires a one-time inspection (improved method) to identify the type of MFLI installed and, depending on findings, replacement or repair, as applicable. This [EASA] AD also prohibits the installation of the affected MFLI on any aeroplane as replacement parts.

The repair may also include locating and removing any missing top stop, and inspecting for any damage caused to the fuel tank by a missing top stop. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Service Bulletin A320–28–1209, dated December 12, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe

condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

Where the MCAI states in the compliance time ''whichever occurs later,'' this proposed AD would require ''whichever occurs earlier.'' We have determined that this compliance time would address the unsafe condition in a more timely manner. We considered the manufacturer's recommendation, and the overall risk to the fleet, including the severity of the failure and the likelihood of the failure's occurrence. Therefore, we find that a compliance time of 49,000 flight hours after May 1, 2006, or at the next scheduled fuel tank entry after the effective date of this AD, whichever occurs first, to complete the required actions to be warranted.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 755 products of U.S. registry.

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Parts numbers review [retained actions from AD 2006–06–14, Amendment 39–14523 (71 FR 15023, March 27, 2006)].	Between 1 and 8 work-hours × $85 per hour = Between $85 and $680.	None	Between $85 and $680.	Between $64,175 and $513,400
Inspection for part numbers [new proposed action].	21 work-hours × $85 per hour = $1,785.	$0	$1,785	$1,347,675

We estimate the following costs to do any necessary replacement or repair that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need the replacement or repair:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace or repair	4 work-hours × $85 per hour = $340	$0	$340

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2006–06–14, Amendment 39–14523 (71 FR 15023, March 27, 2006), and adding the following new AD:

Airbus: Docket No. FAA–2013–0698; Directorate Identifier 2012–NM–136–AD.

(a) Comments Due Date

We must receive comments by October 4, 2013.

(b) Affected ADs

This AD supersedes AD 2006–06–14, Amendment 39–14523 (71 FR 15023, March 27, 2006).

(c) Applicability

This AD applies to Airbus Model A318–111, A318–112, A318–121, A318–122, A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133, A320–111, A320–211, A320–212, A320–214, A320–215, A320–216, A320–231, A320–232, A320–233, A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231, and A321–232 airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 28: Fuel.

(e) Reason

This AD was prompted by a report of several in-service incidents of wear and detachment of the top-stops from magnetic fuel level indicators (MFLI) in a wing fuel tank. We are issuing this AD to prevent an ignition source in the wing fuel tank in the event of a lighting strike, which could result in a fire or explosion.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Retained Review of Airplane Maintenance Records/Investigative and Corrective Actions

This paragraph restates the requirements of paragraph (f) of AD 2006–06–14, Amendment 39–14523 (71 FR 15023, March 27, 2006). For Model A318–111 and –112 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; A320–111 airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; Model A321–111, –112, and –131 airplanes; and Model A321–211, –212, –213, –231, and –232 airplanes; on which Airbus Modification 27496 has not been installed in production: Within 65 months or 6,500 flight hours after May 1, 2006 (the effective date of AD 2006–06–14), whichever is first, review the airplane's maintenance records to determine the part number (P/N) of each MFLI of the wing fuel tanks in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–28–1138, dated March 18, 2005. If the P/N cannot be identified, or the P/N is identified in the ''old P/N'' column of the table in paragraph 1.L., ''Interchangeability/Mixability,'' of Airbus Service Bulletin A320–28–1138, dated March 18, 2005, before further flight, do the applicable related investigative and corrective actions by accomplishing all of the actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–28–1138, dated March 18, 2005.

(h) Retained Parts Installation Prohibition

This paragraph restates the requirements paragraph (g) of AD 2006–06–14, Amendment 39–14523 (71 FR 15023, March 27, 2006). For Model A318–111 and –112 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; A320–111 airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; Model A321–111, –112, and –131 airplanes; and Model A321–211, –212, –213, –231, and –232 airplanes; on which Airbus Modification 27496 has not been installed in production: As of May 1, 2006 (the effective date of AD 2006–06–14), no person may install on any airplane any MFLI of the wing fuel tanks with a P/N identified in the ''old P/N'' column of the table in paragraph 1.L., ''Interchangeability/Mixability,'' of Airbus Service Bulletin A320–28–1138, dated March 18, 2005.

(i) New Requirement of This AD: Inspection

For all airplanes, except as provided by paragraph (k) of this AD: At the next scheduled fuel tank entry after the effective date of this AD, or within 49,000 flight hours after May 1, 2006 (the effective date of AD 2006–06–14, Amendment 39–14523 (71 FR 15023, March 27, 2006), whichever occurs first, perform a special detailed inspection of the wing tank to determine which type of magnetic fuel level indicators (MFLI) are installed, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–28–1209, dated December 12, 2011. A review of airplane maintenance records is acceptable in lieu of this inspection, if the part number and the type of the installed MFLI can be conclusively determined from that review. Paragraphs (i)(1) through (i)(11) of this AD identify the affected MLFI part numbers.

(1) 3508802–24
(2) 3508802–25
(3) 3508802–26
(4) 3508802–27
(5) 3508802–28
(6) 3508802–34
(7) 3508802–39
(8) 3508802–74
(9) 3508802–75
(10) 3508802–76
(11) 3508802–91

Note 1 to paragraph (i) of this AD: The affected MFLI have the 'S'-shaped lock-wire design.

(j) New Requirement of This AD: Replacement or Repair

If, during the inspection required by paragraph (i) of this AD, a MFLI with the 'S' shaped lock-wire design (Part Number (P/N) listed in paragraphs (i)(1) through (i)(11) of this AD) is found, then at the next scheduled fuel tank entry after the effective date of this AD, or within 49,000 flight hours after May 1, 2006 (the effective date of AD 2006–06–14, Amendment 39–14523 (71 FR 15023, March 27, 2006), whichever occurs first, replace the affected MFLI with a serviceable part and accomplish the corrective actions (repair), as applicable, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–28–1209, dated December 12, 2011. For the purpose of this AD, a serviceable part is a composite MFLI, or a metallic MFLI with the top stop retained by a 'trapped wire,' as applicable to the location identified in Table 1 of paragraph (j) of this AD.

TABLE 1 OF PARAGRAPH (J) OF THIS AD—METALLIC MFLI WITH THE TOP STOP RETAINED BY A 'TRAPPED WIRE,' INCLUDING APPLICABLE LOCATION (FIN)

MFLI P/N	Applicable location (FIN)
3508802–35	56/57QM
3508802–36	58/59QM
3508802–37	60/61QM
3508802–38	62/63QM

(k) New Requirement of This AD: Exception for Paragraph (i) of This AD

Airplanes on which Airbus modification (mod) 27496 has been embodied in production, and on which no wing tank MFLI replacement with a part number listed in paragraph (i)(1) through (i)(11) of this AD has been made since first flight, are not affected by the requirement of paragraph (i) of this AD.

(l) New Requirement of This AD: Parts Installation Prohibition

As of the effective date of this AD, do not install on any airplane a MFLI with a part number listed in paragraph (i)(1) through (i)(11) of this AD.

(m) Other FAA AD Provisions

The following provisions also apply to This AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Information may be emailed to: *M-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or its delegated agent, or by the Design Approval Holder with a State of Design Authority's design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to assure the product is airworthy before it is returned to service.

(n) Special Flight Permits

Special flight permits, as described in Section 21.197 and Section 21.199 of the

Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2012–0119, dated July 4, 2012, for related information, which can be found in the AD docket on the Internet at *http://www.regulations.gov.*

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 9, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–20251 Filed 8–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0742; Directorate Identifier 2013–CE–012–AD]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to certain Piper Aircraft, Inc. Models PA–28–140, PA–28–150, PA–28–160, PA–28–180, PA–28R–180, and PA–28R–200 airplanes. AD 71–21–08, Amendment 39–1312 (36 FR 19572, October 8, 1971) currently requires replacement of the fuel selector valve cover. Since we issued AD 71–21–08, it has been found that a similar fuel selector valve issue exists in additional serial numbered airplanes not identified in the existing AD. This proposed AD would add additional airplanes to the AD's applicability section and changes the compliance time of the required actions. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by October 4, 2013.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; fax: (772) 978–6573; email: *customer.service@piper.com;* Internet: *www.piper.com/home/pages/Publications.cfm.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Gary Wechsler, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5575; fax: (404) 474–5606; email: *gary.wechsler@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0742; Directorate Identifier 2013–CE–012–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On September 29, 1971, we issued AD 71–21–08, Amendment 39–1312 (36 FR 19572, October 8, 1971), for certain Piper Aircraft, Inc. Models PA–28–140, PA–28–180, PA–28R–180, and PA–28R–200 airplanes. That AD requires a replacement of the fuel selector valve cover to prevent possible binding of the fuel selector handle.

Actions Since Existing AD Was Issued

Since we issued AD 71–21–08, Amendment 39–1312 (36 FR 19572, October 8, 1971), a safety event in 2011 caused the loss of a Model PA–28–180C airplane and the serious injury to one occupant. A subsequent FAA investigation revealed eight additional PA–28 series events dating from 1999 to the present were the result of a similar fuel selector valve assembly issue. Additionally, the FAA was unable to determine and locate records of notification when Piper Service Letter (SL) 590, dated May 25, 1972, and Piper Service Bulletin (SB) 840, dated June 19, 1986, were released indicating a similar fuel selector valve issue existed in additional serial numbered airplanes not identified in AD 71–21–08.

Although reliable FAA records do not exist for events prior to 1995, it is likely that the AD and Piper service information referenced above was released due to the frequency of similar events occurring during the periods in which the documents were released. Piper has indicated the majority of the airplanes added to the applicability of this NPRM have likely already complied with the proposed action.

Relevant Service Information

The 2011 safety event prompted us to review the Piper Aircraft, Inc. service information history, specifically Piper Mandatory Service Bulletin No. 840, dated June 19, 1986. The service information describes applicability and where to find procedures for replacement of the fuel selector valve cover.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information

and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would retain all actions from AD 71–21–08, Amendment 39–1312 (36 FR 19572, October 8, 1971), add additional airplanes to the applicability, and change the compliance times for the required actions.

Costs of Compliance

We estimate that this proposed AD affects 6,928 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect airplane records and fuel selector valve.	.5 work-hour × $85 per hour = $42.50.	Not applicable ...	$42.50	$294,440.
Install Piper Kit part number 760–545V and one (1) each Air Vent Flange Kit part number 65735–219.	1.5 work-hours × $85 per hour = $127.50.	$519	$646.50	523 airplanes × $646.50 = $338,119.50.
Install Piper Kit part number 760–546V.	1.5 work-hours × $85 per hour = $127.50.	$513	$640.50	6,405 airplanes × $640.50 = $4,102,402.50.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 71–21–08, Amendment 39–1312 (36 FR 19572, October 8, 1971), and adding the following new AD:

Piper Aircraft, Inc.: Docket No. FAA–2013–0742; Directorate Identifier 2013–AD–012–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by October 4, 2013.

(b) Affected ADs

This AD supersedes AD 71–21–08, Amendment 39–1312 (36 FR 19572, October 8, 1971).

(c) Applicability

This AD applies to the following Piper Aircraft, Inc. airplanes, certificated in any category, as identified in table 1, paragraph (c), of this AD:

TABLE 1 TO PARAGRAPH (C) OF THIS AD—APPLICABILITY

Model	Serial Nos.
PA–28–140	28–20000 through 28–26946, and 28–7125001 through 28–7125666.
PA–28–150/160/180	28–01 through 28–5859, and 28–7105001 through 28–7105259.
PA–28R–180	28R–30000 through 28R–31270, and 28R–7130001 through 28R–7130038.
PA–28R–200	28R–35001 through 28R–35820, and 28R–7135001 through 28R–7135254.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code, 2823; Fuel Selector/Shut-Off Valve.

(e) Unsafe Condition

This AD was prompted by a safety event in 2011 that resulted in serious injury and substantial airplane damage and was caused by an in-flight engine stoppage due to binding of the fuel selector handle, thus the need to add additional airplanes to the applicability of AD 71–21–08, Amendment

39–1312 (36 FR 19572, October 8, 1971). We are issuing this AD to detect and correct defective fuel valve covers, which could result in fuel selector handle binding leading to fuel flow interruption resulting in engine stoppage.

(f) Compliance

Unless already done, within the next 100 hours time-in-service (TIS) after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first, do the following actions as applicable in paragraphs (g) through (h) of this AD, including all subparagraphs.

(g) Inspection

Inspect to verify if the appropriate kit, Piper part number (P/N) 760–545V or P/N 760–546V, has been installed on the applicable airplanes, using one of two methods defined in paragraphs (g)(1), (g)(2), or (g)(3) of this AD:

(1) Review the prior logbook entries of the airplanes identified in table 2 to paragraph (g) of this AD for documentation of Piper Mandatory Service Bulletin (MSB) 840, dated June 19, 1986, or Piper Service Letter (SL) 588, dated September 3, 1971, compliance; or kit, Piper P/N 760–545V installation.

TABLE 2 TO PARAGRAPH (G) OF THIS AD—KIT, PIPER P/N 760–545V, APPLICABILITY

Model	Serial Nos.
PA–28–140	28–7125001 through 28–7125666.
PA–28–180	28–7105001 through 28–7105259.
PA–28R–180	28R–7130001 through 28R–7130038.
PA–28R–200	28R–7135001 through 28R–7135254.

(2) Review the prior logbook entries of the airplanes identified in table 3 to paragraph (g) of this AD for documentation of Piper Mandatory Service Bulletin (MSB) 840, dated June 19, 1986, or Piper Service Letter (SL) 588, dated September 3, 1971 compliance; or kit, Piper P/N 760–546V installation.

TABLE 3 TO PARAGRAPH (G) OF THIS AD—KIT, PIPER P/N 760–546V, APPLICABILITY

Model	Serial Nos.
PA–28–140	28–20000 through 28–26946.
PA–28–150/160/180	28–01 through 28–5859.
PA–28R–180	28R–30000 through 28R–31270.
PA–28R–200	28R–35001 through 28R–35820.

(3) Visually examine the fuel selector cover installed on the applicable airplanes referenced in table 1 to paragraph (c) of this AD. Airplanes that have installed the kit,

Piper P/N 760–545V or 760–546V, will have a fuel selector cover with a silver-gray, spring loaded, metal stop located at the 5 o'clock position, approximately 1.75 inches from the center of the fuel selector cover.

(h) Replacement

If after doing the inspections required in paragraph (g)(1), (g)(2), and (g)(3) of this AD you do not find fuel selector valve kit, Piper P/N 760–545V or P/N 760–546V, installed on the airplane, replace the fuel selector valve as specified in paragraphs (h)(1) and (h)(2) of this AD:

(1) For Model PA–28–140 airplanes, serial numbers (S/Ns) 28–7125001 through 28–7125666; Model PA–28–180 airplanes, S/Ns 28–7105001 through 28–7105259; Model PA–28R–180 airplanes, S/Ns 28R–7130001 through 28R–7130038; and Model PA–28R–200 airplanes, S/Ns 28R–7135001 through 28R–7135254: Replace with FuelSelector Valve Cover Replacement Kit, Piper P/N 760–545V; and Air Vent Flange Kit, Piper P/N 65735–219. Do the replacement following the instructions referenced in Piper MSB No. 840, dated June 19, 1986.

(2) For Model PA–28–140 airplanes, S/Ns 28–20000 through 28–26946; Model PA–28–150/160/180 airplanes, S/Ns 28–01 through 28–5859; Model PA–28R–180 airplanes, S/Ns 28R–30000 through 28R–31270; and Model PA–28R–200 airplanes, S/Ns 28R–35001 through 28R–35820: Replace with Fuel Selector Valve Cover Replacement Kit, Piper P/N 760–546V. Do the replacement following the instructions referenced in Piper MSB No. 840, dated June 19, 1986.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Related Information

(1) For more information about this AD, contact Gary Wechsler, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5575; fax: (404) 474–5606; email: *gary.wechsler@faa.gov.*

(2) For service information identified in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; fax: (772) 978–6573; email: *customer.service@piper.com;* Internet: *www.piper.com/home/pages/Publications.cfm.* You may view this service information at FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on August 14, 2013.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–20328 Filed 8–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0734; Directorate Identifier 2012–SW–080–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) for Bell Helicopter Textron (Bell) Model 222, 222B, 222U, 230, and 430 helicopters. The existing AD currently requires inspecting parts of the main rotor hydraulic servo actuator (servo actuator) for certain conditions and

replacing any unairworthy parts before further flight. Since we issued the AD, a new stainless steel piston rod has been manufactured. We propose requiring the installation of a servo actuator assembly with this piston rod and setting an interval for the next overhaul at 10,000 hours time-in-service (TIS) or 10 years, whichever comes first. The proposed actions are intended to detect pitting or penetration of the base metal of the piston rod that could lead to the piston rod's failure, the servo actuator's failure, and the loss of helicopter control.

DATES: We must receive comments on this proposed AD by October 21, 2013.

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

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

Examining the AD Docket

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

For service information identified in this proposed AD, contact Bell Helicopter Textron, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at *http://www.bellcustomer.com/files/.* You may review service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Matt Wilbanks, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *matt.wilbanks@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite 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, explain the reason for any recommended change, and include supporting data. 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.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

On November 24, 2010, we published AD 2010–19–51, Amendment 39–16523 (75 FR 71540), for Bell Model 222, 222B, 222U, 230, and 430 helicopters. AD 2010–19–51 requires inspecting parts of the servo actuator for certain conditions and replacing any unairworthy parts before further flight. AD 2010–19–51 was prompted by a collective servo actuator malfunction. A subsequent investigation revealed that the output piston rod assembly had fractured at the threaded end because of corrosion cracking. The investigation also showed a nonconforming grind relief on a separate piston rod. The actions of AD 2010–19–51 were intended to detect corrosion or a nonconforming piston rod that, if not corrected, could result in the failure of the piston rod, failure of the servo actuator, and subsequent loss of the helicopter.

Actions Since Existing AD Was Issued

Since we issued AD 2010–19–51 (75 FR 71540, November 24, 2010), Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, issued Canadian AD No. CF–2010–29R1, dated July 26, 2012, to correct an unsafe condition for Bell Model 222, 222B, 222U, 230, and 430 helicopters with servo actuator part number (P/N) 222–382–001–107. TCCA AD No. CF–2010–29R1 supersedes AD No. CF–2010–29, dated August 26, 2010. The original TCCA AD required a one-time inspection of the servo actuator for corrosion or a crack, and if needed, repair of the servo actuator. AD No. CF–2010–29 also set intervals for a required overhaul of the servo actuator, depending on the primer or plating on the piston rod.

TCCA's subsequent AD No. CF–2010–29R1 requires an inspection of the servo actuator and either overhauling or replacing the piston rod with a stainless steel piston rod. Replacement of the piston rod extends the overhaul interval of the servo actuator to 10,000 hours TIS or 10 years, whichever comes first. AD No. CF–2010–29R1 allows different compliance times for overhaul or replacement of the piston rod, depending on the condition of the piston rod when inspected.

FAA's Determination

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to our bilateral agreement with Canada, TCCA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

Related Service Information

We reviewed Bell Alert Service Bulletin (ASB) 222–11–111 for Model 222 and 222B helicopters, ASB 222U–11–82 for Model 222U helicopters, ASB 230–11–43 for Model 230 helicopters, and ASB 430–11–46 for Model 430 helicopters, all Revision A and all dated June 22, 2012. The ASBs contain, and require compliance with, Woodward HRT Service Bulletin 141600–67–03, dated February 14, 2012, to upgrade the servo actuator by replacing the piston rod and then re-identifying the servo actuator dash number with ''–111FM.'' The compliance time for upgrading the servo actuator varies depending on the color and amount of corrosion found and type of plating on the piston rod. The Bell ASBs also provide an alternative inspection and procedure for servo actuator P/N 222–382–001–107 which have not reached certain hours TIS and where the servo actuator cannot be upgraded.

TCCA classified these ASBs as mandatory and issued AD No. CF–2010–29R1, dated July 26, 2012, to

ensure the continued airworthiness of these helicopters.

Proposed AD Requirements

This proposed AD would supersede AD 2010–19–51, Amendment 39–16523 (75 FR 71540, November 24, 2010) and would require within 5 hours time-in-service (TIS), inspecting servo actuator, P/N 222–382–001–107, using a 10X or higher power magnifying glass to determine whether the piston rod has any pitting or penetration of the base metal.

If the piston rod has pitting or penetration of the base metal, the proposed AD would require, before further flight, replacing the servo actuator with servo actuator P/N 222–382–001–111 or P/N 222–382–001–111FM. Thereafter, the proposed AD would require overhauling servo actuator P/N 222–382–001–111 or P/N 222–382–001–111FM at intervals not to exceed 10 years or 10,000 hours TIS, whichever comes first.

Differences Between the Proposed AD and the TCCA AD

This proposed AD differs from the TCCA AD as follows:

The TCCA AD sets three different timelines or time-in-service requirements for the overhaul or upgrade of the applicable servo actuators, depending on the damage and type of material applied to protect the piston rod.

We would require replacing, before further flight, the piston rod if it has pitting or any penetration of the base metal.

The TCCA AD requires returning parts to the manufacturer, and this proposed AD would not.

Costs of Compliance

We estimate that this proposed AD would affect 146 helicopters of U.S. Registry and that labor costs average $85 an hour. Based on these estimates, we expect the following costs:

- Inspecting the servo actuators would require 4 work-hours for a labor cost of $340 per helicopter, and $49,640 for the U.S. fleet.
- Overhauling the servo actuators would require 8 work-hours for a labor cost of $680. Parts would cost $11,900 for a total cost of $12,580 per helicopter.
- Replacing the servo actuators would require 8 hours work-hours for a labor cost of $680. Parts would cost $35,700 for a total cost of $36,380 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–16523, 75 FR 71540, and adding the following new airworthiness directive (AD):

Bell Helicopter Textron: Docket No. FAA–2013–0734; Directorate Identifier 2012–SW–080–AD.

(a) Applicability

This AD applies to Bell Helicopter Textron Canada (Bell) Model 222, 222B, 222U, 230, and 430 helicopters, with a main rotor hydraulic servo actuator (servo actuator), part number (P/N) 222–382–001–107, installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as pitting or any other penetration of the base metal on the output piston rod assembly. This condition could lead to failure of the piston rod, failure of the servo actuator, and subsequent loss of helicopter control.

(c) Affected ADs

This AD supersedes AD 2010–19–51, Amendment 39–16523 (75 FR 71540, November 24, 2010).

(d) Comments Due Date

We must receive comments by October 21, 2013.

(e) Compliance

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

(f) Required Actions

(1) Within 5 hours time-in-service (TIS), inspect servo actuator, P/N 222–382–001–107, using a 10X or higher power magnifying glass to determine whether the piston rod has any pitting or penetration of the base metal.

(2) If the piston rod has pitting or any penetration of the base metal, replace with servo actuator P/N 222–382–001–111 or P/N 222–382–001–111FM, before further flight. Thereafter, overhaul servo actuator P/N 222–382–001–111 or P/N 222–382–001–111FM at intervals not to exceed 10 years or 10,000 hours TIS, whichever comes first.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Wilbanks, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *matt.wilbanks@faa.gov.*

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

(h) Additional Information

(1) The subject of this AD is addressed in Transport Canada Civil Aviation AD No. CF–2010–29R1, dated July 26, 2012. A copy of this document is available for review in Docket No. FAA–2013–0734 on the Internet at *http://www.regulations.gov.*

(2) Bell Alert Service Bulletin (ASB) No. 222–11–111 for Model 222 and 222B helicopters, ASB No. 222U–11–82 for Model 222U helicopters, ASB No. 230–11–43 for Model 230 helicopters, and ASB No. 430–11–46 for Model 430 helicopters, all Revision A and all dated June 22, 2012, contain information to replace and overhaul the servo actuator. You may review service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6730, Rotorcraft Servo System.

Issued in Fort Worth, Texas, on August 12, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–20309 Filed 8–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0735; Directorate Identifier 2013–SW–014–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. (Bell) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Bell Model 204B helicopters. This proposed AD would require inspecting the tail rotor (T/R) cable assembly for an incorrectly machined body. This proposed AD is prompted by a report from Bell that a defective body on the cable prevents the barrel assembly from fully engaging in the body cavity. The proposed actions are intended to prevent disengagement of the cable from the barrel, failure of the T/R pitch control, and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by October 21, 2013.

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

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

Examining the AD Docket

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

For service information identified in this proposed AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *http://www.bellcustomer.com/files/.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Helene Gandy, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5413; email *7-AVS-ASW-170@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite 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, explain the reason for any recommended change, and include supporting data. 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.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

We received a report from Bell that a number of cable assemblies, part number (P/N) 205–001–720–001, were manufactured with a defective body, P/N 205–001–742–001. Bell states the bodies were incorrectly machined with a ''false cut,'' preventing the barrel assembly, P/N 0301245, from fully engaging with the body cavity. This condition, combined with a failure of the lockwire securing the barrel and the cable, could result in disengagement of the cable, T/R pitch control failure in a fixed position, and subsequent loss of control of the helicopter.

FAA's Determination

We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition exists and is likely to exist or develop on other helicopters of the same type design.

Related Service Information

We reviewed Bell Alert Service Bulletin (ASB) No. 204B–12–68, dated October 10, 2012, which describes procedures for inspecting the barrel assembly to determine if an incorrectly machined body is installed. If an incorrectly machined body is installed, the ASB specifies replacing the cable assembly. The ASB further specifies inspecting the barrel assembly and cable connection daily until the cable assembly is replaced.

Proposed AD Requirements

This proposed AD would require inspecting each cable assembly, within 25 hours time-in-service (TIS), to determine if an incorrectly machined body is installed. If an incorrectly machined body is installed, the proposed AD would require replacing the cable assembly within 100 hours TIS. Until the cable assembly is replaced, this proposed AD would require inspecting the assembly for separation daily.

Differences Between This Proposed AD and the Service Information

The ASB specifies replacing any defective cable assembly within 100 hours TIS or by January 31, 2013; the proposed AD specifies replacing the cable assembly within 100 hours TIS.

Costs of Compliance

We estimate that this proposed AD would affect 9 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. At an average labor rate of $85 per hour, inspecting the barrel assembly would require about 1 work-hour, for a cost per helicopter of $85 and a total cost of $765 for the fleet. If required, replacing a defective cable assembly would require about 8 work-hours, and required parts would cost about $625, for a cost per helicopter of $1,305.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bell Helicopter Textron, Inc. (Bell) Helicopters: Docket No. FAA–2013–0735; Directorate Identifier 2013–SW–014–AD.

(a) Applicability

This AD applies to Bell Model 204B helicopters with a cable assembly, part number (P/N) 205–001–720–001 installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as an incorrectly machined body on the cable assembly, which could prevent the barrel assembly from fully engaging in the body cavity. This condition could result in disengagement of the cable from the barrel, failure of the tail rotor pitch control, and subsequent loss of control of the helicopter.

(c) Comments Due Date

We must receive comments by October 21, 2013.

(d) Compliance

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

(e) Required Actions

(1) Within 25 hours time in service (TIS), inspect each cable assembly to determine if there is a false cut on the body of the barrel assembly, as depicted in Figure 1 of Bell Alert Service Bulletin No. 204B–12–68, dated October 10, 2012.

(2) If there is a false cut, before the first flight of each day, inspect the cable assembly for separation of the barrel assembly from the body. If there is any separation, before further flight, replace the cable assembly.

(3) Within 100 hours TIS, replace the cable assembly with an airworthy cable assembly that does not have a false cut in the body. Replacing the cable assembly is terminating action for the inspections required by paragraph (e)(2) of this AD.

(f) Alternative Methods of Compliance (AMOC)

(1) The Manager, Rotorcraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Helene Gandy, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5413; email *7–AVS–ASW–170@faa.gov.*

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

(g) Subject

Joint Aircraft Service Component (JASC) Code: 6720: Tail Rotor Control System.

Issued in Fort Worth, Texas, on August 12, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–20248 Filed 8–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0736; Directorate Identifier 2013–SW–013–AD]

RIN 2120–AA64

Airworthiness Directives; Various Restricted Category Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for various restricted category helicopters, originally manufactured by Bell Helicopter Textron, Inc. (Bell), model numbers HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P. The current type certificate holders include but are not limited to Arrow Falcon Exporters Inc.; AST, Inc.; Bell Helicopter Textron, Inc.;

Global Helicopter Technology, Inc.; Hagglund Helicopters, LLC; International Helicopters, Inc.; JJASPP Engineering Services, LLC; Northwest Rotorcraft, LLC; OAS Parts LLC; Richards Heavylift Helo, Inc.; Robinson Air Crane, Inc.; Rotorcraft Development Corporation; San Joaquin Helicopters; Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation International, Inc.; Tamarack Helicopters, Inc; and Southwest Florida Aviation, Inc. This proposed AD would require inspecting the tail rotor (T/R) cable assembly for an incorrectly machined body. This proposed AD is prompted by a report from Bell that a defective body on the cable prevents the barrel assembly from fully engaging in the body cavity. The proposed actions are intended to prevent disengagement of the cable from the barrel, failure of the T/R pitch control, and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by October 21, 2013.

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

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

Examining the AD Docket

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

For service information identified in this proposed AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *http://www.bellcustomer.com/files/.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Helene Gandy, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5413; email *7–AVS–ASW–170@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite 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, explain the reason for any recommended change, and include supporting data. 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.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

We received a report from Bell that a number of cable assemblies, part number (P/N) 205–001–720–001, were manufactured with a defective body, P/N 205–001–742–001. Bell states the bodies were incorrectly machined with a ''false cut,'' preventing the barrel assembly, P/N 0301245, from fully engaging with the body cavity. This condition, combined with a failure of the lockwire securing the barrel and the cable, could result in disengagement of the cable, T/R pitch control failure in a fixed position, and subsequent loss of control of the helicopter.

FAA's Determination

We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition exists and is likely to exist or develop on other helicopters of the same type design.

Related Service Information

We reviewed Bell Alert Service Bulletin (ASB) No. UH–1H–12–08, dated August 28, 2012, which describes procedures for inspecting the barrel assembly to determine if an incorrectly machined body is installed. If an incorrectly machined body is installed, the ASB specifies replacing the cable assembly. The ASB further specifies inspecting the barrel assembly and cable connection daily until the cable assembly is replaced.

Proposed AD Requirements

This proposed AD would require, within 25 hours time in service (TIS), inspecting the cable assemblies to determine if an incorrectly machined body is installed. If an incorrectly machined body is installed, the proposed AD would require replacing the cable assembly within 50 hours TIS. Until the cable assembly is replaced, this proposed AD would require inspecting the assembly for separation daily.

Differences Between This Proposed AD and the Service Information

The ASB specifies inspecting the barrel assembly at the next daily inspection; the proposed AD specifies inspecting within 25 hours TIS. The ASB also specifies replacing any defective cable assembly at the next phase inspection, within 50 hours TIS, or by December 31, 2012; the proposed AD specifies replacing the cable assembly within 50 hours TIS.

Costs of Compliance

We estimate that this proposed AD would affect 716 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. At an average labor rate of $85 per hour, inspecting the barrel assembly would require about 1 work-hour, for a cost per helicopter of $85 and a total cost of $60,860 for the fleet. If required, replacing a defective cable assembly would require about 8 work-hours, and required parts would cost about $625, for a cost per helicopter of $1,305.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701:

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Various Restricted Category Helicopters: Docket No. FAA–2013–0736; Directorate Identifier 2013–SW–013–AD.

(a) Applicability

This AD applies to various restricted category helicopters originally manufactured by Bell Helicopter Textron, Inc., Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; current type certificate holders include but are not limited to Arrow Falcon Exporters Inc.; AST, Inc.; Bell Helicopter Textron, Inc.; Global Helicopter Technology, Inc.; Hagglund Helicopters, LLC; International Helicopters, Inc.; JJASPP Engineering Services, LLC; Northwest Rotorcraft, LLC; OAS Parts LLC; Richards Heavylift Helo, Inc.; Robinson Air Crane, Inc.; Rotorcraft Development Corporation; San Joaquin Helicopters; Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation International, Inc.; Tamarack Helicopters, Inc.; and Southwest Florida Aviation, Inc., with a cable assembly, part number 205–001–720–001 installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as an incorrectly machined body on the cable assembly, which could prevent the barrel assembly from fully engaging in the body cavity. This condition could result in disengagement of the cable from the barrel, failure of the tail rotor pitch control, and subsequent loss of control of the helicopter.

(c) Comments Due Date

We must receive comments by October 21, 2013.

(d) Compliance

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

(e) Required Actions

(1) Within 25 hours time in service (TIS), inspect each cable assembly to determine if there is a false cut on the body of the barrel assembly, as depicted in Figure 1 of Bell Alert Service Bulletin No. UH–1H–12–08, dated August 28, 2012.

(2) If there is a false cut, before the first flight of each day, inspect the cable assembly for separation of the barrel assembly from the body. If there is any separation, before further flight, replace the cable assembly.

(3) Within 50 hours TIS, replace the cable assembly with an airworthy cable assembly that does not have a false cut in the body of the barrel assembly. Replacing the cable assembly is terminating action for the inspections required by paragraph (e)(2) of this AD.

(f) Alternative Methods of Compliance (AMOC)

(1) The Manager, Rotorcraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Helene Gandy, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5413; email *7-AVS-ASW-170@faa.gov.*

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

(g) Subject

Joint Aircraft Service Component (JASC) Code: 6720: Tail Rotor Control System.

Issued in Fort Worth, Texas, on August 12, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–20249 Filed 8–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2012–0035; 4500030113]

RIN 1018–AY22

Endangered and Threatened Wildlife and Plants; 6-Month Extension of Final Determination for the Listing of the Georgetown Salamander and Salado Salamander

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 6-month extension of the final determination of whether to list the Georgetown salamander (*Eurycea naufragia*) and Salado salamander (*Eurycea chisholmensis*) as endangered or threatened species, and we reopen the comment period on the proposed rule to list these species. We are taking this action based on our finding that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to our determination regarding the proposed listing rule, making it necessary to solicit additional information by reopening the comment period for 30 days.

DATES: The comment period for the proposed rule published August 22, 2012, at 77 FR 50768, is reopened. We will consider all comments received or postmarked on or before September 19, 2013. If you comment using the Federal eRulemaking Portal (see **ADDRESSES**), you must submit your comment by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R2–ES–2012–0035, which is the docket number for the proposed listing rule. Then, in the Search panel on the left side of the screen, under the Document Type heading, check on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2012–0035; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Rd, Suite 200, Austin, TX 78758; by telephone 512–490–0057; or by facsimile 512–490–0974. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On August 22, 2012, we published in the **Federal Register** a proposed rule (77 FR 50768) to list the Austin blind salamander (*Eurycea waterlooensis*), Georgetown salamander (*Eurycea naufragia*), Jollyville Plateau salamander (*Eurycea tonkawae*), and Salado salamander (*Eurycea chisholmensis*) as endangered under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). For a description of previous Federal actions concerning these salamanders, please refer to the proposed rule. That proposal had a 60-day comment period, ending October 22, 2012. We held a public meeting and hearing in Round Rock, Texas, on September 5, 2012, and a second public meeting and hearing in Austin, Texas, on September 6, 2012. On January 25, 2013, we reopened the public comment period on the August 22, 2012, proposed listing and critical habitat designation; announced the availability of a draft economic analysis; and published an amended required determinations section of the proposal (78 FR 5385).

Section 4(b)(6) of the Act and its implementing regulation, 50 CFR 424.17(a), requires that we take one of three actions within 1 year of a proposed listing: (1) Finalize the proposed listing; (2) withdraw the proposed listing; or (3) extend the final determination by not more than 6 months, if there is substantial disagreement among scientists knowledgeable about the species regarding the sufficiency or accuracy of the available data relevant to the determination, for the purposes of soliciting additional data.

Since the publication of the proposed rule for the Georgetown and Salado salamanders, there has been substantial disagreement regarding: (1) The short- and long-term population trends of these two species; (2) the interpretation of water quality and quantity degradation information as it relates to the status of these two species; and (3) the effectiveness of conservation practices and regulatory mechanisms. This has led to significant disagreement regarding the current conservation status of the Georgetown and Salado salamanders.

Therefore, in consideration of the disagreements surrounding the status of the Georgetown and Salado salamanders, we are extending the final listing determination for 6 months in order to solicit information that will help to clarify these issues. Consequently, our final determination on the critical habitat designation for the Georgetown and Salado salamanders will be delayed until we make a final listing determination for these species. Elsewhere in today's **Federal Register**, we published final listing and critical habitat determinations for the Austin blind and Jollyville Plateau salamanders.

Public Comments

We will accept written comments and information during this reopened comment period on our proposed listing for the Georgetown and Salado salamanders that was published in the **Federal Register** on August 22, 2012 (77 FR 50768). We will consider information and recommendations from all interested parties. We intend that any final action resulting from the proposals be as accurate as possible and based on the best available scientific and commercial data.

In consideration of the disagreements surrounding the data used to support the proposed rulemaking, we are extending the final determination for 6 months in order to solicit information that will help to clarify these issues. We are particularly interested in new information and comments regarding:

(1) Survey information and population estimates of the Georgetown and Salado salamanders.

(2) Data on water quality and quantity as it relates to the status of these two species.

(3) Effectiveness of conservation practices; we particularly request comments or information to help us assess the certainty that rangewide conservation efforts will be effective in conserving the Georgetown and Salado salamanders.

(4) Information on existing regulatory mechanisms that may provide protection to the Georgetown and Salado salamanders and their habitats.

If you previously submitted comments or information on the proposed listing rule, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in the preparation of our final determination. Our final determination concerning this proposed listing will take into consideration all written comments and any additional information we receive.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0035, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule on the Internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0035, or by mail from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 5, 2013.

Dan Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–19705 Filed 8–19–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 130705590–3590–01]

RIN 0648–BD45

Fisheries of the Northeastern United States; Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Based on Atlantic States Marine Fisheries Commission (Commission) recommendations, the NMFS is issuing this advance notice of proposed rulemaking to provide background information and request public comment on potential changes to Federal American lobster regulations. The proposed measures for the lobster trap fishery are intended to address the Commission's recommendations for Federal action to address the poor condition of the Southern New England (SNE) lobster stock and foster stock rebuilding. The rulemaking action considers management measures that would reduce lobster exploitation by 10 percent and reduce trap fishing effort in the SNE lobster management areas.

DATES: Comments must be received on or before September 19, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2013–0110, 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-2013-0110,* 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, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on American Lobster ANPR.''
- *Fax:* 978–281–9135; Attn: Allison Murphy

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: Allison Murphy, Fishery Policy Analyst, (978) 281–9122, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The American lobster fishery is managed by the Commission under Amendment 3 to the Interstate Fishery Management Plan for American Lobster (ISFMP). Since 1997, the Commission has coordinated the efforts of the states and Federal Government toward sustainable management of the American lobster fishery. We, NMFS, manage the portion of the fishery conducted in Federal waters from 3 to 200 miles offshore, based on management recommendations made by the Commission.

The American lobster management unit is divided between three lobster stocks and seven lobster conservation management areas (Areas). Recent data indicate that the SNE American lobster stock, which includes all or part of six Areas, is at a low level of abundance and is experiencing persistent recruitment failure, caused by a combination of environmental factors and continued fishing mortality. The Commission opted to address the poor condition of the SNE stock in two phases: First by reducing lobster exploitation by 10 percent through the adoption of multiple management measures in Addendum XVII in February 2012; and, second, by scaling the fishery to the size of the SNE stock through lobster trap reductions as mandated in Addendum XVIII, adopted in August 2012. Copies of the Addenda are available on the Commission's Web site at: *http://www.asmfc.org/.*

To achieve a 10-percent reduction in exploitation of the SNE American lobster stock under Addendum XVII, the Commission recommended several effort control measures for Areas 2, 3, 4, 5, and 6 to reduce the amount of American lobsters harvested from these Areas. We plan to develop proposed and final rules to implement these measures, which include: Minimum size increases; mandatory v-notching of egg-bearing female lobsters; and seasonal closures. See Table 1 for specific management measures by Area.

TABLE 1—ADDENDUM XVII MANAGEMENT MEASURE CHANGES

Management measures	Area 2	Area 3	Area 4	Area 5	Area 6
V-Notching*	Mandatory for legal-sized egg-bearing females.	n/a	Mandatory for legal-sized egg-bearing females.	Mandatory for legal-sized egg-bearing females.	n/a.
New Minimum Size	n/a	3 17/32 in (8.97 cm).	n/a	n/a	n/a.
Seasonal Closure	n/a	n/a	February 1–March 31	February 1–March 31	September 8–November 28.

* If v-notching is deemed insufficient to meet the conservation objectives, additional seasonal closures may be implemented.

Under Addendum XVIII, the Commission proposed trap reductions for Areas 2 and 3, following separate trap reduction schedules. Specifically, measures for Area 2 would reduce a Federal lobster permit holder's trap

allocation in Area 2 by 25 percent in the first year and by 5 percent each year over a 5-year period, ultimately reducing allocations by a total of 50 percent. Measures for Area 3 would reduce a Federal lobster permit holder's Area 3 allocation by 5 percent each year for 5 years, for a total reduction of 25 percent. We intend to include these trap reductions in the proposed and final rules mentioned above.

In addition to these upcoming measures, we recently published a proposed rule (78 FR 35217; June 12, 2013), based on Commission recommendations, seeking comment on establishing a limited access program in two lobster conservation management areas, Area 2 and the Outer Cape Area, and implementing a Lobster Trap Transfer Program in Areas 2 and 3, and the Outer Cape Area. Because the Lobster Trap Transfer Program may ease economic impacts of trap reductions, we would attempt to time the implementation of the Lobster Trap Transfer Program with the implementation of the trap reduction program to mitigate any negative economic effects, and provide permit holders with operational flexibility.

Public Comments

To help determine the scope of issues to be addressed and to identify significant issues related to this action, we are soliciting written comments on this ANPR. The public is encouraged to submit comments related to the specific ideas mentioned in this ANPR, and the timing of the upcoming actions that are currently under development.

Authority: 16 U.S.C. 5101 *et seq.*

Dated: August 15, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2013–20298 Filed 8–19–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 78, No. 161
Tuesday, August 20, 2013

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 14, 2013.

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.

Comments regarding this information collection received by September 19, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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.

National Agricultural Statistics Service

Title: Wheat and Barley Scab Control Practices Survey.

OMB Control Number: 0535–NEW.

Summary of Collection: The primary objectives of the National Agricultural Statistics Service (NASS) are to prepare and issue official State and national estimates of crop and livestock production, disposition and prices, economic statistics, and environmental statistics related to agriculture and to conduct the Census of Agriculture and its follow-on surveys. This project is conducted as a cooperative effort with the U.S. Wheat and Barley Scab Initiative (USWBSI) which is funded by USDA's Agricultural Research Service (ARS). This survey is being conducted as a pilot. The goal of the overall project is to determine the economic factors which influence scab control measures. General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204(a) which specifies that ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain . . . by the collection of statistics . . . and shall distribute them among agriculturists.'' 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.

Need and Use of the Information: The survey will use a sampling universe defined as producers that harvest wheat or barley in seventeen States. NASS and USWBSI hope to determine which practices are utilized to control scab with relation to the types of farms that employ those practices. The information will be analyzed by small-grain pathologists, agricultural economists, and stakeholders in small-grain production. Results will be used to identify strategies for enhancing adoption of scab management techniques.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 10,800.

Frequency of Responses: Reporting: One time.

Total Burden Hours: 5,166.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–20175 Filed 8–19–13; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 15, 2013.

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.

Comments regarding this information collection received by September 19, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. 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.

Animal Plant and Health Inspection Service

Title: Virus-Serum-Toxin Act and Regulations in 9 CFR, Subchapter E, Parts 101–124.

OMB Control Number: 0579–0013.

Summary of Collection: The Virus-Serum-Toxin Act (37 Stat. 832–833, 21 U.S.C. 151–159) gives the United States Department of Agriculture, the Animal and Plant Health Inspection Service (APHIS) the authority to promulgate regulations designed to prevent the importation, preparation, sale, or shipment of harmful veterinary biological products. A veterinary biological product is defined as all viruses, serums, toxins, and analogous products of natural or synthetic origin. In order to effectively implement the licensing, production, labeling, importation, preparation, sales, or the shipment of harmful veterinary biological products, and other requirements, APHIS employs a number of information gathering tools such as establishment license applications, product license applications, product permit applications, product and test report forms and field study summaries.

Need and Use of the Information: APHIS uses the information collected as a primary basis for the approval or acceptance of issuing licenses or permits to ensure veterinary biological products that are used in the United States are pure, safe, potent, and effective. Also, APHIS uses the information to monitor the serials for purity, safety, potency and efficacy that are produced by licensed manufacturers prior to their release for marketing. APHIS also enforces regulation concerning production, packaging, labeling, and shipping of veterinary biological products, and sets standards for the testing of these products. Failing to collect this information would severely cripple APHIS' ability to prevent harmful veterinary biologics from being distributed in the United States.

Description of Respondents: Business or other for profit; State, Local or Tribal Government.

Number of Respondents: 220.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 78,349.

Animal Plant and Health Inspection Service

Title: Commercial Transportation of Equines to Slaughter.

OMB Control Number: 0579–0160.

Summary of Collection: Sections 901–905 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 1901), authorizes the Secretary of Agriculture to issue guidelines for regulating the commercial transportation of horses to slaughter by person regularly engaged in that activity within the United States. To fulfill this responsibility, the Animal and Plant Health Inspection Service (APHIS) established regulations in title 9, part 88 of the Code of Federal Regulations. The minimum standards cover among other things the food, water, and rest provided to these horses while they are in transit; and to review other related issues that may be appropriate to ensuring that these animals are treated humanely. Implementing these regulations entails the use of information collection activities such as providing business information, completing an owner/shipper certificate and continuation sheet, and maintaining records of the owner/shipper certificate and continuation sheet.

Need and Use of the Information: APHIS will collect the following information: (1) Shippers name and address and the owner's name and address; (2) description of the transporting vehicle, including the license plate number; (3) a description of the horse's physical characteristics, including its sex, coloring, distinguishing marks, permanent brands, electronic means of identification, or other characteristics that can be use to accurately identify the horse; (4) the number of the USDA backtags that has been applied to the horse; (5) a statement of the animal's fitness to travel, which must indicate that the horse is able to bear weight on all four limbs, is able to walk unassisted, is not blind in both eyes, is older than 6 months of age, and is not likely to give birth during the trip; (6) a description of anything unusual with regard to the physical condition of the horse, such as a wound or blindness in one eye, and any special handling needs; (7) the date, time, and place the horse was loaded on the conveyance; and (8) a statement that the horse was provided access to food, water, and rest prior to transport. This information is helpful in those instances in which APHIS must conduct a trace back investigation of any possibly alleged violation of the regulations.

Description of Respondents: Business or other for-profit.

Number of Respondents: 300.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 9,803.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–20240 Filed 8–19–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 15, 2013.

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), New Executive Office Building, 725—17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *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 by September 19, 2013. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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.

Rural Business-Cooperative Service

Title: Annual Survey of Farmer Cooperatives.

OMB Control Number: 0570–0007.

Summary of Collection: The Rural Business Cooperative Service (RBS) was mandated the responsibility to acquire and disseminate information pertaining to agricultural cooperatives under the Cooperative Marketing Act of 1926: 7 U.S.C. 451–457 and Public Law 450. The primary objective of RBS is to promote understanding, use and development of the cooperative form of business as a viable option for enhancing the income of agricultural producers and other rural residents. The annual survey collects basic statistics on cooperative business volume, net income, members, financial status, employees, and other selected information to support RBS' objective and role. RBS will use a variety of forms to collect information.

Need and Use of the Information: RBS uses the information collected to summarize for program planning, evaluation service work and cooperative analysis and education. The information collected and published in the annual report on farmer cooperatives supports and enhances most of the major functions of RBS. By not collecting this information, the RBS would have difficulties in carrying out its policy on farmer cooperatives.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1,384.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 1,367.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–20239 Filed 8–19–13; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–DA–13–0047]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for report forms under the Federal milk marketing order program.

DATES: Comments on this notice must be received by October 21, 2013.

ADDRESSES: Interested persons are invited to submit written comments electronically at *http://www.regulations.gov* or to the Office of the Deputy Administrator, Dairy Programs, AMS, USDA, 1400 Independence Avenue SW., Room 2968 South, Stop 0225, Washington, DC 20250–0225. Comments should make reference to the date and page number of this issue of the **Federal Register**. All comments will be posted electronically without change; including any personal information provided at *http://regulations.gov*. Comments will also be available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Contact David R. Jamison, Acting Chief, Order Operations Branch, Dairy Programs, (202) 720–5752, FAX: (202)690–3410.

SUPPLEMENTARY INFORMATION:

Title: Report Forms under Federal Milk Orders (From Milk Handlers and Milk Marketing Cooperatives).

OMB Number: 0581–0032.

Expiration Date of Approval: January 31, 2014.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Federal milk marketing order regulations (7 CFR parts 1000–1199) authorized under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), require milk handlers to report in detail the receipts and utilization of milk and milk products handled at each of their plants that are regulated by a Federal order. The data are needed to administer the classified pricing system and related requirements of each Federal order.

A Federal milk marketing order (hereinafter, Order) is a regulation issued by the Secretary of Agriculture that places certain requirements on the handling of milk in the area it covers. Each Order is established under the authority of the Act. The Order requires that handlers of milk for a marketing area pay not less than certain minimum class prices according to how the milk is used. These prices are established under each Order after a public hearing at which evidence is received on the supply and demand conditions for milk in the market. An Order requires that payments for milk be pooled and paid to individual farmers or cooperative associations of farmers on the basis of a uniform or average price. Thus, all eligible farmers (producers) share in the market wide use-values of milk by regulated handlers.

Milk Orders help ensure adequate supplies of milk and dairy products for consumers and adequate returns to producers.

The Orders also provide for the public dissemination of market statistics and other information for the benefit of producers, handlers, and consumers.

Formal rulemaking amendments to the Orders must be approved in referenda conducted by the Secretary.

During 2012, 40,750 dairy farmers delivered over 122 billion pounds of milk to handlers regulated under the milk orders. This volume represents 61 percent of all milk marketed in the U.S. and 62 percent of the milk of bottling quality (Grade A) sold in the country. The value of this milk delivered to Federal milk order handlers at minimum order blend prices was nearly $22.1 billion. Producer deliveries of milk used in Class I products (mainly fluid milk products) totaled 43 billion pounds—36 percent of total producer deliveries. More than 247 million Americans reside in Federal milk order marketing areas—80 percent of the total U.S. population.

Each Order is administered by a USDA market administrator. The market administrator is authorized to levy assessments on regulated handlers to carry out the market administrator's duties and responsibilities under the Orders. Additional duties of the market administrators are to prescribe reports required of each handler, to assure that handlers properly account for milk and milk products, and to assure that such handlers pay producers and associations of producers according to the provisions of the Order. The market administrator employs a staff that verifies handlers' reports by examining records to determine that the required payments are made to producers. Most reports required from handlers are submitted monthly to the market administrator.

The forms used by the market administrators are required by the respective Orders that are authorized by the Act. The forms are used to establish the quantity of milk received by handlers, the pooling status of the handler, the class-use of the milk used by the handler, and the butterfat content and amounts of other components of the milk.

The forms covered under this information collection require the minimum information necessary to

effectively carry out the requirements of the Orders, and their use is necessary to fulfill the intent of the Act as expressed in the Orders and in the rules and regulations issued under the Orders.

The information collected is used only by authorized employees of the market administrator and authorized representatives of the USDA, including AMS Dairy Programs' headquarters staff.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.10 hours per response.

Respondents: Milk handlers and milk marketing cooperatives.

Estimated Number of Respondents: 690.

Estimated Number of Responses: 18,774.

Estimated Number of Responses per Respondent: 27.

Estimated Total Annual Burden on Respondents: 20,691 hours.

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.

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.

Dated: August 14, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–20254 Filed 8–19–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Request for Information: Supplemental Nutrition Assistance Program (SNAP) Enhancing Retail Food Store Eligibility

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: Sections 3(k), (p) and (r), Section 7, and Section 9 of the Food and Nutrition Act of 2008 (''the Act''), and Title 7 Parts 271, 274, and 278 of the Code of Federal Regulations (''the regulations'') provide factors for determining the eligibility of retail food stores to participate in the Supplemental Nutrition Assistance Program (''SNAP''). This notice requests information from any and all interested parties on opportunities to enhance retailer definitions and requirements in a manner that improves access to healthy food choices for SNAP participants as well as program integrity, and ensures that only those retailers that effectuate the purpose of SNAP are authorized to accept benefits. The Food and Nutrition Service (FNS) considers access to a variety of healthy foods at SNAP retailers to be fundamental to the effectiveness of this critical nutrition assistance program. FNS is requesting information to understand what policy changes and, as needed, statutory changes, should be considered for retailer authorizations. FNS will use this information in determining how to make positive progress in the available healthy choices for program participants at authorized SNAP retail stores.

DATES: To be assured of consideration, written comments must be submitted on or before October 21, 2013.

ADDRESSES: Comments may be submitted through the Federal eRulemaking Portal at *www.regulations.gov.* Follow the online instructions for submitting comments electronically. Comments can also be mailed or delivered to: Shanta Swezy, Chief, Retailer Management and Issuance Branch, Retailer Policy and Management Division, Supplemental Nutrition Assistance Program, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 426, Alexandria, Virginia, 22302.

All comments submitted in response to this notice will be included in the record and will be made available to the public at *www.regulations.gov.* Please be advised that the substance of the comments and the identity of the individuals or entities commenting will be subject to public disclosure.

FNS will conduct public listening sessions to receive input on this subject. These listening sessions will provide an opportunity for affected parties, key stakeholders, and the general public to provide input directly to FNS policy officials.

Timeline:

Public listening sessions: 45 day period following RFI publication.

Comment period for Request for Information closes: 60 days following publication.

FOR FURTHER INFORMATION CONTACT: Shanta Swezy, Chief, Retailer Management and Issuance Branch, Food and Nutrition Service, (703) 305–2238.

SUPPLEMENTARY INFORMATION: At the end of fiscal year (FY) 2012, over 246,000 retailers were authorized to redeem SNAP benefits. This is an increase of almost 100,000 authorized stores since 2005. According to the most recent data available (2012), 82 percent of all benefits redeemed were redeemed at supermarkets, large grocers and superstores. Approximately 18 percent of benefits were redeemed at smaller stores, including convenience stores, small grocers and farmers' markets. Less than one percent were redeemed by authorized treatment programs, group homes, homeless meal providers, communal dining facilities and shelters as provided for in statute. A 2009 FNS study on benefit use indicates that 96.3 percent of all SNAP beneficiaries shopped at supermarkets or superstores at least once each month.

According to Sections 3(k), (p) and (r), and Section 9 of the Act, and Title 7 Parts 271, and 278 of the regulations, to be eligible to participate in SNAP, stores must sell food for home preparation and consumption and meet one of the criteria below:

(A) Offer for sale, on a continuous basis (any given day of operation), at least three varieties of qualifying foods in each of the following four staple food groups, with perishable foods in at least two of the categories:

- Meat, poultry or fish
- Bread or cereal
- Vegetables or fruits
- Dairy products

OR

(B) More than one-half (50 percent) of the total dollar amount of all things (food, nonfood, gas and services) sold in the store must be from the sale of eligible staple foods.

The last major changes to the store eligibility requirements took place in the early 1990's as a result of congressional action. Today, a store that consistently stocks as few as 12 total food items from the required staple foods categories could technically be licensed to participate in SNAP. Store authorization data collected from retailers by USDA indicates that over 90,000 currently authorized SNAP retailers have substantial (over 50 percent) sales that stem from ineligible items.

In addition to providing minimal access to healthy food, retailers that do

not provide sufficient healthful offerings often tend to be those stores that present the greatest integrity challenges for USDA. The sale or exchange of SNAP benefits for cash is referred to as ''trafficking'', an illegal activity punishable by law. According to the latest FNS trafficking study covering the period 2009–2011, 99.5 percent of all trafficking stores involve retailers *other than* supermarkets, superstores and large grocers. Further, 84.5 percent of all benefit dollars trafficked involve retailers *other than* supermarkets, superstores and large grocers. The large number of smaller stores—roughly 222,000 authorized store locations nationwide—redeemed 15 percent of SNAP recipient's benefits and present the greatest integrity challenge for FNS; the trafficking rate in these store types was 7.6 percent. The store violation rate was 12.45 percent. A 2006 report by the Government Accountability Office (GAO) suggested that the minimal stocking requirements in SNAP contribute to corrupt retailers entering the program, and noted that FNS regulations lacked clarity as to what constitutes sufficient stocking requirements.

FNS is concerned that there are a large and growing number of authorized retailers that do not provide healthful food offerings to SNAP recipients and that engage in fraud. These retailers represent a management challenge for the program that must be balanced against the need to ensure effective access to healthful, nutritious food for SNAP households. FNS has an interest in assuring that all authorized retailers will play by the rules and further the purpose of SNAP.

FNS' objectives are to improve the availability of more healthful foods without compromising access to nutritious food for SNAP participants, or unnecessarily burdening the retailers that redeem SNAP benefits, and to improve the integrity of the program. The Agency is seeking public input regarding the following questions, with particular attention to impacts of each on program integrity, healthy food choices, access to food and retailer operations:

1. Is ensuring that SNAP retailers provide SNAP clients access to healthy food choices a reasonable priority for establishing SNAP store eligibility criteria?

2. Are there store types that clearly meet all of the Program goals and, consequently, should always be eligible for SNAP participation?

3. Conversely, are there store types that do not effectively improve access to food choices (e.g. stores that sell low amounts of food when compared to the amounts of distilled liquor, tobacco and/or lottery tickets sold) and, therefore, should always be ineligible for SNAP participation?

4. Would a different definition of the ''staple foods[1]'' required in SNAP authorized stores help to ensure that these stores offer more healthy food choices? If so, what kinds of changes would be most effective? Specifically, almost all foods can be counted towards meeting staple food requirements, including those high in added sugar, sodium or solid fats. Should foods high in these components be counted as staple foods when determining store authorization requirements?

5. How should prepared foods with multiple ingredients, such as chicken pot pie or other frozen dinners, or single serving meat jerky packages, be treated with regards to ''staple foods'' categories?

6. Do twelve items (the minimum amount necessary to meet SNAP authorization criterion A, by virtue of needing three varieties in the four different staple food categories) provide adequate variety for a retailer to further the Program's purpose? If not, what would be a more appropriate requirement?

7. Currently, retailers who are authorized under criterion A are required to stock perishable items (e.g., fresh, frozen or refrigerated fruits and vegetables; dairy; meats, poultry and fish; bread or cereal) in two categories. Should perishable items be required in more than two categories?

8. Are 50 percent of sales in staple foods, as currently required for criterion B, sufficient to ensure that a SNAP authorized store furthers the program's purpose, given the current definition of ''staple foods''? Would this percentage be sufficient if the definition of ''staple foods'' is changed to exclude items high in added sugar, sodium or solid fats?

9. Should stores whose primary business (as evidenced by marketing, inventory or sales) is not the sale of food, be eligible to participate in SNAP?

10. Restaurants are generally prohibited from being SNAP retailers, and hot foods cannot be purchased with SNAP benefits. However, there are authorized retailers who primarily sell food for immediate consumption, often on premises, but also sell their products cold and heat them for SNAP recipients immediately after purchase for a nominal fee. These stores qualify today based on the array of raw ingredients, such as unbaked pizza or raw fish. Should such stores be eligible for participation in SNAP?

11. Should all retailers who meet SNAP eligibility criteria be authorized, even when sufficient store access for recipients is not a concern?

12. If store access were a concern in an area where no store meets basic eligibility criteria for SNAP authorization, how should FNS select the stores to authorize that best serve the needs of the client population? Should FNS employ an evaluation and scoring system? If so, what criteria should make up such a system?

13. How should integrity and management priorities be balanced against healthy food choice criteria in the SNAP authorization process? What elements could be used to assess integrity risks, and how should they be applied?

14. Are there any other ways in which the criteria for retailer eligibility should be changed? If so, how?

Dated: August 15, 2013.

Jeffrey J. Tribiano,

Acting Administrator, Food and Nutrition Service.

[1] *Statutory, Regulatory and Policy Definitions of ''Food'', ''Staple Food'' and ''Accessory Food'':*

Food and Nutrition Act of 2008 7 U.S.C. 2012 Section 3 Definitions:

(k) *''Food'' means* (1) Any food or food product for home consumption except alcoholic beverages, tobacco, and hot foods or hot food products ready for immediate consumption other than those authorized pursuant to clauses (3), (4), (5), (7), (8), and (9) of this subsection, (2) seeds and plants for use in gardens to produce food for the personal consumption of the eligible household, (3) in the case of those persons who are sixty years of age or over or who receive supplemental security income benefits or disability or blindness payments under title I, II, X, XIV, or XVI of the Social Security Act [(42 U.S.C. 1381 et seq.)], and their spouses, meals prepared by and served in senior citizens' centers, apartment buildings occupied primarily by such persons, public or private nonprofit establishments (eating or otherwise) that feed such persons, private establishments that contract with the appropriate agency of the State to offer meals for such persons at concessional prices, and meals prepared for and served to residents of federally subsidized housing for the elderly, (4) in the case of persons sixty years of age or over and persons who are physically or mentally handicapped or otherwise so disabled that they are unable adequately to prepare all of their meals, meals prepared for and delivered to them (and their spouses) at their home by a public

or private nonprofit organization or by a private establishment that contracts with the appropriate State agency to perform such services at concessional prices, (5) in the case of narcotics addicts or alcoholics, and their children, served by drug addiction or alcoholic treatment and rehabilitation programs, meals prepared and served under such programs, (6) in the case of certain eligible households living in Alaska, equipment for procuring food by hunting and fishing, such as nets, hooks, rods, harpoons, and knives (but not equipment for purposes of transportation, clothing, or shelter, and not firearms, ammunition, and explosives) if the Secretary determines that such households are located in an area of the State where it is extremely difficult to reach stores selling food and that such households depend to a substantial extent upon hunting and fishing for subsistence, (7) in the case of disabled or blind recipients of benefits under title I, II, X, XIV, or XVI of the Social Security Act, or are 3–2 individuals described in paragraphs (2) through (7) of subsection (j), who are residents in a public or private nonprofit group living arrangement that serves no more than sixteen residents and is certified by the appropriate State agency or agencies under regulations issued under section1616(e) of the Social Security Act or under standards determined by the Secretary to be comparable to standards implemented by appropriate State agencies under such section [(42 U.S.C. 1382e(e))], meals prepared and served under such arrangement, (8) in the case of women and children temporarily residing in public or private nonprofit shelters for battered women and children, meals prepared and served, by such shelters, and (9) in the case of households that do not reside in permanent dwellings and households that have no fixed mailing addresses, meals prepared for and served by a public or private nonprofit establishment (approved by an appropriate State or local agency) that feeds such individuals and by private establishments that contract with the appropriate agency of the State to offer meals for such individuals at concessional prices.

(r)(1) Except as provided in paragraph (2), *''staple foods'' means* foods in the following categories:

(A) Meat, poultry, or fish.

(B) Bread or cereals.

(C) Vegetables or fruits.

(D) Dairy products.

(2) *''Staple foods'' do not include* accessory food items, such as coffee, tea, cocoa, carbonated and un-carbonated drinks, candy, condiments, and spices.

7 CFR Part 271 General Information and Definitions: Staple food means those food items intended for home preparation and consumption in each of the following food categories: meat, poultry, or fish; bread or cereals; vegetables or fruits; and dairy products. Commercially processed foods and prepared mixtures with multiple ingredients shall only be counted in one staple food category. For example, foods such as cold pizza, macaroni and cheese, multi-ingredient soup, or frozen dinners, shall only be counted as one staple food item and will normally be included in the staple food category of the main ingredient as determined by FNS. Hot foods are not eligible for purchase with food stamps and, therefore, do not qualify as staple foods for the purpose of determining eligibility under § 278.1(b)(1) of this chapter. Accessory food items including, but not limited to, coffee, tea, cocoa, carbonated and un-carbonated drinks, candy, condiments, and spices shall not be considered staple foods for the purpose of determining eligibility of any firm. However, accessory foods that are offered for sale in authorized retail food stores are eligible food items which may be purchased with food stamp benefits.

USDA FNS Policy: ''Accessory food items include coffee, tea, cocoa, carbonated and un-carbonated drinks, candy, condiments and spices. *All foods not identified as accessory in the Act and regulations must be considered staple foods''.*

[FR Doc. 2013–20244 Filed 8–19–13; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation of Muncie (IN) To Provide Class X or Class Y Weighing Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: GIPSA is announcing the designation of East Indiana Grain Inspection, Inc. (East Indiana) to provide Class X or Class Y weighing services under the United States Grain Standards Act (USGSA), as amended.

DATES: *Effective Date:* July 29, 2013.

ADDRESSES: Eric J. Jabs, Chief, USDA, GIPSA, FGIS, QACD, QADB, 10383 North Ambassador Drive, Kansas City, MO 64153.

FOR FURTHER INFORMATION CONTACT: Eric J. Jabs, 816–659–8408 or *Eric.J.Jabs@usda.gov*.

SUPPLEMENTARY INFORMATION: In the July 22, 2013 **Federal Register** (78 FR 43854), GIPSA announced the designation of East Indiana to provide official services under the USGSA, effective July 1, 2013 to June 30, 2016. Subsequently, East Indiana asked GIPSA to amend their designation to include official weighing services. Section 79a of the USGSA authorizes the Secretary to designate authority to perform official weighing to an agency providing official inspection services within a specified geographic area, if such agency is qualified under section 79 of the USGSA. GIPSA evaluated information regarding the designation criteria in section 79 of the USGSA and determined that East Indiana is qualified to provide official weighing services in their currently assigned geographic area.

East Indiana's present designation is amended to include Class X or Class Y weighing within their assigned geographic area, effective July 29, 2013 to June 30, 2016.

Interested persons may obtain official services by contacting East Indiana at 765–744–6425.

Authority: 7 U.S.C. 71—87k.

Marianne Plaus,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2013–20326 Filed 8–19–13; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Partial Cancellation of Fremont Grain Inspection Department Inc. Designation; Selection of Interim Provider; Opportunity for Designation in the Fremont, NE Area

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: Fremont Grain Inspection Department, Inc. (Fremont) is designated to provide official inspection service through June 30, 2016, under the United States Grain Standards Act (USGSA), as amended. Fremont informed the Grain Inspection, Packers and Stockyards Administration (GIPSA) that it wanted to cancel its designation for part of their geographic area to include: Clay county (west of U.S. Route 71), Dickinson county (west of U.S.

Route 71), O'Brien county (north of County Road B24 and east of U.S. Route 59), and Osceola county (east of U.S. Route 59). GIPSA announced the interim availability for the geographic area and selected Sioux City Inspection and Weighing Service Company as the interim provider effective August 1, 2013 until a permanent designee is selected. Accordingly, GIPSA is asking persons or governmental agencies interested in providing official services in part of the geographical area presently assigned to Fremont to submit an application for designation.

DATES: Applications must be received by September 19, 2013.

ADDRESSES: Submit applications and comments concerning this notice using any of the following methods:

- *Applying for Designation on the Internet:* Use FGISOnline (*https://fgis.gipsa.usda.gov/default_home_FGIS.aspx*) and then click on the Delegations/Designations and Export Registrations (DDR) link. You will need to obtain an FGISOnline customer number and USDA eAuthentication username and password prior to applying.
- *Submit Comments Using the Internet:* Go to Regulations.gov (*http://www.regulations.gov*). Instructions for submitting and reading comments are detailed on the site.
- *Mail, Courier or Hand Delivery:* Eric J. Jabs, Chief, USDA, GIPSA, FGIS, QACD, QADB, 10383 North Ambassador Drive, Kansas City, MO 64153.
- *Fax:* Eric J. Jabs, 816–872–1257.
- *Email: Eric.J.Jabs@usda.gov.*

Read Applications and Comments: All applications will be available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

FOR FURTHER INFORMATION CONTACT: Eric J. Jabs, 816–659–8408 or *Eric.J.Jabs@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 79(f) of the United States Grain Standards Act (USGSA) authorizes the Secretary to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79 (f)). Under section 79(g) of the USGSA, designations of official agencies are effective for three years unless terminated by the Secretary, but may be renewed according to the criteria and procedures prescribed in section 79(f) of the USGSA.

Area Open for Designation

Pursuant to Section 79(f)(2) of the United States Grain Standards Act, the following geographic area, in the State of Iowa, is assigned to this official agency.

In Iowa

Clay county (west of U.S. Route 71), Dickinson county (west of U.S. Route 71), O'Brien county (north of County Road B24 and east of U.S. Route 59), and Osceola county (east of U.S. Route 59).

Opportunity for Designation

Interested persons or governmental agencies may apply for designation to provide official services in the geographic areas specified above under the provisions of section 79(f) of the USGSA and 7 CFR 800.196. Designation in the specified geographic area is for a period of no more than three years and will be concurrent with any existing designation. To apply for designation or for more information, contact Eric J. Jabs at the address listed above or visit GIPSA's Web site at *http://www.gipsa.usda.gov.*

We consider applications, comments, and other available information when determining which applicants will be designated.

Authority: 7 U.S.C. 71–87k.

Marianne Plaus,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2013–20322 Filed 8–19–13; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2013–0002]

Notice of Proposed Changes to the National Handbook of Conservation Practices for the Natural Resources Conservation Service

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices for public review and comment.

SUMMARY: Notice is hereby given of the intention of NRCS to issue a series of revised conservation practice standards in the National Handbook of Conservation Practices. These standards include: Contour Farming (Code 330), Critical Area Planting (Code 342), Cross Wind Ridges (Code 588), Deep Tillage (Code 324), Field Border (Code 386), Filter Strip (Code 393), Land Smoothing (Code 466), Livestock Shelter Structure (Code 576), Mulching (Code 484), Residue and Tillage Management, No Till (Code 329), Residue and Tillage Management, Reduced Till (Code 345), Spring Development (Code 574), Stripcropping (Code 585), and Underground Outlet (Code 620).

NRCS State Conservationists who choose to adopt these practices for use within their States will incorporate them into section IV of their respective electronic Field Office Technical Guide. These practices may be used in conservation systems that treat highly erodible land (HEL) or on land determined to be a wetland. Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment all proposed revisions to conservation practice standards used to carry out HEL and wetland provisions of the law.

DATES: *Effective Date:* This is effective August 20, 2013.

Comment Date: Submit comments on or before September 19, 2013. Final versions of these new or revised conservation practice standards will be adopted after the close of the 30-day period, and after consideration of all comments.

ADDRESSES: Comments should be submitted, identified by Docket Number NRCS–2013–0002, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Public.comments@wdc.usda.gov.* Include Docket Number NRCS–2013–0002 or ''comment on practice standards'' in the subject line of the message.
- *Mail:* Comment Submissions, Attention: Anetra Harbor, Policy Analyst, Resource Economics, Analysis and Policy Division, Department of Agriculture, Natural Resources Conservation Service, George Washington Carver Center, 5601 Sunnyside Ave., Room 1–1112C, Beltsville, Maryland 20705.

All comments received will become a matter of public record and will be posted without change to *http://www.regulations.gov* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Wayne Bogovich, National Agricultural Engineer, Conservation Engineering Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue SW., Room

6136 South Building, Washington, DC 20250.

Electronic copies of these standards can be downloaded or printed from the following Web site: *ftp://pact.sc.egov.usda.gov/practice-standards/federal-register/*. Requests for paper versions or inquiries may be directed to Bill Kuenstler, National Practice Standards Review Coordinator, Natural Resources Conservation Service, Central National Technology Support Center, 501 W. Felix St., Fort Worth, Texas 76115.

SUPPLEMENTARY INFORMATION: The amount of the proposed changes varies considerably for each of the conservation practice standards addressed in this notice. To fully understand the proposed changes, individuals are encouraged to compare these changes with each standard's current version as shown at: *http://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/technical/cp/ncps/?cid=nrcs143026849*. To aid in this comparison, following are highlights of the proposed revisions to each standard:

Contour Farming (Code 330)—The agency revised the definition to emphasize proper alignments and revised the general criteria for maximum row grade to 4 percent based on RUSLE2 technology. We added the implementation requirement document to the specifications and plans.

Critical Area Planting (Code 342)—The agency deleted the purpose to rehabilitate and re-vegetate degraded sites that cannot be stabilized using normal establishment techniques as this purpose is implied in other purposes. We added the implementation requirement document to the specifications and plans.

Cross Wind Ridges (Code 588)—The agency revised the definition to: Ridges formed by tillage, planting, or other operations and aligned perpendicular to prevailing wind direction during critical wind erosion periods and revised the purpose to: Reduce soil particulate emissions to the air to reduce soil particulate emissions effecting air quality. We added the implementation requirement document to the specifications and plans.

Deep Tillage (Code 324)—The agency deleted the purpose to reduce concentration of soil contaminants which inhibit plant growth because there is no technology to describe the level of either contamination or a dilution factor. We added the implementation requirement document to the specifications and plans.

Field Border (Code 386)—The agency revised the condition where the practice applies to cover only on existing cropland and pastureland and deleted the purpose to manage pest populations. We added the implementation requirement document to the specifications and plans.

Filter Strip (Code 393)—The agency added a few additional considerations for species selection for native plant communities and organic operation considerations. We added the implementation requirement document to the specifications and plans.

Land Smoothing (Code 466)—The agency revised the Definition; added a cultural resource inventory and assessment to Considerations; added a plan to Operation and Maintenance; and added references.

Livestock Shelter Structure (Code 576)—The agency created this new conservation practice standard which includes livestock shade structures and livestock wind structures.

Mulching (Code 484)—The agency deleted the purposes to moderate soil temperature and suppress weeds as these do not address a resource concern; and revised the ''Condition where practice applies'' to remove this practice from being used for weed control for production agriculture. We added the implementation requirement document to the specifications and plans.

Residue and Tillage Management, No Till (Code 329)—The agency changed the practice name to Residue and Tillage Management, No-Till. No Till is inclusive of direct seed and strip till. In addition, we added criteria clarification to not allow any full-width tillage for this practice; reduced the maximum soil tillage intensity rating value for no till from 30 to 20; added implementation requirements to the specifications and plans; and changed the purpose ''Reduce wind erosion and particulate matter less than 10 micrometers in diameter—PM_{10}'' to ''Reduce tillage-induced particulate emissions'' to address all sizes of tillage particulate emissions.

Residue and Tillage Management, Reduced Till (Code 345)—The agency incorporated 346 Residue and Tillage Management, Ridge Till into this standard; added criteria to establish a maximum soil tillage intensity value of 80; clarified the air quality purpose to reduce tillage-induced particulate emissions vs. only PM_{10} emissions; Revised the criteria for energy savings to a 25 percent reduction from the current baseline; and added implementation requirements to the specifications and plans.

Spring Development (Code 574)—The agency revised version is the result of a comprehensive review by NRCS biologists and hydrologists from differing arid and humid U.S. regions. The new Purpose statement no longer includes the wording ''other agricultural uses.'' Readability and flow of material is enhanced by using multiple sections with headings as opposed to the old format of a lengthy running text.

Stripcropping (Code 585)—The agency revised the definition to stress alternating strips of erosion susceptible crops and revised the wind erosion purpose to reduce wind erosion and associated transport of sediment and other wind borne contaminants. We added the implementation requirement document to the specifications and plans.

Underground Outlet (Code 620)—The agency expanded the Criteria and revised the Considerations sections.

Signed this 12th day of August, 2013, in Washington, DC.

Thomas W. Christensen,

Acting Associate Chief for Operations, Natural Resources Conservation Service.

[FR Doc. 2013–20250 Filed 8–19–13; 8:45 am]

BILLING CODE 3410–16–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meetings

DATE AND TIME: Wednesday, August 21, 2013, 9:15 a.m. EDT.

PLACE: Broadcasting Board of Governors, Cohen Building, Room 3321, 330 Independence Ave. SW., Washington, DC 20237.

SUBJECT: Notice of Closed Meeting of the Broadcasting Board of Governors.

SUMMARY: The members of the Broadcasting Board of Governors (BBG) will meet in a closed session to consider the appointment of the Chief Financial Officer. This meeting should be closed to public observation pursuant to 5 U.S.C. 552b(c)(6) in order to protect the privacy interests of candidates considered but not selected for the position. In accordance with the Government in the Sunshine Act and BBG policies, the meeting will be recorded and a transcript of the proceedings, subject to the redaction of information protected by 5 U.S.C. 552b(c)(6), will be made available to the public. The publicly-releasable transcript will be available for download at *www.bbg.gov* within 21 days of the date of the meeting.

Information regarding member votes to close the meeting and expected attendees can also be found on the Agency's public Web site.

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Paul Kollmer-Dorsey at (202) 203–4545.

Paul Kollmer-Dorsey,

Deputy General Counsel.

[FR Doc. 2013–20223 Filed 8–16–13; 11:15 am]

BILLING CODE 8610–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: U.S. Census Bureau.

Title: Business and Professional Classification Report.

Form Number(s): SQ–CLASS(00).

OMB Control Number: 0607–0189.

Type of Request: Revision of a Currently Approved Collection.

Burden Hours: 11,267.

Number of Respondents: 52,000.

Average Hours per Response: 13 minutes.

Needs and Uses: The Economic Census and current business surveys represent the primary source of facts about the structure and function of the U.S. economy, providing essential information to government and the business community in making sound decisions. This information helps build the foundation for the calculation of Gross Domestic Product (GDP) and other important measures of the economy. Crucial to the success of the surveys and the economic census conducted by the Census Bureau is the accuracy and reliability of the Business Register. The Business Register (BR) is a multi-relational database that contains a record for each known establishment that is located in the United States or one of its territories. This database serves as the primary source for constructing sampling frames for the economic census and current business surveys.

The BR is used to identify the set of statistical units that represents an economic data collection's target population, which is defined by a specific reference period and scope. Critical to the quality of information housed in the BR is that each of the statistical units has an accurate industry classification, measure of size, activity status, and physical address assigned to it. Furthermore, linkages between the different types of statistical units, such as companies, establishments, and Employer Identification Numbers (EINs) must be accurately maintained over time. The primary purpose of the Business and Professional Classification Report (SQ–CLASS report) is to meet these needs for the retail trade, wholesale trade, and services portions of the economy as defined by the North American Industry Classification System (NAICS). The data collected by the SQ–CLASS report are used to update the current business surveys to reflect newly opened establishments. Additionally, establishments in the five-year economic census will receive data collection instruments specifically tailored to their industry based on the classification information obtained by the SQ–CLASS report.

To keep current with rapid changes in the marketplace caused by new businesses (a.k.a. births) the Census Bureau samples newly assigned Employer Identification Numbers (EINs) obtained from the Internal Revenue Service (IRS). Each EIN can only be selected once for the SQ–CLASS report. EINs selected for the SQ–CLASS sample are asked to provide data about the establishment(s) associated with the new EIN including a more reliable measure of size, consisting of sales in two recent months, company affiliation information, a new or more detailed industry classification code, and other key information needed to maintain proper coverage of the business universe on the BR for the current business surveys.

Based on information collected on the SQ–CLASS form, EINs meeting the criteria for inclusion in the Census Bureau's current business surveys are eligible for a second phase of sampling. The retail and wholesale EINs selected in this second sampling are asked to report annually on the annual retail, wholesale, and service surveys. A subsample of the retail and wholesale EINs are also asked to report monthly on the monthly retail and wholesale surveys. Similarly, a subsample of the service EINs are asked to report quarterly on the Quarterly Services Survey.

There are few changes since the last request was submitted for OMB clearance in 2010. Most of the changes to the questionnaire are aesthetic. The questionnaire has been redeveloped using the Census Bureau's standard questionnaire design software. This gives it a very similar look and feel when compared to collection instruments for other Census Bureau economic surveys and the economic census. Some changes were made to the wording and organization of existing questions and instructions to ensure consistency across the economic surveys and/or the economic census. Additionally, the sample size has decreased from the previous OMB submission due to the availability of more complete and timely administrative data.

Although no statistical tables are prepared or published, the outputs of the SQ–CLASS report directly and critically affect the quality of the estimates published for the Advance Monthly Retail Trade and Food Services Survey (OMB Approval 0607–0104); Monthly Wholesale Trade Survey (OMB 0607–0190); Services Annual Survey (OMB Approval 0607–0422); Annual Retail Trade Survey (OMB Approval 0607–0013); Annual Wholesale Trade Survey (OMB Approval 0607–0195); and Quarterly Service Survey (OMB Approval 0607–0907), because the SQ–CLASS report is used to reflect newly opened businesses in the samples for these surveys.

The information obtained from the SQ–CLASS report is also used in tabulating data for small businesses in succeeding economic censuses (because many small businesses are not mailed an economic census report form), and for the Census Bureau's County Business Patterns program, which is conducted on an annual basis.

Affected Public: Business or other for-profit organizations, Not-for-profit institutions.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 182 and 193.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or email (*bharrisk@omb.eop.gov*).

Dated: August 14, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–20212 Filed 8–19–13; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–894]

Certain Tissue Paper Products From the People's Republic of China: Notice of Rescission of the 2012–2013 Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* August 20, 2013.

FOR FURTHER INFORMATION CONTACT: Brian Smith, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1766.

SUMMARY: The Department of Commerce (the Department) is rescinding the administrative review of the antidumping duty order on certain tissue paper products from the People's Republic of China (PRC) for the period of review (POR) of March 1, 2012, to February 28, 2013, with respect to AR Printing & Packaging (India) Pvt. Ltd. (ARPP), LF Products Pte. Ltd. (LF Products), and Stone Sapphire (HK) Limited.[1] This rescission is based on the timely withdrawal of the requests for review by the only interested party that requested the review of these companies.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2013, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain tissue paper products from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 78 FR 13858 (March 1, 2013) (*Opportunity Notice*). In response, on April 1, 2013, the petitioner [2] timely requested an administrative review of entries of the subject merchandise during the POR from ARPP, LF Products, and Stone Sapphire.[3] Therefore, on April 25, 2013, the Department initiated a review of ARPP, LF Products, and Stone Sapphire. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 78 FR 25418 (May 1, 2013).

In a letter dated July 30, 2013, the petitioner withdrew its request for review of ARPP, LF Products, and Stone Sapphire. No other parties requested a review.

Scope of the Order

The tissue paper products subject to the order are cut-to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter.[4] The merchandise subject to this order does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States. Subject merchandise may be under one or more of several different subheadings, including: 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.31.1000; 4804.31.2000; 4804.31.4020; 4804.31.4040; 4804.31.6000; 4804.39; 4805.91.1090; 4805.91.5000; 4805.91.7000; 4806.40; 4808.30; 4808.90; 4811.90; 4823.90; 4820.50.00; 4802.90.00; 4805.91.90; and 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party who requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Accordingly, the petitioner timely withdrew its request for review of ARPP, LF Products, and Stone Sapphire. Because no other party requested a review, pursuant to 19 CFR 351.213(d)(1), the Department is rescinding the entire administrative review of the antidumping duty order on certain tissue paper products from the PRC for the period March 1, 2012, to February 28, 2013.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed 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)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a 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 Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the 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.

This notice is published in accordance with sections 751(a) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: August 14, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–20302 Filed 8–19–13; 8:45 am]

BILLING CODE 3510–DS–P

[1] The Department is also rescinding this review with respect to any affiliates of ARPP, LF Products, or Stone Sapphire that may have exported subject merchandise during the review period.

[2] The petitioner is Seaman Paper Company of Massachusetts, Inc.

[3] March 31, 2013, is the deadline for submitting requests for review as stated in the *Opportunity Notice. See Opportunity Notice,* 78 FR at 13859. However, because March 31, 2013, was a Sunday and the Department of Commerce's operations were closed on that day, the petitioner filed its request for review on the next business day, April 1, 2013.

[4] *See Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products from the People's Republic of China,* 70 FR 16223 (March 30, 2005) for a complete description of the scope of the order.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–967, C–570–968]

Aluminum Extrusions From the People's Republic of China: Initiation of Changed Circumstances Reviews and Consideration of Revocation of the Antidumping and Countervailing Duty Orders in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by 3M Company (3M), a U.S. importer of certain rectangular wire, the Department of Commerce (the Department) is initiating changed circumstances reviews of the antidumping duty (AD) and countervailing (CVD) duty orders on aluminum extrusions from the People's Republic of China. Interested parties are invited to comment on this notice of initiation.

DATES: *Effective Date:* August 20, 2013.

FOR FURTHER INFORMATION CONTACT: James Terpstra, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone (202) 482–3965.

Background

On May 26, 2011, the Department published in the **Federal Register** the AD and CVD orders on aluminum extrusions from the PRC.[1]

On June 20, 2013, the Department received a request on behalf of 3M for changed circumstances reviews to revoke, in part, the *Orders* with respect to certain rectangular wire imported by 3M. In its request, 3M attached a letter submitted on behalf of the Aluminum Extrusion Fair Trade Committee (AEFTC), the petitioners in the less-than-fair-value and CVD investigations, and the Aluminum Extrusion Council (AEC), in which representatives of the AEFTC and AEC stated that they do not oppose the partial revocation of the *Orders* with respect to the specific product identified in 3M's changed circumstances review requests. Further, 3M requested that the Department expedite the review by combining the notice of initiation of the changed circumstances reviews and the preliminary results of the reviews pursuant to 19 CFR 351.221(c)(3)(ii). On July 2, 2013, 3M filed a letter containing a clarification from the AEFTC and AEC in which they stated that they do not oppose revocation of the *Orders* with regard to certain rectangular wire, regardless of whether 3M or another party is the importer. We did not receive comments from any other party.

Scope of the Orders

The merchandise covered by these *Orders* is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise is made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. Aluminum extrusions that are drawn subsequent to extrusion (drawn aluminum) are also included in the scope.

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.,* without any coating or further finishing), brushed, buffed, polished, anodized (including bright-dip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.,* prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, *etc.*), fabricated, or any combination thereof.

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes the aluminum extrusion components that are attached (*e.g.,* by welding or fasteners) to form subassemblies, *i.e.,* partially assembled merchandise unless imported as part of the finished goods 'kit' defined further below. The scope does not include the non-aluminum extrusion components of subassemblies or subject kits.

Subject extrusions may be identified with reference to their end use, such as fence posts, electrical conduits, door thresholds, carpet trim, or heat sinks (that do not meet the finished heat sink exclusionary language below). Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation.

The following aluminum extrusion products are excluded: aluminum extrusions made from aluminum alloy with an Aluminum Association series designations commencing with the number 2 and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 5 and containing in excess of 1.0 percent magnesium by weight; and aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 7 and containing in excess of 2.0 percent zinc by weight.

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed

[1] *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order,* 76 FR 30650 (May 26, 2011) and *Aluminum Extrusions From the People's Republic of China: Countervailing Duty Order,* 76 FR 30653 (May 26, 2011) (together, the *Orders*).

at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a ''finished goods kit.'' A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled 'as is' into a finished product. An imported product will not be considered a 'finished goods kit' and therefore excluded from the scope of the investigation merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0, A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics: (1) length of 37 millimeters (mm) or 62 mm, (2) outer diameter of 11.0 mm or 12.7 mm, and (3) wall thickness not exceeding 0.13 mm.

Also excluded from the scope of these *Orders* are finished heat sinks. Finished heat sinks are fabricated heat sinks made from aluminum extrusions the design and production of which are organized around meeting certain specified thermal performance requirements and which have been fully, albeit not necessarily individually, tested to comply with such requirements.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 7604.21.0000, 7604.29.1000, 7604.29.3010, 7604.29.3050, 7604.29.5030, 7604.29.5060, 7608.20.0030, and 7608.20.0090. The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60.

Additional subject products may be classifiable under the following HTS categories: 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7616.99.10, 7616.99.50, 8302.10.3000, 8302.10.6030, 8302.10.6060, 8302.10.6090, 8302.30.3010, 8302.30.3060, 8302.41.3000, 8302.41.6015, 8302.41.6045, 8302.41.6050, 8302.41.6080, 8302.42.3010, 8302.42.3015, 8302.42.3065, 8302.49.6035, 8302.49.6045, 8302.49.6055, 8302.49.6085, 8302.50.0000, 8302.60.9000, 8306.30.0000, 8419.90.1000, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 9403.90.1040, 9403.90.1050, 9403.90.1085, 9403.90.2540, 9403.90.2580, 9403.90.4005, 9403.90.4010, 9403.90.4060, 9403.90.5005, 9403.90.5010, 9403.90.5080, 9403.90.6005, 9403.90.6010, 9403.90.6080, 9403.90.7005, 9403.90.7010, 9403.90.7080, 9403.90.8010, 9403.90.8015, 9403.90.8020, 9403.90.8030, 9403.90.8041, 9403.90.8051, 9403.90.8061, 9506.11.4080, 9506.51.4000, 9506.51.6000, 9506.59.4040, 9506.70.2090, 9506.91.0010, 9506.91.0020, 9506.91.0030, 9506.99.0510, 9506.99.0520, 9506.99.0530, 9506.99.1500, 9506.99.2000, 9506.99.2580, 9506.99.2800, 9506.99.6080, 9507.30.2000, 9507.30.4000, 9507.30.6000, and 9507.90.6000.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these *Orders* is dispositive.

Initiation of Changed Circumstances Reviews and Consideration of Revocation of the Orders in Part

Pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), the Department will conduct a changed circumstances review upon receipt of a request from an interested party which shows changed circumstances sufficient to warrant a review of an order.[2] Section 782(h)(2) of the Act and 19 CFR 351.222(g)(1)(i) provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the order, in whole or in part. In addition, in the event the Department determines that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

In its administrative practice, the Department has interpreted ''substantially all'' to represent producers accounting for at least 85 percent of the total U.S. production of the domestic like product covered by the order.[3]

In the letter attached to 3M's June 20, 2013, submission, the AEC states that it represents the ''vast majority of U.S. domestic aluminum extrusions producers.'' Based on the information provided by AEC in 3M's submissions, the Department has determined that there exist changed circumstances sufficient to warrant review of the *Orders*.[4] However, because the statement provided by AEC in 3M's submission does not indicate whether AEC accounts for substantially all of domestic aluminum extrusion production, we are not combining this notice of initiation with a preliminary determination pursuant to 19 CFR 351.221(c)(3)(ii). Interested parties are, therefore, requested to address the issue of domestic industry support of this partial revocation of the *Orders* in their comments. This notice of initiation will accord all interested parties an opportunity to address these proposed partial revocations.

Accordingly, we are notifying the public that we are considering a request to revoke the *Orders,* in part, with respect to certain rectangular wire.

Public Comment

Interested parties are invited to provide comment or additional factual information regarding these changed circumstance reviews, including comments concerning industry support. Submissions may be submitted no later than 14 days after the date of publication of this notice. Responses to

[2] *See also* 19 CFR 351.216.

[3] *See, e.g., Certain Cased Pencils From the Peoples' Republic of China: Initiation and Preliminary Results of Antidumping duty Changed Circumstances Review, and Intent To Revoke Order in Part,* 77 FR 42276 (July 18, 2012) (*Pencils*), unchanged in *Certain Cased Pencils From the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review, and Determination To Revoke Order, in Part,* 77 FR 53176 (August 31, 2012).

[4] *See* section 751(b) of the Act and 19 CFR 351.216(d).

those submissions may be filed no later than 10 days thereafter in accordance with 19 CFR 351.301(c)(1). All submissions must be filed electronically using Import Administration's AD and CVD Centralized Electronic Service System (IA ACCESS).[5] 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 Time of the deadlines set forth in this notice.

The Department will issue the preliminary results of these changed circumstances reviews, in accordance with 19 CFR 351.221(c)(3), which will set forth the factual and legal conclusions upon which are preliminary results are based, and a description of any action proposed based on those results. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of the review. In accordance with 19 CFR 351.216(e), the Department will issue the final results of its AD changed circumstance review within 270 days after the date on which the review is initiated.

This initiation is published in accordance with sections 751(b)(1) of the Act and 19 CFR 351.216(b) and 351.221(b)(1).

Dated: August 14, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–20329 Filed 8–19–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Comprehensive Data Collection on Fishing Dependence of Alaska Communities

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 21, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Amber Himes, (206) 526–4221 or *Amber.Himes@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this data collection program is to improve commercial fisheries socio-economic data for North Pacific fisheries, using the community as the unit of reporting and analysis. Communities are often the focus of policy mandates (e.g., National Standard 8 of the Magnuson-Stevens Fisheries Management Act (MSA), social impact assessments under the National Environmental Policy Act and MSA, North Pacific Fishery Management Council (NPFMC) programmatic management goals, etc.) and are frequently a recognized stakeholder in NPFMC deliberations and programs. However, much of the existing commercial socio-economic data is collected and organized around different units of analysis, such as counties (boroughs), fishing firms, vessels, sectors, and gear groups. It is often difficult to aggregate or disaggregate these data for analysis at the individual community or regional level. In addition, at present, some relevant community level socio-economic data are simply not collected at all. The NPFMC, the Alaska Fisheries Science Center (AFSC), and community stakeholder organizations, have identified ongoing collection of community level economic and socioeconomic information, specifically related to commercial fisheries, as a priority.

The proposed data collection is a continuation of a program collecting data since 2011. Data collected includes information on community revenues based in the fisheries economy, population fluctuations, vessel expenditures in ports, fisheries infrastructure available in the community, support sector business operations in the community, community participation in fisheries management, effects of fisheries management decisions on the community, and demographic information on commercial fisheries participants from the community. The information collected in this program will capture the most relevant and pressing types of data needed for socio-economic analyses of communities.

II. Method of Collection

The method of data collection will be a survey sent by mail (and by email where possible).

III. Data

OMB Control Number: 0648–0626.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: State, local, or tribal government.

Estimated Number of Respondents: 500.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 521.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–20213 Filed 8–19–13; 8:45 am]

BILLING CODE 3510–22–P

[5] *See,* generally, 19 CFR 351.303.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB161

Marine Mammals; File No. 14535

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that a permit amendment has been issued to Colleen Reichmuth, Ph.D., Long Marine Laboratory, University of California at Santa Cruz, 100 Shaffer Road, Santa Cruz, CA 95060, for research on captive pinnipeds.

DATES: Written, telefaxed, or email comments must be received on or before September 19, 2013.

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

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

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

SUPPLEMENTARY INFORMATION: On April 9, 2013, notice was published in the **Federal Register** (78 FR 21112) that a request for an amendment to Permit No. 14535–01 to conduct research on captive pinnipeds had been submitted by the above-named applicant. The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*); and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 14535–02 authorizes the addition of temporary threshold shift (TTS) studies to the currently approved research activities for captive pinnipeds held at Long Marine Laboratory in Santa Cruz, CA. This research may be conducted with up to two individuals from each of three species of ice seal: Spotted (*Phoca largha*), ringed (*Phoca hispida*), and bearded (*Erignathus barbatus*) seals trained for participation in ongoing behavioral hearing studies. This research will provide the first-ever direct information about the noise levels that cause a temporary, recoverable reduction in hearing sensitivity following exposure events in ice seals. The research is accomplished using trained behaviors in which the animals voluntarily participate and can leave the testing area at any time.

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

Dated: August 15, 2013.

P. Michael Payne,

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

[FR Doc. 2013–20225 Filed 8–19–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC766

Marine Mammals; File No. 17429

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Sea Life Park Hawaii, 41–202 Kalanianaole Highway Waimanalo, HI 96795 (Jerry Pupillo, Responsible Party), has applied in due form for a permit to maintain non-releasable Hawaiian monk seals (*Monachus schauinslandi*) in captivity for enhancement purposes.

DATES: Written, telefaxed, or email comments must be received on or before September 19, 2013.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 17429 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Room 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 17429 in the subject line of the email comment.

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

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

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Sea Life Park Hawaii proposes to continue to maintain and provide routine animal husbandry and veterinary care for one non-releasable adult Hawaiian monk seal and up to an additional three seals (four total, considering future non-releasable seals) at the monk seal exhibit at Sea Life Park Hawaii in Waimanalo, Hawaii. Sea Life Park would maintain in permanent captivity seals removed from the wild under separate permits for stranding response and enhancement, which are deemed non-releasable to the wild.

The animals will be made available for scientific studies by researchers whose research protocols are approved by the Sea Life Park Hawaii Curator and staff veterinarian and authorized under separate permits. A public conservation and education lecture will be conducted daily concerning the status of Hawaiian monk seals, and educational descriptive signs with current information are on display at the monk seal exhibit. The applicant requests a five-year permit.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to

prepare an environmental assessment or environmental impact statement.

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

Dated: August 15, 2013.

P. Michael Payne,

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

[FR Doc. 2013–20231 Filed 8–19–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC563

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Seismic Survey in the Chukchi Sea, Alaska

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

ACTION: Notice; issuance of an incidental take authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to TGS–NOPEC Geophysical Company ASA (TGS) to take, by harassment, small numbers of marine mammals incidental to a marine 2-dimensional (2D) seismic survey program in the Chukchi Sea, Alaska, during the 2013 Arctic open-water season.

DATES: Effective August 14, 2013, through October 31, 2013.

ADDRESSES: Inquiry for information on the incidental take authorization should be addressed to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. A copy of the application containing a list of the references used in this document, NMFS' Environmental Assessment (EA), Finding of No Significant Impact (FONSI), and the IHA may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401 or Brad Smith, NMFS, Alaska Region, (907) 271–3023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

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 3, 2012, NMFS received an application from TGS requesting an authorization for the harassment of small numbers of marine mammals incidental to conducting an open-water 2D seismic survey in the Chukchi Sea off Alaska. After addressing comments from NMFS, TGS modified its application and submitted a revised application on April 1, 2013, and a revised marine mammal monitoring and mitigation plan on April 15, 2013, with additional clarification on May 7, 2013. TGS' activities discussed here are based on its April 1, 2013, IHA application and April 15, 2013, marine mammal monitoring and mitigation measures.

Description of the Specified Activity

TGS proposes to conduct approximately 9,600 km of marine 2D seismic surveys along pre-determined lines in U.S. waters and international waters of the Chukchi Sea (Figure 1 of TGS' IHA application) during the 2013 open water season. The purpose of the seismic program is to gather geophysical data using a 3,280 in^3 seismic source array and an 8,100-m long hydrophone solid streamer towed by the seismic vessel. Results of the 2D seismic program would be used to identify and map potential hydrocarbon-bearing formations and the geologic structures that surround them.

Approximately 35 days of seismic operations are expected to occur over a period of about 45–60 days in U.S. Chukchi Sea. In addition, up to 33 days of seismic operations may occur in international waters (depending on ice and weather conditions). Seismic operations are proposed to occur along pre-determined track lines at speeds of about four to five knots. Seismic operations would be conducted up to 24 hours per day as possible except as potentially needed for shut-down mitigation for marine mammals. The full 3,280 in^3 airgun array would only be firing during seismic acquisition operations on and near the end and start of survey lines; during turns and transits between seismic lines, a single ''mitigation'' airgun (60 in^3 or smaller) is proposed to be operated.

Two vessels would be used during the survey: (1) a seismic operations vessel that would tow the seismic source array hydrophone solid streamer, and (2) a

smaller vessel that will be used to search for marine mammals and scout for ice and other navigation hazards ahead of the seismic vessel. In the event of an emergency, the scout vessel may be used to support the seismic vessel. In this extraordinary circumstance, all seismic activity will cease since the scout vessel will no longer be devoted to monitoring the exclusion zones.

The seismic vessel will tow a compressed-air seismic source array of 28 Bolt 1900 LLXT airguns with a total discharge volume of 3,280 in^3. The airguns range in volume from 40 in^3 to 300 in^3 and are arranged in a geometric lay-out of three sub-arrays that will be towed approximately 200 m behind the vessel at a depth of 6 m. The seismic source would discharge every 25 m (82 ft) or approximately every 10 seconds. Additional details regarding seismic acquisition parameters are provided in TGS' IHA application. To ascertain whether the seismic source array is operating correctly, the full volume will be enabled for 1 km from the start of every line (i.e., a run in). To ensure full fold data acquisition the vessel will require a 4 km run out at the conclusion of each line. TGS states that gravity and magnetic data will also be passively acquired during the survey by measuring gravity and magnetic variations while traversing the lines (no acoustics are involved with these methods).

The acoustic source level of the proposed 3,280 in^3 seismic source array was predicted using JASCO's airgun array source model (AASM) based on data collected from three sites chosen in the project area by JASCO. Water depths at the three sites were 17, 40, and 100 m. JASCO applied its Marine Operations Noise Model (MONM) to estimate acoustic propagation of the proposed seismic source array and the associated distances to the 190, 180 and 160 dB (rms) re 1 µPa isopleths. The resulting isopleths modeled for the 180 and 190 dB (rms) re 1 µPa exclusion zone distances for cetaceans and pinnipeds, respectively, differed with the three water depths. An additional 10 percent distance buffer was added by JASCO to these originally modeled distances to provide larger, more protective exclusion zone radii distances that will be adhered to during the project (Table 1).

The estimated distances to the 190, 180 and 160 dB re 1µPa (rms) isopleths for the single 60 in^3 airgun (the largest single airgun that would be used as a ''mitigation'' gun) were measured by JASCO during a monitoring sound source verification (SSV) study conducted for Statoil in 2010 in the Chukchi Sea during the open water season of 2010 (Blees *et al.* 2010). Results indicated that the distance to the 190 dB isopleth was 13 m, the 180 dB isopleth distance was 68 m, and the 160 dB isopleth distance was 1,500 m (all dB (rms) re 1 µPa).

TABLE 1—MODELED DISTANCES IN (METERS) TO RECEIVED SOUND LEVELS FOR THE TGS' 3,280 IN^3 AIRGUN ARRAY IN WATERS WITH THREE DIFFERENT DEPTHS IN THE CHUKCHI SEA

Water depths (m)	Received sound level (dB re 1 µPa rms)		
	190	180	160
17–40	930	2,200	8,500
40–100	920	2,500	9,900
>100	430	2,400	15,000

Both vessels would use industry-standard echosounder/fathometer instruments to continuously monitor water depth for navigation purposes while underway. These instruments are the same as those used aboard all large vessels to obtain information on water depths and potential navigation hazards for vessel crews during routine navigation operations. Navigation echosounders direct a single, high-frequency acoustic signal that is focused in a narrow beam directly downward to the sea floor. The reflected sound energy is detected by the echosounder instrument which then calculates and displays water depth to the user. Typical source levels of these types of navigational echosounders are generally 180–200 dB re 1 µPa at 1 m.

One navigational echosounder would be used by the seismic vessel and another one will be used by the scout vessel. The echosounder used by the seismic vessel will consist of a downward-facing single-beam (Kongsberg EA600) that operates at frequencies of 18 to 200 kHz (output power 1–2 kilowatt [kW]). Associated pulse durations are 0.064 and 4.096 milliseconds (ms) long and repetition frequency of the pulse (i.e., the ping rate) is related to water depth. In shallow water, the highest pulse repetition frequency is about 20 pings per second. The scout vessel will use a Furuno 292 echosounder that operates at a frequency of 28 and 88 kHz. The highest ping rate in shallow water is 12 pings per second.

Dates, Duration and Action Area

TGS plans to conduct its 2D seismic surveys in both the U.S. Chukchi Sea and international waters through October 31, 2013. Seismic operations are anticipated to occur for about 35 days over a period of 45–60 days in U.S. waters and up to about 33 days in international waters. Operations in U.S. waters are expected to be complete no later than October 5, 2013. However, poor weather, ice conditions, equipment repair, etc., would likely delay or curtail operations. Thus, this extended period allows flexibility in proposed operational dates, contingent on such conditions. Specific dates and durations of project activities are listed below in chronological order, but are contingent on weather and ice, etc.

The seismic operations are proposed to occur in U.S. and international waters of the Chukchi Sea between about 70–77° N and 154–165° W (Figure 1 of TGS' IHA application). Up to approximately 6,088 km of seismic operations with the full sound source are planned to be conducted in U.S. waters as follows, which include 5,973 km of pre-plot lines plus approximately 115 km for 1-km run-in and 5-km run-out between seismic lines. In addition, approximately 1,556 km with the single 60 in^3 (or smaller) mitigation airgun are planned to be conducted during turns and transits between lines. Approximately 3,691 km of seismic operations with the full seismic source as follows are planned to be conducted in international waters, which include 3,631 km of pre-plot lines plus about 60 km of 1-km run-in and 5-km run-out between pre-plot lines. In addition, approximately 812 km with the single 60 in^3 (or smaller) mitigation airgun are planned to be conducted during turns and transits between seismic lines. Most of the total approximately 9,600 km of seismic lines occur in water 40–100 m deep (82% or 7,890 km), followed by waters >100 m deep (14% or 1,320 km) and waters <40 m deep (4% or 390 km).

Comments and Responses

A notice of NMFS' proposal to issue an IHA to TGS was published in the **Federal Register** on June 12, 2013 (78 FR 35508). That notice described, in

detail, TGS' activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals and the availability of marine mammals for subsistence uses. During the 30-day public comment period, NMFS received three comment letters from the following: the Marine Mammal Commission (Commission); the Alaska Eskimo Whaling Commission (AEWC); the North Slope Borough; the Alaska Wilderness League (AWL), Center for Biological Diversity, Earthjustice, Greenpeace, International Fund for Animal Welfare, Natural Resources Defense Council, Northern Alaska Environmental Center, Ocean Conservation Research, Oceana, Redoil, and Sierra Club (collectively ''AWL''), and two private citizens.

Any comments specific to TGS' application that address the statutory and regulatory requirements or findings NMFS must make to issue an IHA are addressed in this section of the **Federal Register** notice.

Impacts Analysis

Comment 1: A private citizen states that NMFS may not issue the IHA because it kills marine animals.

Response: As discussed in detail in the **Federal Register** notice for the proposed IHA and in this document, the potential effects to marine mammals from TGS' 2D seismic surveys would be Level B behavioral harassment of small numbers of marine mammals in the project vicinity, and no injury, serious injury, or mortality is expected. In addition, no injury, serious injury, or mortality to marine mammal is authorized by NMFS under this IHA.

Comment 2: The AEWC noted that on page 35516 of the **Federal Register** notice for the proposed IHA, NMGS stated that ''though temporary diversions of the swim path of migrating whales have been documented, the whales have generally been observed to resume their initial migratory route.'' The AEWC argues that there is no research support migrating bowhead whales return to their normal migratory path following deflection.

Response: NMFS acknowledges that the above statement made in the **Federal Register** notice was somewhat misleading. NMFS has corrected the statement to read ''though temporary diversions of the swim path of migrating whales have been documented, the whales have generally been observed to continue their migration via a deflected migratory route.''

Comment 3: The AEWC states that NMFS also needs to point out the potential for whales to become skittish—changing their swim speeds, breathing rates, and other migratory behavior—when affected by the proposed open-water seismic surveys and vessel noise, even when they do not deflect from their migratory path.

Response: NMFS is aware of the potential effects of whales becoming skittish when exposed to seismic surveys and vessel noise, and has incorporated this information in this document.

Comment 4: The NSB states that the distances estimated for the 190 and 180 dB zones seem reasonable but the 160 dB zone may be substantially low. The NSB points out that previous sound source verifications (SSV) conducted in the Chukchi Sea measured distances of ~ 8,000 to ~ 13,500 m for the 160 dB zone in similar water depths as proposed by TGS. The NSB requests that NMFS require applicants to provide data from previous SSV tests in future applications, even those conducted by other companies, as a check on the modeled estimates. The NSB further states that NMFS should require TGS to provide some sort of estimate of the possible variability in distances for each of the isopleths.

Response: As stated in the **Federal Register** notice for the proposed IHA, as well as in TGS' IHA application, the acoustic source levels of the seismic source array and mitigation airgun were calculated using JASCO's airgun array source model (AASM) based on data collected from three sites chosen in the project area reported in SSV for Statoil in 2010 by JASCO (see TGS' IHA application Appendix C). Water depths at the these three sites were 17, 40, and 100 m, and the modeled 160 dB zones range from 8,500 to 15,000 m. The possible variability in distances for the isopleths has been considered and the originally modeled exclusion zones were expanded by 10 percent by JASCO to provide larger, more protective exclusion zones.

Comment 5: The Commission requests NMFS provide stronger assurance that the actual numbers of takes would be negligible by revising the estimates to (1) incorporate some measure of uncertainty in that estimate (e.g., upper and lower confidence limits) or (2) use maximum estimated densities. The AWL also claims that NMFS density estimations are arbitrary, and that maximum estimated densities should be used.

Response: As discussed in detail in the **Federal Register** notice for the proposed IHA, TGS' 2D seismic survey areas include the U.S. Chukchi Sea and the international waters north of 72° N, where marine mammal density is less certain, primarily due to lack of systematic scientific surveys. Therefore, density estimates for the proposed seismic survey area were based on two types of sources: (1) Dedicated marine mammal abundance surveys for certain areas and species, and (2) sightings of marine mammals observed from prior seismic surveys when seismic airgun arrays were off. The latter data were used to calculate marine mammal densities for areas with high uncertainties (because of the lack of well designed, dedicated marine mammal surveys). Since these latter data were based on a few opportunistic sightings, it was not possible to perform a rigorous statistical analysis and derive upper and lower confidence limits. In fact, some of these densities in the north of 72° N were actually based on marine mammal densities south of 72° N, which is considered protective because it over-estimates take numbers.

In this case, NMFS has chosen to use the average density data of marine mammal populations to calculate estimated take numbers because these numbers are based on dedicated surveys and monitoring of marine mammals in the vicinity of the proposed project area. ''Maximum densities'' are typically the average densities multiplied by a factor of 4 or 5, and the method of their derivation is not scientifically justified and would likely result in an overestimate. For several species whose average densities are too low to yield a take number due to extra-limital distribution in the vicinity of the proposed Chukchi Sea survey area, but whose chance occurrence has been documented in the past, such as killer whales, narwhales, and harbor porpoises, NMFS allotted a few numbers of these species to allow unexpected takes.

The negligible determination is based on analysis of the potential effects of the specific activities (i.e., airgun impulses from TGS' 2D seismic surveys) on marine mammals, as well as the effectiveness of the required monitoring and mitigation measures to minimize such effects. Although different marine mammal densities used for take calculation may yield different take numbers, the result is not likely to change the nature of potential effects. In addition, an inflated take number based on ''maximum densities'' could lead to more takes being authorized. Finally, based on prior year marine mammal monitoring reports from Arctic seismic surveys, it is well documented that the numbers of marine mammals (modeled and corrected to account for animals not observed) exposed to noise levels above harassment thresholds were always

lower than take numbers calculated based on average densities.

Comment 6: The NSB states that beluga whales from both the Chukchi Sea stock and Beaufort Sea stock will be found in TGS' proposed seismic survey area. The NSB further points out that the Chukchi Sea stock will certainly be there throughout the summer and the Beaufort Sea stock will migrate through the Chukchi Sea during autumn migration in September and October. The NSB states that it is unlikely that PSOs will see belugas from the vessels because the animals are very sensitive to anthropogenic sounds. The NSB states that TGS should be required to have a monitoring technique that will allow them to observe belugas in the far field (i.e., beyond the visual observers view). In addition, citing TGS' IHA application, the NSB points out that although it is true that most observations of belugas tend to be near the shore, the entire Beaufort Sea stock of beluga whales migrates south through the Chukchi Sea. The NSB further states that satellite tagged belugas from the Beaufort Sea stock migrate south through the Chukchi Sea far offshore in some cases.

Response: While the Beaufort Sea stock beluga whales do migrate through the Chukchi during their fall migration, NMFS considers it unlikely TGS would encounter this population during its open-water seismic survey because of the temporal and spatial design of the survey. TGS plans on surveying the Alaskan Chukchi first in August when the Beaufort Sea stock beluga whales will be in their Beaufort Sea summer area. Although recent tagging studies showed that Beaufort Sea stock beluga whales migrate through deep water during their fall westward migration, the majority of the animals are expected to stay below 72° N in September (Hauser *et al.* 2013). In October, most Beaufort Sea beluga whales will have moved farther south/west along the Russian Chukchi Sea (Hauser et al. 2013). The TGS survey area during September and October will be moved farther north offshore in international waters above 72° N. Therefore, it is not likely the survey would encounter Beaufort Sea stock beluga whales during the latter portion of the surveys.

Regarding far field monitoring of marine mammals, as stated in the **Federal Register** notice for the proposed IHA, visual monitoring from a scout vessel at the perimeter of the exclusion zone as well as towed passive acoustic monitoring will be implemented.

Comment 7: Citing TGS' IHA application that harbor porpoises are unlikely to occur in significant numbers within the seismic survey area, the NSB argues that this is a misstatement. Citing Industry's Joint Monitoring Program Reports for the Chukchi and Beaufort Seas and 90-day monitoring reports since 2006, the NSB points out that in recent industry surveys, harbor porpoises are one of the most commonly seen cetaceans in the Chukchi Sea. The NSB further points out that harbor porpoises are among the most commonly sighted cetaceans in Table 3 of TGS' IHA application. The NSB states that TGS must consider this cetacean in their assessment of possible impacts to marine mammals from the proposed seismic survey.

Response: While NMFS does not disagree with the NSB assessment regarding the occurrence of harbor porpoises in Chukchi Sea, it is also important to note that the area where harbor porpoise occurrences were recorded in the Industry's Joint Monitoring Program Report for the Chukchi and Beaufort Seas are limited to within the U.S. Beaufort Sea, while much of TGS' proposed 2D seismic survey area is located in international waters farther north and offshore, which is not likely a habitat for the harbor porpoise, which occur more often inshore. Further, while TGS may have inaccurately characterized the abundance of harbor porpoises in the U.S. Chukchi Sea, where part of its 2D seismic surveys would occur, NMFS conducted its own analyses in determine the potential impacts to all marine mammal species within both U.S. Chukchi Sea and international waters. Finally, as the NSB also noticed, the harbor porpoise densities presented in Table 3, which were used to calculate take estimates, actually used information from 90-day monitoring reports submitted in prior years by holders of incidental take authorizations, and took into consideration the high occurrence of this species in the U.S. Chukchi Sea.

Comment 8: Citing TGS' IHA application, the NSB points out that TGS' statement that its activities are ''expected to be temporary and minor, with no long-term impacts to individuals or populations based on available studies'' is misleading. The NSB pointed out that no one has examined the long-term effects from seismic exposure; therefore no data exist to evaluate the long-term effects.

Response: NMFS agrees with the NSB's assessment that the long-term effects on marine mammals from seismic surveys are still largely unknown, therefore, the statement made by TGS in its IHA application needs to be viewed with caution. Nevertheless, in making the determination to issue the IHA to TGS, NMFS conducted its own analyses and evaluation. A more detailed discussion on potential anthropogenic noise impacts on marine mammals and marine mammal habitat can be found in the **Federal Register** notice for the proposed IHA, as well as in this document.

Comment 9: The Commission requests that NMFS require TGS to revise its take estimates such that adjustment factors do not reduce the estimated densities for waters north of 72° N latitude without additional scientific basis for those adjustments. The NSB also pointed out that satellite tagging of beluga whales indicated many of the whales traveled to north of 72° N. The NSB questions how TGS is going to monitor and assess possible impacts to beluga whales.

Response: NMFS believes that this comment is due to the language presented in TGS' original IHA application. The initial IHA application submitted by TGS in November 2012 contained an adjustment factor of 0.01 for gray whales, 0.10 for bowhead and beluga whales, and ringed and bearded seals for areas above 72° N. This IHA application, though not published for public comment as NMFS did not consider it complete, was submitted to a peer review panel, which included members from the Commission and the NSB, for review and comment. After receiving NMFS comments and recommendations, TGS subsequently modified its analysis and submitted a revised IHA application on April 1, 2013. The revised IHA application included ''upper-adjusted density estimates'', which is virtually the same adjustment proposed in TGS' initial IHA application, and ''lower-adjusted density estimates'', which only make an adjustment for gray whales north of 72° N by a factor of 0.2. No adjustments were made for bowhead and beluga whales and bearded and ringed seals north of 72° N.

In NMFS calculation of take estimates, the ''lower-adjusted density estimates'' were used for adjusting the gray whale numbers because reported gray whale distribution in the Chukchi Sea normally does not extend much north of 72° N during summer/fall (Clarke and Ferguson 2010). This northernmost peripheral boundary area is thus expected to have very low gray whale densities. In addition, by fall when TGS enters into the international waters after completing surveys in the U.S. Chukchi Sea, most gray whales will have migrated south of the project area north of 72° N (Rice and Wolman 1971; Allen and Angliss 2011).

Comment 10: The NSB states that Table 4 of TGS' IHA application showed that all adjustments would lower the densities of marine mammals north of 72° N as all the values are ≤1. The NSB also notes that the footnote (*) suggests the densities may increase but because the factors are one or less the densities will all actually decrease. The NSB asks if this is appropriate for all species, especially belugas. The NSB further notes that belugas have a mark for a footnote (**) but there is no corresponding discussion associated with the footnote.

Response: As discussed in the previous response to comment, the adjustment factors under ''high adjustment'' were carried over from TGS' previous IHA application, and were not used in density estimates. Regarding the ''low adjustment'', there is only one adjustment factor (0.2) for gray whales, which is explained in the previous response to comment. Several species such as humpback, fin, minke, and killer whales, harbor porpoises, and ribbon and spotted seals, are not expected to occur north of 72° N, therefore NMFS does not believe they would be taken north of 72° N. For the rest of the marine mammal species, including beluga whales and bowhead whales, no adjustment was made in take calculation. As far as the extra footnote for beluga whale in Table 4 of TGS' IHA application, TGS responded that the corresponding notes to the footnote for beluga should read ''the beluga population estimate for the E Chukchi Sea is based on the minimum population estimate, as this is the only and most current up to date population estimate per the NMFS Stock Assessment Report.'' The note was accidentally omitted.

Comment 11: The NSB notes that TGS should be congratulated for providing a range of estimates of numbers of marine mammals that may be exposed to seismic sounds. The NSB further states that this approach is an improvement over a single point estimate that is typically provided in an IHA application.

Response: NMFS agrees with the NSB assessment that presenting a range of estimates of numbers of marine mammal that may be exposed to anthropogenic sounds is a better approach than a single number estimate.

Comment 12: The NSB states that the approach for calculating the size of the ensonified area could lead to a negative bias in animals exposed to seismic sound because there are areas of overlap. The NSB notes that since most marine mammals will not stay stationary in one location of the Chukchi Sea over extended periods of time, the areas of overlap should be counted twice.

Response: NMFS does not completely agree with the NSB's assessment. While there is a potential for negative bias in calculating animals exposed to seismic sound where the take zones overlap but the calculation is based on multiplying the ensonified area by marine mammal densities, such cases are only applicable to 3D seismic surveys and site clearance and shallow hazard surveys where the survey track lines are much closer together. For TGS' 2D seismic survey, the ensonified areas are established along each track line, which took into consideration areas where track lines crisscross and thus the overlapping areas are accounted for. Therefore, even though marine mammals may move in/out the survey area, the entire ensonified areas along the track lines were included in the calculation of exposures.

Comment 13: The NSB and AWL claims that NMFS underestimated the number of animals that would be harassed from TGS's survey because it calculates harassment from TGS's proposed survey based on the exposure of marine mammals to impulsive sounds at or above 160 dB. The AWL states that this uniform approach to harassment does not take into account known reactions of marine mammals in the Arctic to levels of noise well below 160 dB. The NSB states that bowhead and beluga whales respond to anthropogenic sound at lower levels, as low as or lower than 120 dB. Without citing specific research, the AWL claims that ''for harbor porpoises, behavioral changes, including exclusion from an area, can occur at received levels from 90–110 dB [near ambient level] or lower,'' and beluga whales ''are known to alter their migration paths in response to ice breaker noise at received levels as low as 80 dB [quiet ambient level].'' The AWL further pointed out that NMFS acknowledged the potential for behavioral disturbance to belugas at distances of 10–20 km, and for bowhead whales to react to sound levels lower than 160 dB.

Response: NMFS does not agree with NSB and AWL's assessment on acoustic effects of marine mammals. Even though bowhead and beluga whales have been observed to respond to anthropogenic sound levels as low as 120 dB, as stated by the NSB, most likely those are non-impulse sounds (such as noise from icebreaking) as NSB did not provide specific description of characteristics of the noise. In general, marine mammals tend to respond to short pulses at higher received levels than longer non-pulse sound, hence the difference in NMFS current criteria of different take thresholds.

In regards to the AWL's argument, first, the AWL did not provide a reference on harbor porpoise behavioral responses and exclusion from an area to received levels at 90–110 dB or lower, which is near the ambient noise level. Second, for the beluga whale example at quiet ambient level, although also not supported by a reference, such a deviation could be attributed to noise exposure to continuous sound (icebreaker), rather than exposure to seismic impulses. Additionally, as TGS does not intend to use icebreakers during its operations, statements regarding beluga reactions to icebreaker noise are not relevant to this activity. Concerning the behavioral disturbance by belugas at distances of 10–20 km, there was no mention of received level, so it is irrelevant to the AWL's argument concerning 160 dB received noise levels.

Additionally, as stated in the past, NMFS does not believe that minor course corrections during a migration will always equate to ''take'' under the MMPA. This conclusion is based on controlled exposure experiments conducted on migrating gray whales exposed to the U.S. Navy's low frequency sonar (LFA) sources (Tyack 2009). When the source was placed in the middle of the migratory corridor, the whales were observed deflecting around the source during their migration. However, such minor deflection is considered not to be biologically significant. To show the contextual nature of this minor behavioral modification, recent monitoring studies of Canadian seismic operations indicate that when not migrating, but involved in feeding, bowhead whales do not move away from a noise source at an SPL of 160 dB. Therefore, while bowheads may avoid an area of 20 km (12.4 mi) around a noise source, when that determination requires a post-survey computer analysis to find that bowheads have made a 1 or 2 degree course change, NMFS believes that does not rise to a level of a ''take.'' NMFS therefore continues to estimate ''takings'' under the MMPA from impulse noises, such as seismic, as being at a distance of 160 dB (re 1 μPa). Although it is possible that marine mammals could react to any sound levels detectable above the ambient noise level within the animals' respective frequency response range, this does not mean that such animals would react in a biologically significant way. According to experts on marine mammal behavior, the degree of reaction which constitutes a ''take,'' i.e.,

a reaction deemed to be potentially biologically significant or that could potentially disrupt the migration, breathing, nursing, breeding, feeding, or sheltering, etc., of a marine mammal is complex and context specific, and it depends on several variables in addition to the received level of the sound by the animals. These additional variables include, but are not limited to, other source characteristics (such as frequency range, duty cycle, continuous vs. impulse vs. intermittent sounds, duration, moving vs. stationary sources, etc.); specific species, populations, and/or stocks; prior experience of the animals (naive vs. previously exposed); habituation or sensitization of the sound by the animals; and behavior context (whether the animal perceives the sound as predatory or simply annoyance), etc. (Southall *et al.* 2007).

NMFS is in the process of developing revised acoustic criteria and thresholds for different sources, including seismic sources. The revised acoustic criteria will be peer-reviewed and made available for public comment. Until that process is complete, it is not appropriate to apply the new criteria and thresholds in any incidental take authorization. Instead, NMFS will continue its longstanding practice of considering specific modifications to the acoustic criteria and thresholds currently employed for incidental take authorizations only after providing the public with an opportunity for review and comment and responding to the comments.

Comment 14: The AWL states that uncertainty precludes conclusions regarding take number and potential impacts. The AWL further states that NMFS must consider the extent of missing information about ecosystems in the Chukchi Sea, especially considering the large footprint of TGS' proposed survey.

Response: Although NMFS agrees that it would be desirable to obtain additional information about the Chukchi Sea ecosystem and regional populations of marine mammals, NMFS has sufficient information to support its analysis of the potential impacts of TGS's proposed marine surveys on wildlife. As required by the MMPA implementing regulations at 50 CFR 216.102(a), NMFS has used the best scientific information available in assessing the level of take and whether the impacts would be negligible. The **Federal Register** notice for the proposed IHA, NMFS EA for the issuance of IHAs to take marine mammals incidental to open-water marine and seismic surveys in 2013, and this document all provide detailed analysis using the best available scientific information that enables NMFS to make the required determinations. In addition, the required monitoring and mitigation measures prescribed in the IHA NMFS issued to TGS will further reduce any potential impacts of the proposed marine surveys on marine mammals.

Comment 15: The AWL states that NMFS may not issue the IHA because it has not negated the possibility of serious injury from TGS's airguns. Further, the AWL noted that 18 years ago, NMFS once stated that permanent hearing loss qualifies as serious injury (60 FR 28381, May 31, 1995). A private citizen further states that the marine survey is ''massive deadly'' to marine mammals.

Response: NMFS does not agree with the private citizen and AWL's assessment. NMFS was able to make a preliminary determination in the **Federal Register** for the proposed IHA to TGS to take marine mammals incidental to its open-water marine surveys. In addition, NMFS' preliminary determination states that the potential effects would be Level B behavioral harassment of small numbers of marine mammals in the project vicinity, and no injury, serious injury, or mortality is expected.

Concerning the AWL's comments on NMFS 1995 proposed rule to implement the process to apply for and obtain an IHA, NMFS stated that authorizations for harassment involving the ''potential to injure'' would be limited to only those that may involve non-serious injury (60 FR 28379; May 31, 1995). While the **Federal Register** notice cited by the commenters states that NMFS considered PTS to be a serious injury (60 FR 28379; May 31, 1995), our understanding of anthropogenic sound and the way it impacts marine mammals has evolved since 1995, and NMFS no longer considers PTS to be a serious injury. NMFS has defined ''serious injury'' in 50 CFR 216.3 as ''. . . any injury that will likely result in mortality.'' There are no data that suggest that PTS would be likely to result in mortality, especially the limited degree of PTS that could hypothetically be incurred through exposure of marine mammals to seismic airguns at the level and for the duration that are likely to occur in this action.

Further, as stated several times in this document and previous **Federal Register** notices for seismic activities, there is no empirical evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns (see Southall *et al.* 2007). PTS is thought to occur several decibels above that inducing mild temporary threshold shift (TTS), the mildest form of hearing impairment (a non-injurious effect). NMFS concluded that cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding, respectively, 180 and 190 dB re 1 μPa (rms). The established 180- and 190-dB re 1 μPa (rms) criteria are the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS before TTS measurements for marine mammals started to become available, one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals. Additionally, NMFS has required monitoring and mitigation measures to negate the possibility of marine mammals being seriously injured or killed as a result of TGS's activities. In the proposed IHA, NMFS determined that TGS's activities are unlikely to even result in TTS. Based on this determination and the explanation provided here, PTS is also not expected. Therefore, an IHA is appropriate.

Comment 16: The AWL claims that NMFS' take estimates of 30,000 ringed seals, close to 1,500 gray whales, 800 bowhead whales, and 400 beluga whales do not meet MMPA's ''small number'' requirement. The AWL further claims that NMFS underestimated the Level B takes in the proposed IHA.

Response: NMFS does not agree with the AWL's assessment. First, as mentioned in the **Federal Register** notice for the proposed IHA and in this document, the estimated takes of the bowhead, gray, and beluga whales and ringed seals represent 7.53%, 7.13%, 11.11%, and 14.36% of their populations, respectively. As described in the Negligible Impact and Small Numbers Analysis and Determination section of this document, NMFS considers the number of authorized takes small. In addition, the percent population of bowhead whale takes is further reduced to 4.70% based on the most recent surveys and on the recommendation by scientists from the NSB (see *Response to Comment 39*).

As discussed in detail in the Negligible Impact and Small Numbers Analysis and Determination section of this document, all takes from TGS' proposed open-water seismic surveys are expected to be Level B behavioral harassment, in the form of startle behavior or vacating the area for the short duration of time when the seismic airgun is firing in the area. Animals could also change their behavior patterns during this short duration, but are expected to resume their normal activities and reoccupy the area as soon

as the vessels move away. Additionally, since a portion of the proposed open-water seismic survey is planned in offshore waters far north above 72° N, it is expected to be outside the gray whale habitat. In addition, the mitigation and monitoring measures (described previously in the **Federal Register** notice for the proposed IHA) included in the IHA are expected to further reduce any potential disturbance to marine mammals.

Comment 17: The AWL claims that NMFS' negligible impact finding is unjustified.

Response: NMFS does not agree with the AWL's assessment. First, as discussed in the Negligible Impact and Small Numbers Analysis and Preliminary Determination section of the **Federal Register** notice for the proposed IHA, based on rigorous analyses, TGS' proposed 2D seismic surveys in the Chukchi Sea are expected to result in takes of small numbers of marine mammals in the form of Level B behavioral harassment. Animals exposed to airgun noises are expected to show brief startle reactions or to temporarily vacate the seismic site. No injury, serious injury, or mortality is expected, and none is authorized. Please also see *Responses to Comments 15 and 16* for additional justification.

Comment 18: The AWL states that NMFS must consider potential effects from masking and stress.

Response: NMFS agree that potential acoustic masking and stress caused by anthropogenic sources could negatively affect marine mammal fitness and survival. The potential impacts from masking and stress by seismic surveys are considered and discussed in detail in the **Federal Register** notice for the proposed IHA. In this case, masking effects of pulsed sounds on marine mammal calls and other natural sounds are expected to be limited. Some whales continue calling in the presence of seismic pulses (e.g., Richardson *et al.* 1986; McDonald *et al.* 1995; Greene *et al.* 1999a, 1999b; Nieukirk *et al.* 2004; Smultea *et al.* 2004; Holst *et al.* 2005a, 2005b, 2006; Dunn and Hernandez 2009). In addition, marine mammals are thought to be able to compensate to some degree for masking by adjusting their acoustic behavior such as shifting call frequencies, and increasing call volume and vocalization rates, as discussed in the **Federal Register** notice for the proposed IHA (e.g., Miller *et al.* 2000; Parks *et al.* 2007; Di Iorio and Clark 2009; Parks *et al.* 2010).

Although not much is known about potential stress to marine mammals from exposure from seismic surveys, the TGS' proposed 2D survey in the Chukchi Sea is short in duration, and will not stay in one area. Therefore, as analyzed in the **Federal Register** notice for the proposed IHA, the potential effects are expected to be negligible.

Mitigation

Comment 19: AEWC requested that NMFS include the following provisions of the 2013 CAA in Section 6(d) of the IHA issued to TGS: Section 202(a) and (c): Com-Center General Communications Scheme; Section 204: Standardized Log Books; Section 302: Barge and Transit Vessel Operations; Section 402: Sound Signature Tests; Section 501: General provisions for Avoiding Interference with Bowhead Whales or Subsistence Whale Hunting Activities; Section 502(b): Limitations on Geophysical Activity in the Chukchi Sea; Section 505: Termination of Operations and Transit Through the Bering Strait; and Title VI, Sections 601 and 602: Late Season Seismic Operations.

Response: NMFS has incorporated the above provisions of the 2013 CAA into the IHA issued to TGS, as these measures will help ensure there is no unmitigable adverse impact on the availability of affected species or stock(s) for subsistence uses.

Comment 20: The Commission requested that NMFS specify reduced vessel speeds of 9 knots or less when weather conditions or darkness reduce visibility.

Response: NMFS worked with TGS and included the speed limitation requested by the Commission in the IHA as a mitigation measure for vessel movement.

Comment 21: A private subsistence user comments that since seals diving to the bottom to feed on benthic organisms in deep water can stay down for an hour or more, NMFS should extend the visual monitoring of the exclusion zone to 30 minutes or longer before ramping up, after a shutdown due to a pinniped entering the zone.

Response: NMFS is aware that pinnipeds are able to dive for long periods. However, in the case of TGS' 2D seismic survey, the required condition for ramping up seismic airguns after a shutdown triggered by pinniped presence is that (1) the pinniped is visually observed to have moved out of the exclusion zone, or (2) 15 minutes have passed since the last time the pinniped is seen. The time duration of 15 minutes is not based on the depth to which the pinniped can dive. Rather, it is based on the relatively small 190-dB exclusion zone for pinnipeds, and the speed of the seismic vessel, which is typically between 4 and 5 knots. As presented in the **Federal Register** notice for the proposed IHA, the modeled 190-dB exclusion zones range from 430–930 m, depending on depth. Assuming that the radius of the zone is 930 m, and the source vessel is moving at a speed of 4 knots (7.4 km/hr), then in 15 minutes, the vessel will be at a location 1.85 km from where the pinniped was initially sighted. Therefore, NMFS believes that 15 minutes is a long enough duration to wait prior to safely ramping up seismic airguns after a shutdown caused by the presence of a pinniped.

Comment 22: The AWL states NMFS should include provisions in the IHA that restrict TGS's operations based on geographic location, and/or time of year, such as restricting activity in certain areas, including subsistence use areas, areas of high productivity or diversity; areas that are important for feeding, migration, or other parts of the life history of species; or areas of biogenic habitat, structure-forming habitat, or habitat for endangered or threatened species.

Response: While processing the proposed IHA, NMFS worked with TGS and conducted extensive analysis on the areas where TGS's proposed open-water marine surveys would occur. The areas TGS proposed to have its proposed marine surveys are analyzed in the proposed IHA process, during the section 7 consultation under the ESA, as well as under the NEPA analysis conducted during preparation of the EA. However, NMFS did not find that further restriction is needed given that no areas of high productivity or diversity, areas that are important for feeding and migration, or critical habitat for endangered or threatened species were found. Nevertheless, certain time and area restrictions are included in the IHA to minimize potential impacts on subsistence activities which are consistent with the CAA TGS has signed. These time and area restrictions are:

- Vessels should remain as far offshore as weather and ice conditions allow, and at least five miles offshore during transit,
- From August 31 to October 31 vessels in the Chukchi Sea or Beaufort Sea shall remain at least 20 miles offshore of the coast of Alaska from Icy Cape in the Chukchi Sea to Pitt Point on the east side of Smith Bay in the Beaufort Sea whether in transit or engaging in activities in support of oil and gas operations unless ice conditions or an emergency that threatens the safety of the vessel or crew prevents compliance with this requirement,

• Beginning September 15, and ending with the close of the fall bowhead whale hunt, if Wainwright, Pt. Lay, or Pt. Hope intend to whale in the Chukchi Sea, no more than two geophysical activities employing geophysical equipment will occur at any one time in the Chukchi Sea. During the fall bowhead whale hunt, geophysical equipment will not be used within 30 miles of any point along the Chukchi Sea coastline. Industry participants will contact the Whaling Captains' Associations of each village to determine if a village is prepared to whale and will notify the AEWC of any response, and

• All Industry participant vessels shall complete operations in time to allow such vessels to complete transit through the Bering Strait to a point south of 59 degrees North latitude no later than November 15, 2013.

Comment 23: The AWL states that NMFS should examine imposing requirements for the use of new technology that could reduce the footprint of seismic exploration. The AWL cited an expert conference in February in Silver Spring, Maryland, by NMFS on alternative technologies for offshore energy production and requested that NMFS consider (1) Mandating the use of marine vibroseis or other technologies in some or all of the survey area; (2) mandating the testing of marine vibroseis in a pilot area, precedent to a decision to permit seismic activity, with an obligation to accrue data on environmental impacts; (3) deferring the permitting of surveys in part or all of the survey area until effective mitigative technologies, such as marine vibroseis, become available; (4) providing incentives for TGS's use of these technologies as was done for passive acoustic monitoring systems; and (5) exacting funds from TGS to support accelerated mitigation research in this area.

Response: First, the February workshop (not an ''expert conference'') in Silver Spring, Maryland, titled Quieting Technologies for Reducing Noise during Seismic Surveying and Pile Driving, was convened by BOEM, not NMFS. The goals of the workshop, as stated in the Web site of the workshop, were to (1) Review and examine recent developments (existing, emerging, and potential) in quieting technologies for seismic surveying, whether proposed or in development; (2) identify the requirements for operation and limitations for using these technologies; (3) evaluate data quality and cost-effectiveness of these technologies as compared to that from existing marine acoustic technologies; (4) identify the acoustic characteristics of new technologies in varying environments compared to that from existing technologies; (5) examine potential environmental impacts from these technologies; (6) identify which technologies, if any, provide the most promise for full or partial traditional use and specify the conditions that might warrant their use (e.g., specific limitations to water depth, use in Marine Protected Areas, etc.); and (7) identify next steps, if appropriate, for the further development of these technologies, including potential incentives for field testing. Most of these technologies are still in research and development stages and have not been field tested. The workshop provided a forum for discussion and evaluation of such technologies, including vibroseis. NMFS supports and encourages both the development and use of technologies that will reduce impacts to marine mammals and other marine species. These alternative technologies will likely be adopted for use to replace some subset of future seismic survey activities once their development is further along and their environmental impacts, especially as compared to seismic airguns, are better understood. However, NMFS does not believe it can currently mandate the use of such technologies.

Monitoring

Comment 24: The Commission requests NMFS only authorize an in-season adjustment in the size of the exclusion and/or disturbance zones if the size(s) of the estimated zones are determined to be too small. The Commission states that the purpose of SSV is to ensure protection of marine mammals, and one way to reduce risk to marine mammals would be to only allow expansion of the exclusion and/or disturbance zones.

Response: NMFS does not agree with the Commission's recommendation. While it may seem to be more protective to increase the size of the exclusion zone, if the effectiveness of visual-based marine mammal monitoring remains the same, the actual result may not be an increase in protection. For example, when the SSV suggests that the exclusion and/or disturbance zones are smaller than the ones modeled and monitoring still focuses on the larger modeled zones, it is likely that the effectiveness of marine mammal monitoring could be reduced as the area to be monitored would be larger than necessary. In addition, larger than realistic exclusion zones would cause unnecessary power-down and shutdowns, which could increase the total duration of the marine surveys, and cause unnecessary impacts to the marine environment.

Comment 25: The Commission requests NMFS require TGS to monitor for marine mammals 30 minutes before, during, and 30 minutes after survey operations and other activities have ceased.

Response: TGS is required to monitor for marine mammals 30 minutes before, during, and 30 minutes after survey operations and other activities have ceased.

Comment 26: The Commission requests NMFS encourage TGS to deploy additional protected species observers to (1) increase the probability of detecting all marine mammals in or approaching the Level A and B harassment zones and (2) assist in the collection of data on activities, behaviors, and movements of marine mammals around the source.

Response: NMFS agrees that an adequate number of PSOs is critical to ensure complete coverage in visual monitoring and implementing mitigation measures. While it is reasonable to conclude that additional PSOs would increase detection capability to a certain degree, the number of PSOs that can be stationed on vessels is limited by the available berth spaces. TGS plans to have 5 PSOs onboard the survey vessel and 4 onboard the scout vessel, and will have 100% monitoring coverage during all periods of survey operations in daylight. In addition, each PSO is limited to maximum of 4 consecutive hours per watch and maximum of 12 hours of watch time per day. NMFS believes that the number of PSOs onboard is adequate given the limited space available on the survey vessel.

Comment 27: The NSB notes that towed PAM will be used for marine mammal monitoring during TGS' 2D seismic survey. The NSB states that PAM is still in the research and development phase, and that it is not clear whether it will provide useful data. In addition, the NSB states that since the PAM will be towed by the scout vessel thus presumably reducing the maneuverability of the scout vessel. The NSB further states that the scout vessel would have a more difficult time visually monitoring the safety and behavioral impact zones with the streaming towed array.

Response: NMFS is aware of the technical challenges involved in towed PAM for marine mammal monitoring. Nevertheless, given the needs for marine mammal monitoring at far-field beyond visual observation, and the technological progresses made in the

past few years regarding towed PAM, it is worth the efforts to require towed PAM as an extra modality to monitor marine mammal presence in the seismic survey area, and to enhance visual monitoring. Towed PAM has been used in past IHAs issued by NMFS for marine mammal monitoring in the Arctic (e.g., open-water seismic survey by StatOil in the Chukchi Sea in 2010), and the results indicated more acoustic detections than visual detections, and acoustic detections have led to visual detections of marine mammals. Regarding towed PAM for TGS' 2D seismic survey, NMFS worked with the applicant and its acoustic contractor and carefully reviewed all technical aspects of the acoustic monitoring design and methods. The reason that PAM will be conducted from the scout vessel is to decouple the PAM array from the seismic streamer and airgun arrays. In addition, because the purpose of the towed PAM is to expand the monitoring to the far-field by positioning them approximately 2 km ahead of the seismic vessel, it makes sense that the PAM array be deployed off the scout vessel. The design will not reduce the maneuverability of the scout vessel since the scout vessel is positioned to be approximately 2 km ahead of the seismic vessel for far-field monitoring. More details of the towed PAM design and discussion are described in TGS' 4MP.

Comment 28: The NSB states that because the towed PAM is not a proven technique for monitoring marine mammals in the vicinity of a seismic survey in the Arctic, NMFS should require TGS to collect acoustic data using bottom mounted instruments. The NSB states that TGS should deploy at least several instruments in the northern areas of their proposed seismic survey area.

Response: As discussed above, NMFS is aware of the technical challenges involved in implementing towed PAM for marine mammal monitoring. The justification and improvement in implementing the towed PAM as an effective tool for marine mammal monitoring is discussed in *Response to Comment 27.* As discussed in the **Federal Register** notice for the proposed IHA, NMFS discussed extensively with TGS ways to improve the far-field marine mammal monitoring. As a result, upon further investigation and conversations with both JASCO and Bio-Waves by TGS, as well as further research into past Arctic marine mammal monitoring results conducted with towed-PAM, NMFS and TGS agree that utilizing a well-designed towed-PAM system would be a better choice under this circumstance to provide enhanced marine mammal monitoring beyond exclusion zones in a real time basis, as well as using acoustic data for limited relative abundance and distribution analysis, and possibly limited insights on impacts to marine mammals.

NMFS also studied other PAM methodologies suggested by the peer-review panel. First, concerning deploying fixed bottom mounted instruments, TGS states that it worked with other operators but was not able to find a collaborator to participate in long-term acoustic monitoring due to the short-term nature of the proposed survey. Regarding real-time acoustic monitoring with a fixed buoy, TGS stated that it conducted an evaluation of this option and discussed the possibility with Cornell University's Bioacoustical Research Program concerning its real-time marine acoustic recording unit (MARU), but decided that the technology is still in the research and development stage. When the fact that the equipment is still in the developmental stages is considered in combination with the increased cost of this technology, TGS believes that the downsides of using fixed buoys outweigh the potential benefits and that towed PAM is a more effective solution. Therefore, NMFS considers in this case that a towed PAM is a reasonable alternative for passive acoustic monitoring.

Comment 29: The AWL claims that NMFS' proposed mitigation measures are ineffective and do not negate the potential for serious injury. Citing the example of ION Geophysical's 90-day monitoring report, the AWL points out the difficulty of monitoring these zones at distances greater than 2.2 miles. The AWL further states that since the very large size of the 180-dB exclusion zone could extend to 2.5 km (1.5 mi) from the sound source, depending on water depth, marine mammals could be injured. The AWL also points out that the proposed monitoring measures for behavioral harassment were also inadequate as the 160 dB zone could extend to 15 km from the source. Further, the AWL states that the Open-water peer review panel reviewing TGS's proposed activities also noted serious limitations of visual monitoring, and that ''PSOs on the scout vessel will only be able to monitor a small portion of the 160 dB zone.'' Finally, the AWL quotes ION's 90-day report as saying ''nights with fog, no ambient light, or heavy seas made observations nearly impossible.''

Response: NMFS recognizes the limitations of visual monitoring as distance increases. However, TGS's proposed open-water seismic survey would employ a scout vessel to supplement the visual monitoring of the exclusion zone at a distance of approximately 2 km in front of the source vessel, to ensure that the exclusion zone is free of marine mammals during the survey. In addition, NMFS recognizes that 2.5 km (1.5 mi) is a large distance for vessel monitoring, however, based on prior marine mammal monitoring reports, this distance is well within the line of sight and can be effectively monitored by experienced PSOs. Furthermore, towed PAM will be implemented to supplement marine mammal monitoring to further increase the chance of detecting marine mammals in the survey vicinity.

Concerning far field monitoring of the 160-dB zone, NMFS recognizes the limitations of visual monitoring, but again, towed PAM will provide information on marine mammals in the vicinity. It is likely that towed PAM designed for TGS' seismic survey will be able to localize marine mammals in the far field beyond exclusion zones, as discussed in detail in the **Federal Register** notice for the proposed IHA.

In addition, NMFS also recognizes the limitations of visual monitoring in darkness and other inclement weather conditions. Therefore, in the IHA issued to TGS, NMFS required that no seismic airgun can be ramped up when the entire exclusion zones are not visible. However, TGS's operations will occur in an area where periods of darkness do not begin until early September. Beginning in early September, there will be approximately 1–3 hours of darkness each day, with periods of darkness increasing by about 30 min each day. By the end of the survey period, there will be approximately 8 hours of darkness each day. These conditions provide PSOs favorable monitoring conditions for most of the time.

Comment 30: The AWL states that the use of PAM does not remedy AWL's perceived flaws in the mitigation regime, and the AWL is not clear whether or how towed PAM will be used to improve implementation of the exclusion zones. The AWL further states NMFS provided less detail about how the PAM system will work by stating that details and specifications of the equipment will be determined at a later date once TGS has identified a contractor for the system.

Response: Concerning the effectiveness of using towed PAM to supplement marine mammal monitoring, and the effectiveness of implementing towed PAM, please refer

to *Response to Comment 27.* The utilization of towed PAM to improve implementation of the exclusion zones is discussed in detail in the **Federal Register** notice for the proposed IHA and in TGS' 4MP. In summary, using towed PAM to supplement marine mammal visual detection has been required by NMFS in the past for various marine seismic and geophysical activities and it has proven to be effective. Specifically, there are far more acoustic detections than visual detection of marine mammals, and many visual detections were based on initial acoustic detection of marine mammals in the project vicinity. In addition, for the TGS' seismic survey, marine mammal localization by towed PAM is also proposed by using target motion analysis. With this method, it is possible with a single towed hydrophone array to obtain a localization to vocalizing animals given certain assumptions. Although due to the linear alignment of hydrophones, there is a left/right ambiguity that cannot be resolved without turning the tow vessel, this ambiguity is not a concern for mitigation during the seismic survey because the exclusion zones are circular and would encompass both sides of the hydrophones. Therefore, the distance to the calling animal is the same on the right and left side of the vessel.

Although at the time when the **Federal Register** notice for the proposed IHA was published NMFS did not have specific information concerning the design of the towed PAM, specific requirements for an effective towed PAM were analyzed and requested. For example, the towed PAM system shall be able to monitor marine mammal occurrence within 160 dB isopleths, and shall minimize the interferences from flow noise by equipping the system with pre-amplifier filters that are ''tuned'' to reduce low-frequency flow and vessel noise. Detailed discussion on these requirements and specifications are provided in the **Federal Register** notice for the proposed IHA and in TGS' 4MP.

Comment 31: Citing ION's error in its initial exclusion zone measurements, the AWL states that sound measurements used to estimate the size of safety radii from which animals should be excluded can easily be miscalculated. The AWL further requests NMFS require sound source verification before any activities commence to ensure no similar errors and resulting takes occur during TGS' proposed activities.

Response: Although NMFS recognizes the error made by ION's contractor during the sound source verification measurement and the radius of the 180-dB exclusion was originally estimated less than it was measured to be, NMFS does not agree with AWL's speculation that sound measurements used to estimate the size of exclusion zones can be ''easily miscalculated.'' The ION incident was not due to miscalculation. It was due to human error in data handling and is preventable. NMFS has subsequently discussed this with ION and its contractor to make sure that rigorous checks and verification are performed to ensure no error in data handling.

NMFS agrees with the AWL that SSV will be conducted before TGS commences its seismic surveys in the Chukchi Sea.

Subsistence Issues

Comment 32: The NSB requests NMFS require TGS to sign the CAA with the Alaska Eskimo Whaling Commission (AEWC).

Response: The signing of a CAA is not a requirement to obtain an IHA. The CAA is a document that is negotiated between and signed by the industry participant, AEWC, and the Village Whaling Captains' Associations. Although the contents of a CAA may inform NMFS' ''no unmitigable adverse impact'' determination for bowhead and beluga whales, the signing of it is not a requirement. Nevertheless, TGS signed the 2013 CAA and NMFS incorporated all relevant measures that will help to ensure no unmitigable adverse impacts to subsistence harvest activities into the IHA issued to TGS.

Comment 33: The Commission recommends that NMFS encourage the development of conflict avoidance agreements that reflect the interests of all potentially affected communities and co-management organizations and account for potential adverse impacts on all marine mammal species taken for subsistence.

Response: TGS signed a Conflict Avoidance Agreement (CAA) with the Alaska native whaling communities to ensure that there is no unmitigable adverse impacts to subsistence whaling activities from its proposed 2D seismic survey in the Chukchi Sea. For marine mammal species other than bowhead whales, TGS developed a POC and engaged with all potentially affected communities and co-management organizations to ensure that the potential effects to subsistence activities can be mitigated. In addition, TGS developed a marine mammal monitoring and mitigation plan to make sure that there will be no unmitigable impacts to subsistence use of all marine mammal species by the native communities. Finally, NMFS has rigorously reviewed TGS' POC and the 4MP and provided additional recommendations (e.g., passive acoustic monitoring) to further reduce any adverse effects. NMFS has subsequently made a determination that TGS' 2013 open-water 2D seismic survey will not have unmitigable adverse impacts to subsistence use of any marine mammal species. Neither the MMPA nor its implementing regulations require an independent legal agreement between TGS and any subsistence use representative. TGS has already ensured there will be no unmitigable adverse impact to subsistence uses.

Comment 34: The AEWC and NSB point out that currently there are 11 villages that take bowhead whales, not 10 as described in the **Federal Register** notice for the proposed IHA. The AEWC further asks NMFS to update the discussion of Barrow whaling to acknowledge the increasing importance of the fall hunt.

Response: NMFS appreciates the additional new information on the current subsistence whaling activities and clarifying the role of the fall bowhead whale hunt. NMFS' analyses provided in the **Federal Register** notice for the proposed IHA was based on historical data as the most recent data from the same season may not be available at the time of analysis. NMFS has incorporated this information into the subsistence impact analysis in this document.

Comment 35: Citing the **Federal Register** notice for the proposed IHA that NMFS states that the provisions in the POC ''should minimize impacts to subsistence hunters,'' the AEWC argues that ''should'' and ''minimize'' simply has no place in the statutory analysis. The AEWC states that NMFS must determine that the proposed activities ''will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses.''

Response: NMFS agrees with the AEWC's point and considers that the sentence in the ''Unmitigable Adverse Impact Analysis and Preliminary Determination'' section of the **Federal Register** notice did not accurately convey NMFS analyses on subsistence affects. NMFS subsequently corrected the sentence to read ''TGS has adopted a spatial and temporal strategy for its Chukchi Sea open-water seismic surveys that will have no unmitigable impacts to subsistence hunters'' under the ''Unmitigable Adverse Impact Analysis and Determination'' section of this document.

NEPA Concern

Comment 36: The AEWC and AWL state that NMFS must address the potential cumulative effects of multiple concurrent seismic operations in the Chukchi and Beaufort Seas.

Response: NMFS prepared an EA to analyze and address cumulative impacts of other oil and gas activities planned for the Arctic Ocean. The oil and gas related activities in the U.S. Arctic in 2013 include this activity and Shell's open-water marine surveys in the Chukchi Sea. Seismic survey activities in the Canadian and Russian Arctic occur in different geophysical areas, therefore, they are not analyzed under the NMFS 2013 EA. Other appropriate factors, such as Arctic warming, military activities, and noise contributions from community and commercial activities were also considered in NMFS' 2013 EA. Please refer to that document for further discussion of cumulative impacts.

Comment 37: The AWL notes that NMFS is in the middle of preparing a programmatic EIS for Arctic Ocean oil and gas exploration, and states that NEPA prohibits piecemeal approvals while a programmatic EIS process is ongoing, except under strictly prescribed circumstances not found here. The AWL further states that if NMFS were to allow TGS' activities to go forward pending completion of the EIS, NMFS risks undermining the overarching aim of the programmatic EIS process to establish appropriate standards for future oil and gas activities that address and mitigate potential cumulative effects of the activities.

Response: NMFS does not agree with the AWL statement. While the analysis contained in the Final EIS will apply more broadly to Arctic oil and gas operations, NMFS' issuance of an IHA to TGS for the taking of several species of marine mammals incidental to conducting its open-water marine survey in the Chukchi Sea in 2013, as analyzed in the EA, is not expected to significantly affect the quality of the human environment. In the 2013 Arctic EA, NMFS included a rigorous analysis on cumulative effects of all activities currently occurring in the Arctic. TGS's surveys are not expected to significantly affect the quality of the human environment because of the limited duration and scope of operations.

ESA Concern

Comment 38: The AWL states that although NMFS has completed a programmatic biological opinion for Arctic oil and gas activities, it must also thoroughly analyze the impacts of the specific activities authorized here including future impacts. The AWL further states that in order to comply with the ESA, this site-specific analysis must include an incidental take statement specifying the number and type of takes expected.

Response: For the issuance of the IHA to TGS, NMFS' Permits and Conservation Division initiated consultation with NMFS Alaska Regional Office (AKRO) Protected Resources Division under section 7 of the ESA on the issuance of an IHA to TGS under section 101(a)(5)(D) of the MMPA for this activity. The consultation took into consideration the specific activities proposed to be authorized and all aspects of current and future impacts to the species. A Biological Opinion was issued on June 19, 2013, which concludes that issuance of the IHA is not likely to jeopardize the continued existence of the ESA-listed marine mammal species. In addition, analysis by NMFS AKRO showed that humpback whale will not be affected, therefore, no take was authorized. NMFS will issue an Incidental Take Statement under this Biological Opinion which contains reasonable and prudent measures with implementing terms and conditions to minimize the effects of take of listed species.

Miscellaneous

Comment 39: The NSB points out that the most recent bowhead population estimates are: 12,631 from 2004 (Koski *et al.* 2010) and 16,892 for 2011 (Givens *et al.* 2013).

Response: NMFS appreciates NSB pointing out the most recent bowhead population estimates and made corrections in the relevant section. With the revised population estimates, the percentage of the Bering-Chukchi-Beaufort Sea population of bowhead whales that could be taken by Level B harassment is changed from 7.53% to 4.70%.

Comment 40: The NSB notes that TGS has proposed to coordinate with state, federal and NSB divisions but has not discussed how they will coordinate with other industry operators. The NSB points out that Shell, ConocoPhillips and Statoil have an extensive monitoring program in the Chukchi Sea, including passive acoustic monitoring (PAM). The NSB points out that results from that PAM could provide useful information about possible impacts from TGS' seismic operations. The NSB requests NMFS require TGS to work with other industry partners who are collecting useful data in the area where they are operating.

Response: As discussed in the **Federal Register** notice for the proposed IHA, NMFS has discussed extensively with TGS on a variety of techniques to improve its far field monitoring, including PAM using ocean bottom mounted acoustic sensors. During the course of discussion, TGS stated that it was in contact with other industry operators but was not able to find a collaborator to participate in long-term acoustic monitoring due to the short-term nature of its proposed survey. Further, NMFS cannot legally require TGS to work with other industry partners under the MMPA. Nevertheless, TGS is able to implement PAM with towed acoustic arrays, as described in detail in the **Federal Register** notice for the proposed IHA and in this document.

Comment 41: The Commission requested that NMFS allow sufficient time between the close of the comment period and the issuance of an IHA for NMFS to analyze, consider, and respond fully to comments received and incorporate recommended changes, as appropriate—the applicable statutory provision, section 101(a)(5)(D)(iii), anticipates that up to 45 days might be required. The Commission points out that the deadline for comments on the proposed IHA is July 12, 2013, yet the IHA was proposed to be issued on July 15, 2013. The Commission states that it is concerned that the time between the close of the comment period and the issuance of the IHA does not provide adequate opportunity for NMFS to consider, provide adequate responses to, and incorporate any changes prompted by comments from the Commission and the public.

Response: NMFS always fully reviews and considers comments submitted by the Commission and the public, and works with the applicant to incorporate such input as appropriate. In the case of the TGS IHA, NMFS is actively working with the applicant on the scheduling issue, and since the publication of the **Federal Register** notice for the proposed IHA, TGS has indicated that its 2D seismic survey would probably start in early August, thus giving NMFS extra time to complete the process.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species under NMFS jurisdiction most likely to occur in the seismic survey area include eight cetacean species: beluga whale (*Delphinapterus leucas*), harbor porpoise (*Phocoena phocoena*), killer whale (*Orcinus orca*), bowhead whale (*Balaena mysticetus*), gray whale (*Eschrichtius robustus*), minke whale

(*Balaenoptera acutorostrata*), fin whale (*B. physalus*), and humpback whale (*Megaptera novaeangliae*), and four pinniped species, ringed (*Phoca hispida*), spotted (*P. largha*), bearded (*Erignathus barbatus*), and ribbon seals (*Histriophoca fasciata*).

The bowhead, fin, and humpback whales are listed as ''endangered'', and the ringed and bearded seals are listed as ''threatened'' under the Endangered Species Act (ESA) and as depleted under the MMPA. Certain stocks or populations of gray and beluga whales and spotted seals are also listed under the ESA, however, none of those stocks or populations occur in the proposed activity area.

TGS' application contains information on the status, distribution, seasonal distribution, and abundance of each of the species under NMFS jurisdiction mentioned in this document. Please refer to the application for that information (see **ADDRESSES**). Additional information can also be found in the NMFS Stock Assessment Reports (SAR). The Alaska 2012 SAR is available at: *http://www.nmfs.noaa.gov/pr/sars/pdf/ak2012.pdf.*

Potential Effects of the Specified Activity on Marine Mammals

Operating active acoustic sources such as airgun arrays, navigational sonars, and vessel activities have the potential for adverse effects on marine mammals. Potential effects from TGS' 2D seismic survey on marine mammals in the Chukchi Sea are discussed in the **Federal Register** (78 FR 35508; June 12, 2013) notice for the proposed IHA. No changes have been made to the discussion contained in this section of the **Federal Register** notice for the proposed IHA.

Anticipated Effects on Habitat

The primary potential impacts to marine mammal habitat are associated with elevated sound levels produced by airguns and vessels and their affects to marine mammal prey species. These potential effects from TGS' 2D seismic survey are discussed in the **Federal Register** (78 FR 35508; June 12, 2013) notice for the proposed IHA. No changes have been made to the discussion contained in this section of the **Federal Register** notice for the proposed IHA.

Potential Impacts on Availability of Affected Species or Stock for Taking for Subsistence Uses

Subsistence hunting is an essential aspect of Inupiat Native life, especially in rural coastal villages. The Inupiat participate in subsistence hunting activities in and around the Chukchi Sea. The animals taken for subsistence provide a significant portion of the food that will last the community through the year. Marine mammals represent on the order of 60–80% of the total subsistence harvest. Along with the nourishment necessary for survival, the subsistence activities strengthen bonds within the culture, provide a means for educating the young, provide supplies for artistic expression, and allow for important celebratory events.

Potential Impacts to Subsistence Uses

NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as: ''. . . an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.''

(1) Bowhead Whales

TGS' planned seismic surveys would have no or negligible effects on bowhead whale harvest activities. Noise and general activity associated with seismic surveys and operation of vessels has the potential to harass bowhead whales. However, though temporary diversions of the swim path of migrating whales have been documented, the whales have generally been observed to continue their migration via a deflected migratory route. The proposed open-water seismic surveys and vessel noise could affect subsistence hunts by placing the animals further offshore or otherwise at a greater distance from villages thereby increasing the difficulty of the hunt or retrieval of the harvest, or creating a safety risk to the whalers. Further, whales have the potential to become skittish—changing their swim speeds, breathing rates, and other migratory behavior—when exposed to seismic and vessel noise, even if they do not deflect, thus make hunting more difficult.

Eleven primary coastal Alaskan villages deploy whaling crews during whale migrations. Around the TGS' proposed project area in the Chukchi Sea, the primary bowhead hunting villages that could be affected are Barrow, Wainwright, and Point Hope. Whaling crews in Barrow hunt in both the spring and the fall (Funk and Galginaitis 2005). The primary bowhead whale hunt in Barrow occurs during spring, while the fall hunt is used to meet the quota and seek strikes that can be transferred from other communities. In the spring, the whales are hunted along leads that occur when the pack ice starts deteriorating. This tends to occur between the first week of April through May in Barrow and the first week of June in Wainwright, well before the proposed 2D seismic surveys would be conducted. The Point Hope bowhead whale hunt occurs from March to June. Whaling camps are established on the ice edge south and southeast of Point Hope, 10 to 11 km (6 to 7 mi) offshore. However, due to extremely dangerous and challenging ice conditions, along with persistent strong westerly and southwesterly winds in 2013, the spring bowhead whale subsistence hunt fell far below the subsistence needs this year. Only four of the villages were able to take any whales: Gambell landed two out of a quota of eight, Savoonga landed four out of a quota of eight, and Pt. Hope landed five out of a quota of 10. Barrow was able to land only one whale out of a quota of 22. The remaining spring villages were unable to take any whales. As a result, the fall hunting will be especially important, not only for Barrow and the Beaufort Sea villages, but also for attempts out of Wainwright, Pt. Lay, and possibly Pt. Hope. Nevertheless, the proposed seismic survey would be conducted in the West of Point Barrow in the Chukchi Sea far offshore.

(2) Beluga Whales

Belugas typically do not represent a large proportion of the subsistence harvests by weight in the communities of Wainwright and Barrow. Barrow residents hunt beluga in the spring (normally after the bowhead hunt) in leads between Point Barrow and Skull Cliffs in the Chukchi Sea primarily in April–June, and later in the summer (July–August) on both sides of the barrier island in Elson Lagoon/Beaufort Sea (MMS 2008), but harvest rates indicate the hunts are not frequent. Wainwright residents hunt beluga in April-June in the spring lead system, but this hunt typically occurs only if there are no bowheads in the area. Communal hunts for beluga are conducted along the coastal lagoon system later in July-August. Between 2005 and 2009, the annual beluga subsistence take was 94 whales (Allen and Angliss 2012) among both Wainwright and Barrow.

Belugas typically represent a much greater proportion of the subsistence harvest in Point Lay and Point Hope. Point Lay's primary beluga hunt occurs from mid-June through mid-July, but can sometimes continue into August if

early success is not sufficient. Belugas are harvested in coastal waters near these villages, generally within a few miles from shore. However, the southern extent of TGS' proposed surveys is over 88 m to the north of Point Lay, and much farther away from Point Hope. Therefore NMFS considers that the surveys would have no or negligible effect on beluga hunts.

(3) Seals

Seals are an important subsistence resource and ringed seals make up the bulk of the seal harvest. Most ringed and bearded seals are harvested in the winter or in the spring before TGS' 2013 activities would commence, but some harvest continues during open water and could possibly be affected by TGS' planned activities. Spotted seals are also harvested during the summer. Most seals are harvested in coastal waters, with available maps of recent and past subsistence use areas indicating seal harvests have occurred only within 30–40 mi (48–64 km) off the coastline. TGS does not plan to survey within 88 km (55 mi) of the coast, which means that the proposed activities are not likely to have an impact on subsistence hunting for seals.

As stated earlier, the proposed seismic survey would take place between July and October. The proposed seismic survey activities would be conducted in far offshore waters of the Chukchi Sea and away from any subsistent activities. In addition, the timing of the survey activities that would be conducted between July and October would further avoid any spring hunting activities in Chukchi Sea villages. Therefore, due to the time and spatial separation of TGS' proposed 2D seismic surveys and the subsistence harvest by the local communities, it is anticipated to have no effects on spring harvesting and little or no effects on the occasional summer harvest of beluga whale, subsistence seal hunts (ringed and spotted seals are primarily harvested in winter while bearded seals are hunted during July—September in the Beaufort Sea), or the fall bowhead hunt.

In addition, TGS has developed and proposes to implement a number of mitigation measures (described in the next section) which include a Marine Mammal Monitoring and Mitigation Plan (4MP), employment of subsistence advisors in the villages, and implementation of a Communications Plan (with operation of Communication Centers). TGS has also prepared a Plan of Cooperation (POC) under 50 CFR 216.104 that addresses potential impacts on subsistence seal hunting activities.

Finally, to ensure that there will be no conflict from TGS' proposed open-water seismic surveys to subsistence activities, TGS stated that it will maintain communications with subsistence communities via the communication centers (Com and Call Centers) and signed the Conflict Avoidance Agreement (CAA) with Alaska whaling communities.

Mitigation Measures

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.

For the proposed TGS open-water marine 2D seismic surveys in the Chukchi Sea, NMFS is requiring TGS to implement the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity as a result of its survey activities. The primary purpose of these mitigation measures is to detect marine mammals within, or about to enter designated exclusion zones and to initiate immediate shutdown or power down of the airgun(s).

(1) Establishing Exclusion and Disturbance Zones

Under current NMFS guidelines, the ''exclusion zone'' for marine mammal exposure to impulse sources is customarily defined as the area within which received sound levels are ≥180 dB (rms) re 1 μPa for cetaceans and ≥190 dB (rms) re 1 μPa for pinnipeds. These safety criteria are based on an assumption that SPL received at levels lower than these will not injure these animals or impair their hearing abilities, but that at higher levels might have some such effects. Disturbance or behavioral effects to marine mammals from underwater sound may occur after exposure to sound at distances greater than the exclusion zones (Richardson *et al.* 1995). Currently, NMFS uses 160 dB (rms) re 1 μPa as the threshold for Level B behavioral harassment from impulses noise.

The acoustic source level of the proposed 3,280 in^3 seismic source array was predicted using JASCO's airgun array source model (AASM) based on data collected from three sites chosen in the project area by JASCO. Water depths at the three sites were 17, 40, and 100 m. JASCO applied its Marine Operations Noise Model (MONM) to estimate acoustic propagation of the proposed seismic source array and the associated distances to the 190, 180 and 160 dB (rms) re 1 μPa isopleths relative to standard NMFS mitigation and monitoring requirements for marine mammals. The resulting isopleths modeled for the 180 and 190 dB (rms) re 1 μPa exclusion zone distances for cetaceans and pinnipeds, respectively, differed with the three water depths. An additional 10 percent distance buffer was added by JASCO to these originally modeled distances to provide larger, more protective exclusion zone radii. The modeled exclusion zones and zones of influence are listed in Table 1.

These safety distances will be implemented at the commencement of 2013 airgun operations to establish marine mammal exclusion zones used for mitigation. TGS will conduct sound source measurements of the airgun array at the beginning of survey operations in 2013 to verify the size of the various marine mammal exclusion zones. The acoustic data will be analyzed as quickly as reasonably practicable in the field and used to verify and adjust the marine mammal exclusion zone distances. The mitigation measures to be implemented at the 190 and 180 dB (rms) sound levels will include power downs and shut downs as described below.

(2) Vessel Related Mitigation Measures

These mitigation measures apply to all vessels that are part of the Chukchi Sea seismic survey activities, including the supporting vessel.

- Avoid concentrations or groups of whales by all vessels under the direction of TGS. Operators of vessels should, at all times, conduct their activities at the maximum distance possible from such concentrations of whales.
- Vessels in transit shall be operated at speeds necessary to ensure no physical contact with whales occurs. If any vessel approaches within 1.6 km (1 mi) of observed bowhead whales, except when providing emergency assistance to whalers or in other emergency situations, the vessel operator will take reasonable precautions to avoid potential interaction with the bowhead whales by taking one or more of the following actions, as appropriate:
  - Reducing vessel speed to less than 5 knots within 300 yards (900 feet or 274 m) of the whale(s);
  - Steering around the whale(s) if possible;
  - Operating the vessel(s) in such a way as to avoid separating members of

a group of whales from other members of the group;

○ Operating the vessel(s) to avoid causing a whale to make multiple changes in direction; and

○ Checking the waters immediately adjacent to the vessel(s) to ensure that no whales will be injured when the propellers are engaged.

• Reduce vessel speed to 5 knots when weather conditions require, such as when visibility drops, to avoid the likelihood of injury to whales.

(3) Mitigation Measures for Airgun Operations

The primary role for airgun mitigation during the seismic surveys is to monitor marine mammals near the airgun array during all daylight airgun operations and during any nighttime start-up of the airguns. During the seismic surveys PSOs will monitor the pre-established exclusion zones for the presence of marine mammals. When marine mammals are observed within, or about to enter, designated safety zones, PSOs have the authority to call for immediate power down (or shutdown) of airgun operations as required by the situation. A summary of the procedures associated with each mitigation measure is provided below.

Ramp Up Procedure

A 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 is achieved. The purpose of a ramp up (or ''soft start'') is to ''warn'' cetaceans and pinnipeds in the vicinity of the airguns and to provide time for them to leave the area and thus avoid any potential injury or impairment of their hearing abilities.

During the open-water survey program, the seismic operator will ramp up the airgun arrays slowly. Full ramp ups (i.e., from a cold start after a shut down, when no airguns have been firing) will begin by firing a single airgun in the array (i.e., the mitigation airgun). A full ramp up, after a shut down, will not begin until there has been a minimum of 30 min of observation of the safety zone by PSOs to assure that no marine mammals are present. The entire exclusion zone must be visible during the 30-minute lead-in to a full ramp up. If the entire exclusion zone is not visible, then ramp up from a cold start cannot begin. If a marine mammal(s) is sighted within the safety zone during the 30-minute watch prior to ramp up, ramp up will be delayed until the marine mammal(s) is sighted outside of the exclusion zone or the animal(s) is not sighted for at least 15–30 minutes: 15 minutes for small odontocetes (harbor porpoise) and pinnipeds, or 30 minutes for baleen whales and large odontocetes (including beluga and killer whales and narwhal).

Use of a Small-Volume Airgun During Turns and Transits

Throughout the seismic survey, particularly during turning movements, and short transits, TGS will employ the use of a small-volume airgun (i.e., 60 in^3 ''mitigation airgun''). The mitigation airgun would be operated at approximately one shot per minute and would not be operated for longer than three hours in duration during daylight hours and good visibility. In cases when the next start-up after the turn is expected to be during lowlight or low visibility, use of the mitigation airgun may be initiated 30 minutes before darkness or low visibility conditions occur and may be operated until the start of the next sail line. The mitigation gun must still be operated at approximately one shot per minute.

During turns or brief transits (e.g., less than three hours) between seismic tracklines, one mitigation airgun will continue operating. The ramp-up procedure will still be followed when increasing the source levels from one airgun to the full airgun array. However, keeping one airgun firing will avoid the prohibition of a ''cold start'' during darkness or other periods of poor visibility. Through use of this approach, seismic surveys using the full array may resume without the 30 minute observation period of the full exclusion zone required for a ''cold start''. PSOs will be on duty whenever the airguns are firing during daylight, during the 30 minute periods prior to ramp-ups.

Power-Down and Shut Down Procedures

A power down is the immediate reduction in the number of operating energy sources from all firing to some smaller number (e.g., single mitigation airgun). A shut down is the immediate cessation of firing of all energy sources. The array will be immediately powered down whenever a marine mammal is sighted approaching close to or within the applicable safety zone of the full array, but is outside the applicable safety zone of the single mitigation source. If a marine mammal is sighted within or about to enter the applicable safety zone of the single mitigation airgun, the entire array will be shut down (i.e., no sources firing).

Poor Visibility Conditions

TGS plans to conduct 24-hour operations. PSOs will not be on duty during ongoing seismic operations during darkness, given the very limited effectiveness of visual observation at night (there will be no periods of darkness in the survey area until mid-August). The provisions associated with operations at night or in periods of poor visibility include the following:

• If during foggy conditions, heavy snow or rain, or darkness (which may be encountered starting in late August), the full 180 dB exclusion zone is not visible, the airguns cannot commence a ramp-up procedure from a full shut-down.

• If one or more airguns have been operational before nightfall or before the onset of poor visibility conditions, they can remain operational throughout the night or poor visibility conditions. In this case ramp-up procedures can be initiated, even though the exclusion zone may not be visible, on the assumption that marine mammals will be alerted by the sounds from the single airgun and have moved away.

(4) Mitigation Measures for Subsistence Activities

Regulations at 50 CFR 216.104(a)(12) require IHA applicants for activities that take place in Arctic waters to provide a Plan of Cooperation (POC) or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes.

TGS has prepared a POC, which relies upon the Chukchi Sea Communication Plans to identify the measures that TGS has developed in consultation with North Slope subsistence communities and will implement during its planned 2013 activities to minimize any adverse effects on the availability of marine mammals for subsistence uses. The POC describes important subsistence activities near the proposed survey program and summarizes actions TGS has taken to inform subsistence communities of the proposed survey activities; and measures it will take to minimize adverse effects on marine mammals where proposed activities may affect the availability of a species or stock of marine mammals for arctic subsistence uses or near a traditional subsistence hunting area.

TGS began stakeholder engagement by introducing the project to the North Slope Borough (NSB) Planning Commission on October 25, 2012, and it also met with the NSB Planning Director and other Barrow leadership. In

December 2012, TGS met with Chukchi Sea community leaders at the tribal, city, and corporate level in Barrow, Wainwright, Point Hope, Point Lay, and Kotzebue. TGS also introduced the project to the Alaska Eskimo Whaling Commission (AEWC) at their 4th Quarter Meeting on December 13–14, 2012, in Anchorage.

Community POC meetings were held in Barrow, Kotzebue, Point Hope, Point Lay, and Wainwright in January and February 2013. Finally, in February 2013, TGS participated in the AEWC mini-convention and Conflict Avoidance Agreement (CAA) discussion. A final POC that documents all consultations with community leaders and subsistence users was submitted to NMFS in May, 2013.

In addition, TGS signed a CAA with the Alaska whaling communities to further ensure that its proposed open-water seismic survey activities in the Chukchi Sea will not have unmitigable impacts to subsistence activities. NMFS has included appropriate measures identified in the CAA in the IHA.

Mitigation Conclusions

NMFS has carefully evaluated the mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; and
- the practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has determined that the required 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.

Monitoring and Reporting Measures

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 ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

I. Monitoring Measures

Monitoring will provide information on the numbers of marine mammals potentially affected by the exploration operations and facilitate real time mitigation to prevent injury of marine mammals by industrial sounds or activities. These goals will be accomplished in the Chukchi Sea during 2013 by conducting vessel-based monitoring from both the source vessel and a supporting vessel and an acoustic monitoring program using a towed hydrophone array to document marine mammal presence and distribution in the vicinity of the survey area beyond visual observation distances.

Visual monitoring by Protected Species Observers (PSOs) during seismic operations, and periods when these surveys are not occurring, will provide information on the numbers of marine mammals potentially affected by these activities and facilitate real time mitigation to prevent impacts to marine mammals by industrial sounds or operations. Vessel-based PSOs onboard the survey vessel will record the numbers and species of marine mammals observed in the area and any observable reaction of marine mammals to the survey activities in the Chukchi Sea.

Real-time PAM would be conducted from the supporting vessel to complement the visual monitoring conducted by PSOs during the seismic surveys in the Chukchi Sea. Studies have indicated that towed PAM is a practical and successful application for augmenting visual surveys of low-frequency mysicetes, including blue and fin whales (Clark and Fristrup 1997). Passive acoustics methods, including towed hydrophone arrays, are most effective in remote areas, harsh environments (e.g. the arctic) and when visibility and/or sea conditions are poor, or at nighttime or during low-light conditions when animals cannot be sighted easily. Surveys have collected more acoustic detections than visual observations while using towed PAM in the Arctic during an open-water seismic survey program conducted by Statoil in 2010 (McPherson *et al.* 2012). TGS states that the designed PAM system would provide the possibility of advanced real-time notification of vocalizing marine mammals that are not observed visually (or are observed after acoustic detection) and allow for mitigation actions (i.e., power-down, shut-down) to take place, if necessary.

Visual-Based Protected Species Observers (PSOs)

The visual-based marine mammal monitoring will be implemented by a team of experienced PSOs, including both biologists and Inupiat personnel. PSOs will be stationed aboard the survey and supporting vessels through the duration of the project. The vessel-based marine mammal monitoring will provide the basis for real-time mitigation measures as discussed in the Mitigation Measures section. In addition, monitoring results of the vessel-based monitoring program will include the estimation of the number of ''takes'' as stipulated in the IHA.

(1) Protected Species Observers

Vessel-based monitoring for marine mammals will be done by trained PSOs throughout the period of survey activities. The observers will monitor the occurrence of marine mammals near the survey vessel during all daylight periods during operation, and during most daylight periods when operations are not occurring. PSO duties will include watching for and identifying marine mammals; recording their numbers, distances, and reactions to the survey operations; and documenting ''take by harassment''.

A sufficient number of PSOs will be required onboard the survey vessel to meet the following criteria:

- 100% Monitoring coverage during all periods of survey operations in daylight;
- maximum of 4 consecutive hours on watch per PSO; and
- maximum of 12 hours of watch time per day per PSO.

PSO teams will consist of Inupiat observers and experienced field biologists. Each vessel will have an experienced field crew leader to supervise the PSO team. The total number of PSOs may decrease later in the season as the duration of daylight decreases.

(2) Observer Qualifications and Training

Crew leaders and most PSOs will be individuals with experience as observers during recent seismic, site clearance and shallow hazards, and other monitoring projects in Alaska or other offshore areas in recent years.

Biologist-observers will have previous marine mammal observation experience, and field crew leaders will be highly experienced with previous vessel-based marine mammal monitoring and mitigation projects. Resumes for those individuals will be provided to NMFS

for review and acceptance of their qualifications. Inupiat observers will be experienced in the region and familiar with the marine mammals of the area. All observers will complete a NMFS-approved observer training course designed to familiarize individuals with monitoring and data collection procedures.

PSOs will complete a two or three-day training and refresher session on marine mammal monitoring, to be conducted shortly before the anticipated start of the 2013 open-water season. Any exceptions will have or receive equivalent experience or training. The training session(s) will be conducted by qualified marine mammalogists with extensive crew-leader experience during previous vessel-based seismic monitoring programs.

Marine Mammal Observer Protocol

Vessel-based visual monitoring for marine mammals shall be conducted by NMFS-approved PSOs throughout the period of survey activities, and extends to 30 minutes after the survey is completed. The PSOs will watch for marine mammals from the best available vantage point on the survey vessels, typically the bridge. The PSOs will scan systematically with the unaided eye and 7 x 50 reticle binoculars, supplemented with 20 x 60 image-stabilized Zeiss Binoculars or Fujinon 25 x 150 ''Big-eye'' binoculars, and night-vision equipment when needed. Personnel on the bridge will assist the marine mammal observer(s) in watching for marine mammals.

The observer(s) aboard the survey and support vessels will give particular attention to the areas within the marine mammal exclusion zones around the source vessel. These zones are the maximum distances within which received levels may exceed 180 dB (rms) re 1 μPa (rms) for cetaceans, or 190 dB (rms) re 1 μPa for pinnipeds.

Distances to nearby marine mammals will be estimated with binoculars (Fujinon 7 x 50 binoculars) containing a reticle to measure the vertical angle of the line of sight to the animal relative to the horizon. Observers may use a laser rangefinder to test and improve their abilities for visually estimating distances to objects in the water.

When a marine mammal is seen approaching or within the exclusion zone applicable to that species, the seismic survey crew will be notified immediately so that mitigation measures called for in the applicable authorization(s) can be implemented.

Night-vision equipment (Generation 3 binocular image intensifiers or equivalent units) will be available for use when/if needed. In TGS' Marine Mammal Monitoring and Mitigation Plan submitted in May 2013, TGS stated that it would use the ITT F500 Series Generation 3 binocular image intensifiers or equivalent units. However, TGS later notified NMFS that such technology is restrict for export and thus cannot be carried to high seas. Therefore, Generation 1 night-vision devices (NVDs) will be used instead. Since the low-light hours during TGS' survey period is very limited, and there is strict mitigation measures prohibiting airgun ramp up from cold start when the entire exclusion zones are not visible, NMFS considers that the unavailability of Generation 3 NVDs does not compromise the effectiveness of mitigation measures. Past experience with night-vision devices (NVDs) in the Chukchi Sea and elsewhere has indicated that NVDs are not nearly as effective as visual observation during daylight hours (e.g., Harris et al. 1997, 1998; Moulton and Lawson 2002).

Field Data-Recording

The PSOs aboard the vessels will maintain a digital log of seismic surveys, noting the date and time of all changes in seismic activity (ramp-up, power-down, changes in the active seismic source, shutdowns, etc.) and any corresponding changes in monitoring radii in a project-customized Mysticetus™ observation software spreadsheet. In addition, PSOs will utilize this standardized format to record all marine mammal observations and mitigation actions (seismic source power-downs, shut-downs, and ramp-ups). Information collected during marine mammal observations will include the following:

- Vessel speed, position, and activity
- Date, time, and location of each marine mammal sighting
- Number of marine mammals observed, and group size, sex, and age categories
- Observer's name and contact information
- Weather, visibility, and ice conditions at the time of observation
- Estimated distance of marine mammals at closest approach
- Activity at the time of observation, including possible attractants present
- Animal behavior
- Description of the encounter
- Duration of encounter
- Mitigation action taken

Data will preferentially be recorded directly into handheld computers or as a back-up, transferred from hard-copy data sheets into an electronic database. A system for quality control and verification of data will be facilitated by the pre-season training, supervision by the lead PSOs, in-season data checks, and will be built into the Mysticetus™ software (i.e., Mysticetus™ will recognize and notify the operator if entered data are non-sensical). Computerized data validity checks will also be conducted, and the data will be managed in such a way that it is easily summarized during and after the field program and transferred into statistical, graphical, or other programs for further processing. Mysticetus™ will be used to quickly and accurately summarize and display these data.

Passive Acoustic Monitoring

(1) Sound Source Measurements

Prior to or at the beginning of the seismic survey, sound levels will be measured as a function of distance and direction from the proposed seismic source array (full array and reduced to a single mitigation airgun). Results of the acoustic characterization and SSV will be used to empirically refine the modeled distance estimates of the pre-season 190 dB, 180 dB, and 160 dB isopleths. The refined SSV exclusion zones will be used for the remainder of the seismic survey. Distance estimates for the 120 dB isopleth will also be modeled. The results of the SSV will be submitted to NMFS within five days after completing the measurements, followed by a report in 14 days. A more detailed report will be provided to NMFS as part of the 90-day report following completion of the acoustic program.

(2) Real-Time Passive Acoustic Monitoring

TGS will conduct real-time passive acoustic monitoring using a towed hydrophone array from the support vessel. The towed hydrophone array system consists of two parts: the ''wet end'' and the ''dry end''. The wet end consists of the hydrophone array and tow cable that is towed behind the vessel. The dry end includes the analog-to-digital, computer processing, signal conditioning and filtering system used to process, record and analyze the acoustic data. Specific noise filters will be used to maximize the systems ability to detect low frequency bowhead whales. The towed hydrophone array will be deployed using a winch from the scout vessel. Details and specifications on the equipment will be determined at a later date once TGS has selected an acoustics contractor, as each contractor has different equipment specifications.

Localization of vocalizing animals will be accomplished using target motion analysis. With this method, it is possible with a single towed

hydrophone array to obtain a localization to vocalizing animals given certain assumptions. Due to the linear alignment of hydrophones, there is a left/right ambiguity that cannot be resolved without turning the tow vessel. The left/right ambiguity, however, is not a critical concern for mitigation during the TGS 2D seismic survey because the exclusion zones are circular; therefore, the distance to the calling animal is the same on the right and left side of the vessel. Furthermore, unambiguous localization can be achieved in circumstances where the vessel towing the array can turn and the calling animals call multiple times or continuously.

To ensure the effectiveness of real-time PAM with a towed hydrophone array, the following requirements for PAM design and procedures will be required:

Lowering Interferences From Flow Noise

- Limit towing speeds to 4–6 knots. Reduce speed appropriately if bowhead whales are detected so that bearing can be obtained. If greater speeds are necessary, slow down every 20–30 minutes to listen for animal calls for at least 5–10 minutes.
- Maintain straight track-lines unless right/left ambiguity must be resolved (usually by turning 20–30 degrees at a time, then maintaining a straight course until good bearings can be obtained).
- Maintain a separation distance of at least several hundred meters (preferably more) from the seismic survey vessel.
- Design pre-amplifier filters that are 'tuned' to reduce low-frequency flow and vessel noise.
- If necessary, use a variable high-pass filter before digitizing the signals.

Monitoring Marine Mammal Occurrence Within 160 dB Isopleths

- Design a hydrophone array that is sensitive to frequencies of interest (e.g. marine mammal sounds) but attenuates (via filters) noise.
- Use a processing system that can further signal conditions (i.e. filter and match signal gains) to allow software to effectively estimate bearings and/or localize.
- Use software designed exclusively for monitoring, localizing and plotting marine mammal calls.
- Design the sampling software to optimize overlap between monitoring the 180 and 160 dB isopleths.
- Allow the survey vessel to deviate from designated track-lines by 25–30 degrees (for brief periods) so that left/right ambiguity can be resolved.

Increase Localization Capability

- Start with a simple hydrophone array, and if needed, add additional capabilities (or hydrophones) to supplement this system. For example, a 2-hydrophone array that can do TMA but with an additional array (or inline section) that can be added in front of the primary array would allow crossed-pair localization methods to be used.
- Use a processing and geographic display system that can accommodate at least the TMA localization method, but also, additional methods if needed.
- Provide at least 300 m of cable (for TMA methods), and up to 500 m if crossed-pair or hyperbolic localization methods will be used.

Monitoring Plan Peer Review

The MMPA requires that monitoring plans be independently peer reviewed ''where the proposed activity may affect the availability of a species or stock for taking for subsistence uses'' (16 U.S.C. 1371(a)(5)(D)(ii)(III)). Regarding this requirement, NMFS' implementing regulations state, ''Upon receipt of a complete monitoring plan, and at its discretion, [NMFS] will either submit the plan to members of a peer review panel for review or within 60 days of receipt of the proposed monitoring plan, schedule a workshop to review the plan'' (50 CFR 216.108(d)).

NMFS convened an independent peer review panel to review TGS' mitigation and monitoring plan in its IHA application for taking marine mammals incidental to the proposed open-water seismic survey in the Chukchi Sea during 2013. The panel met on January 8 and 9, 2013, and provided their final report to NMFS in March 2013. The full panel report can be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

NMFS provided the panel with TGS' monitoring and mitigation plan and asked the panel to address the following questions and issues for TGS' plan:

- Will the applicant's stated objectives effectively further the understanding of the impacts of their activities on marine mammals and otherwise accomplish the goals stated below? If not, how should the objectives be modified to better accomplish the goals above?
- Can the applicant achieve the stated objectives based on the methods described in the plan?
- Are there technical modifications to the proposed monitoring techniques and methodologies proposed by the applicant that should be considered to better accomplish their stated objectives?
- Are there techniques not proposed by the applicant (i.e., additional monitoring techniques or methodologies) that should be considered for inclusion in the applicant's monitoring program to better accomplish their stated objectives?
- What is the best way for an applicant to present their data and results (formatting, metrics, graphics, etc.) in the required reports that are to be submitted to NMFS (i.e., 90-day report and comprehensive report)?

The peer review panel report contains recommendations that the panel members felt were applicable to the TGS' monitoring plans. The panel agrees that the objective of vessel-based monitoring to implement mitigation measures to prevent or limit Level A takes is appropriate. In addition, at the time the panel reviewed the TGS' proposed marine mammal monitoring and mitigation plan, TGS only proposed vessel-based visual monitoring (but subsequently added PAM as described above). The panel was particularly concerned that there are considerable limitations to the ability of PSOs to monitor the full extent of the zones of influence, as these zones extend to as far as 15 km beyond the source. In addition, the panel pointed out that TGS did not specify how it planned to operate the scout vessel for marine mammal monitoring.

Specific recommendations provided by the peer review panel to enhance marine mammal monitoring, especially far distance monitoring beyond exclusion zones, include: (1) Implementing passive acoustic monitoring, with bottom mounted passive acoustic recorders probably being the most appropriate method; (2) deploying a real-time, passive acoustic monitoring device that is linked by satellite (i.e., Iridium) phone; (3) collaborating with NMFS to use aerial survey data for assessing marine mammal distribution, relative abundance, behavior, and possible impacts relative to seismic surveys; (4) looking into the possibility of using unmanned aerial systems to survey for marine mammals in offshore areas; and (5) utilizing new technologies, such as underwater vehicles, gliders, satellite monitoring, etc., to conduct far-field monitoring.

NMFS discussed extensively with TGS ways to improve far-field marine mammal monitoring. As a result, upon further investigation and conversations with both JASCO and Bio-Waves by TGS, as well as further research into past Arctic marine mammal monitoring results conducted with towed-PAM, NMFS and TGS agree that utilizing a

well-designed towed-PAM system would meet the need to provide enhanced marine mammal monitoring beyond exclusion zones, as well as using acoustic data for limited relative abundance and distribution analysis, and possibly limited insights on impacts to marine mammals.

NMFS also studied other PAM methodologies suggested by the peer-review panel. First, concerning deploying fixed bottom mounted recorders, TGS states that it has been in contact with other operators but was not able to find a collaborator to participate in long-term acoustic monitoring due to the short-term nature of the proposed survey. Regarding the real-time acoustic monitoring with fixed buoy, TGS stated that it conducted an evaluation of this option and discussed the possibility with the Cornell University's Bioacoustical Research Program concerning its real-time marine acoustic recording unit (MARU), but decided that the technology is still in the research and development stage. TGS also states that it did not consider the technology because the cost is more expensive than other PAM methods. TGS also discussed (with NMFS scientists) the possibility of using NMFS' aerial survey data for assessing marine mammal distribution, relative abundance, and possible impacts relative to seismic surveys. However, most of TGS' survey areas are outside NMFS aerial survey area, which makes it impossible to use these datasets for impact analyses. TGS also did a cost-benefit analysis of manned aerial surveys, and eliminated this as an option due to increased health and safety exposure risk, especially north of 72°N. TGS also investigated the possibility of using unmanned aerial vehicles (UAV) to survey for marine mammals in offshore areas, however, it has also turned out not to be feasible due to the fact that the approach is currently awaiting an FAA permit to operate in the Arctic, and this permit could not be guaranteed to be obtained in time for the TGS monitoring effort. TGS states that it did consider new technologies, but did not feel that they could justify the expense of testing techniques with unknown capabilities in the Arctic environment.

In addition, the panel also recommends that TGS collaborate with other organizations operating in the Chukchi Sea and share visual and acoustic data to improve understanding of impacts from single and multiple operations and efficacy of mitigation measures. Accordingly, TGS plans to share these data via the OBIS–SEAMAP Web site entertaining all appropriate data-sharing agreements, including data obtained using towed PAM.

II. Reporting Measures

1. Sound Source Verification Reports

A report on the preliminary results of the sound source verification measurements, including the measured 190, 180, and 160 dB (rms) radii of the airgun sources, would be submitted within 14 days after collection of those measurements at the start of the field season. This report will specify the distances of the exclusion zones that were adopted for the survey.

2. Field Reports

Throughout the survey program, PSOs will prepare a report each day or at such other intervals, summarizing the recent results of the monitoring program. The reports will summarize the species and numbers of marine mammals sighted. These reports will be provided to NMFS and to the survey operators.

3. Technical Reports

The results of TGS' 2013 vessel-based monitoring, including estimates of ''take'' by harassment, would be presented in the ''90-day'' and Final Technical reports, if the IHA is issued for the proposed open-water 2D seismic surveys. The Technical Reports should be submitted to NMFS within 90 days after the end of the seismic survey. The Technical Reports will include:

(a) Summaries of monitoring effort (e.g., total hours, total distances, and marine mammal distribution through the study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals);

(b) Analyses of the effects of various factors influencing detectability of marine mammals (e.g., sea state, number of observers, and fog/glare);

(c) Species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover;

(d) To better assess impacts to marine mammals, data analysis should be separated into periods when a seismic airgun array (or a single mitigation airgun) is operating and when it is not. Final and comprehensive reports to NMFS should summarize and plot:

- Data for periods when a seismic array is active and when it is not; and
- The respective predicted received sound conditions over fairly large areas (tens of km) around operations;

(e) Sighting rates of marine mammals during periods with and without airgun activities (and other variables that could affect detectability), such as:

- initial sighting distances versus airgun activity state;
- closest point of approach versus airgun activity state;
- observed behaviors and types of movements versus airgun activity state;
- numbers of sightings/individuals seen versus airgun activity state;
- distribution around the survey vessel versus airgun activity state; and
- estimates of take by harassment;

(f) Reported results from all hypothesis tests should include estimates of the associated statistical power when practicable;

(g) Estimate and report uncertainty in all take estimates. Uncertainty could be expressed by the presentation of confidence limits, a minimum-maximum, posterior probability distribution, etc.; the exact approach would be selected based on the sampling method and data available;

(h) The report should clearly compare authorized takes to the level of actual estimated takes; and

(i) Methodology used to estimate marine mammal takes and relative abundance on towed PAM.

4. Notification of Injured or Dead Marine Mammals

In addition, NMFS would require TGS to notify NMFS' Office of Protected Resources and NMFS' Stranding Network within 48 hours of sighting an injured or dead marine mammal in the vicinity of seismic survey operations. TGS shall provide NMFS with the species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

In the event that an injured or dead marine mammal is found by TGS that is not in the vicinity of the proposed open-water seismic survey program, TGS would report the same information as listed above as soon as operationally feasible 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]. Only take by Level B behavioral harassment is anticipated as a result of the proposed open-water seismic survey program. Anticipated impacts to marine mammals are associated with noise propagation from the survey airgun(s) used in the seismic surveys.

The full suite of potential impacts to marine mammals was described in detail in the ''Potential Effects of the Specified Activity on Marine Mammals'' section found earlier in this document. The potential effects of sound from the proposed open-water seismic survey programs might include one or more of the following: masking of natural sounds; behavioral disturbance; non-auditory physical effects; and, at least in theory, temporary or permanent hearing impairment (Richardson *et al.* 1995). As discussed earlier in this document, the most common impact will likely be from behavioral disturbance, including avoidance of the ensonified area or changes in speed, direction, and/or diving profile of the animal. For reasons discussed previously in this document, hearing impairment (TTS and PTS) is highly unlikely to occur based on the mitigation and monitoring measures that would preclude marine mammals from being exposed to noise levels high enough to cause hearing impairment.

For impulse sounds, such as those produced by airgun(s) used in the 2D seismic surveys, NMFS uses the 160 dB (rms) re 1 μPa isopleth to indicate the onset of Level B harassment. TGS provided calculations for the 160-dB isopleths produced by the proposed seismic surveys and then used those isopleths to estimate takes by harassment. NMFS used the calculations to make the necessary MMPA findings. TGS provided a full description of the methodology used to estimate takes by harassment in its IHA application, which is also provided in the following sections.

Basis for Estimating ''Take by Harassment''

The estimated takes by harassment is calculated in this section by multiplying the expected densities of marine mammals that may occur near the planned activities by the area of water likely to be exposed to impulse sound levels of ≥160 dB (rms) re 1 μPa.

Marine mammal occurrence near the operation is likely to vary by season and habitat, mostly related to the presence or absence of sea ice. Although current NMFS' noise exposure standards state that Level B harassment occurs at exposure levels ≥160 dB (rms) re 1 μPa by impulse sources, there is no evidence that avoidance at these received sound levels would have significant biological effects on individual animals. Any changes in behavior caused by sounds at or near the specified received levels would likely fall within the normal variation in such activities that would occur in the absence of the planned operations. However, these received levels are currently used to set the threshold for Level B behavioral harassment.

Marine Mammal Density Estimates

The first step in estimating the number of marine mammals that might be ''taken by harassment'' was to conduct a review of available data on density estimates for the marine mammal species occurring in the project vicinity and adjacent areas of the Chukchi Sea. While several densities are available for U.S. waters in the Chukchi Sea, no reliable estimates are known for U.S. waters north of 72° N. Furthermore, no systematic surveys are known for the western half of the proposed project area in international waters.

Therefore, densities used to estimate exposures were based on two recent IHA applications and three 90-day reports to NMFS summarizing results of field monitoring surveys. These project areas overlapped the proposed TGS project area to at least some extent as well as TGS' proposed seismic operations period. A map showing the boundaries of these survey areas relative to TGS' proposed seismic line locations is provided in Figure 2 of TGS' IHA application. The surveys consisted of the (1) Two Statoil 90-day reports from the northern Chukchi Sea (Blees *et al.* 2010; Hartin *et al.* 2011), (2) UAGI's IHA (LGL 2011) and 90-day report (Cameron *et al.* 2012), and (3) Shell 2012 IHA (Shell 2011). These data are considered the ''best available'' density estimates and occurrence data currently available for the project area.

All recent density estimates for four different project areas overlapping the TGS project area based on the observed or derived densities reported in other studies (Blees *et al.* 2010; Hartin *et al.* 2011; LGL 2011; Shell 2011; Cameron *et al.* 2012) and are shown in Table 3 of TGS' IHA application. Note that only the Cameron *et al.* (2012) survey occurred north of 72° N in U.S. waters and international waters partially overlapping the TGS project area. Sightings providing data on observed densities were available for the following six species: the bowhead, gray and beluga whale, and the bearded, ringed and spotted seal. The remaining other six species occur so rarely in the project area vicinity that reliable densities are not available for them and/or no sightings were made during the reported surveys: the humpback, minke, fin, and killer whales, the harbor porpoise, and the ribbon seal (Blees *et al.* 2010; Hartin *et al.* 2011; Cameron *et al.* 2012). Thus, certain fractional numbers were assigned to them based on those reported for other IHAs overlapping the proposed TGS project area, to address the rare chance of an encounter (Blees *et al.* 2010; Hartin *et al.* 2011; LGL 2011; Shell 2011; Cameron *et al.* 2012).

Adjustment Factors Applied to Provide Lower and Upper Estimates of Density

A number of habitat parameters have been shown to influence the distribution of marine mammal species occurring in the TGS project area. These parameters were applied to adjust the density of species accordingly, as done by other applicants in previous IHA applications (e.g., Blees *et al.* 2010; Hartin *et al.* 2011; LGL 2011; Shell 2011, Cameron *et al.* 2012). These included (1) open water (i.e., ice-free) vs. ice-edge margin (higher densities of pinnipeds and beluga whales occur near and/or within the ice margin), (2) summer (July–August) vs. fall (September–October), (3) water depth (>200 vs. <200 m deep), and (4) likelihood of occurrence above or below 72° N. Open-water densities were used if available because TGS operations must completely avoid ice to be able to safely and effectively conduct operations.

Densities (Table 3 in TGS' IHA application) used to estimate and calculate the number of exposures to TGS' seismic impulse sound levels ≥160 dB (rms) re1μPa were obtained by (1) averaging the densities from the four previous studies by summer (July–August), fall (September–October), and summer–fall, and then (2) multiplying the resulting averaged densities by adjustment factors for water depth (shallower or deeper than 200 m) and expected occurrence in waters north or south of 72° N. Notably, TGS plans to operate above 72° N for about half (32 days) of the total 45–60-day period in US Federal waters (35 days of which would involve seismic operations), and for all operations in international waters, up to 33 days. These northern waters above 72° N would be accessed sometime between about mid-September and 15 October (when waters are ice-free).

Because few data were available for most of the survey area, particularly north of 72° N and west of Barrow, it is not known how closely the applied average densities reflect the actual densities that will be encountered

during the proposed TGS seismic survey. Thus, lower and upper adjustment factors (Table 4 in TGS' IHA application) were multiplied by the averaged densities to provide a range of density estimates. The latter adjustment was incorporated into a formula to estimate exposures to seismic sounds. The ''lower adjustment factor'' does not apply adjustment factors to densities north of 72° N for the bowhead and beluga whale and the ringed and bearded seal. In contrast, the ''upper adjustment factor'' applies factors to account for the expected lower density of marine mammal species north of 72° N. Adjustment factors differed by species and were based on (1) the reported distribution and occurrence of each species in these waters, and (2) factors applied by ION (LGL 2012) for their 2012 IHA application for the fall period of Oct–Dec 2012 that overlapped the fall period (mid-to-late September–October) and north-easternmost region that TGS expects to operate in international waters during fall.

TGS applied these density data and factors previously applied in an IHA issued to ION to account for expected lower densities above 72° N where waters are predominantly >1,000 m deep. The upper-adjusted (i.e., lower) density estimate was calculated by multiplying reported fall densities for more southern Chukchi waters as follows: (1) by a factor of 0.0 for fin, humpback, minke and killer whales, and harbor porpoise and ribbon and spotted seals as they are not expected in waters above 72° N and thus were assumed not to occur there; (2) by an adjustment factor of 0.01 for gray whales (since the northernmost boundary of their distribution is near 72° N and they are thus considered highly unlikely to occur above 72° N; (3) by a factor of 0.1 for bowhead whales as the area is outside the main migration corridor, and (4) by a factor of 0.1 for beluga whales and bearded and ringed seals as they are closely associated with ice, and thus considered less likely to occur in ice-free waters needed to conduct the TGS seismic operations.

A similar 0.1 adjustment factor was applied in the ION IHA (LGL 2012) for species where the seismic survey area was on the edge of that species' range at the given time of year. ION's adjustment factor of 0.1 was used for TGS density estimates because TGS proposes to be well north and west of ION's westernmost 2012 survey lines no earlier than 15–30 September through 31 October 2013. In comparison, ION proposed their program for 1 October through mid-December, and their actual program occurred in the Chukchi and Beaufort Seas from 20 October–9 November, 2012. These periods overlap the majority of the period that TGS is expected to be operating at or near the westernmost seismic lines (no earlier than 15–30 September through October) between 73°–76° N and 160° W to 160° E. Thus, ION's ''late season'' period coincides with TGS' proposed late fall season both in time and space relative to waters above 72° N.

The upper density estimates consisted of the averaged fall densities for more southern Chukchi waters by only (1) a smaller adjustment factor of 0.20 for gray whales (Table 4 of TGS' IHA application), and (2) by the same factor of 0.0 for fin, humpback, minke and killer whales, and harbor porpoise and ribbon and spotted seals as described above.

Additional Rationale for Adjusting Densities North of 72° N

- No whale sightings have been reported in waters north of 72° N during the few recent vessel-based surveys conducted there that overlapped the southern or eastern part of the proposed TGS project area and season (Blees *et al.* 2010; Hartin *et al.* 2011; Cameron *et al.* 2012).
- The main fall migration corridor for bowheads reportedly occurs south of 72° N (Quakenbush *et al.* 2010). However, satellite-tagging studies indicate that at least some individual bowheads migrate generally west/southwest across the project area in waters above 72° N and west of Barrow during the fall migration from September–November (Quakenbush 2007; LGL 2011; Quakenbush *et al.* 2012).
- The reported gray whale distribution in the Chukchi Sea normally does not extend much north of 72° N during summer/fall (Jefferson *et al.* 2008). This northernmost peripheral boundary area is thus expected to have very low gray whale densities. Furthermore, most gray whales will have migrated south of the project area by fall (Rice and Wolman 1971; Allen and Angliss 2012).

Exposure Calculation Methods

The approach used to calculate the estimated number of individuals of each marine mammal species potentially exposed to received levels of seismic impulse sound levels ≥160 dB (rms) re 1 μPa during the proposed seismic project is described below.

1. The area of water (in km^2) ensonified to ≥160 dB (rms) re 1 μPa around the operating seismic source array on seismic lines as well as turns and transits between seismic lines was calculated for U.S. and international waters for waters shallower and deeper than 200 m, and for waters north and south of 72° N (Table 2). It was assumed for purposes of this estimation that the full seismic source array would be used during all seismic lines and during the 1-km run-in and 5-km run-out between seismic lines. In addition, it was assumed that a single 60 in^3 airgun would be used during turns and transits between seismic lines. Ensonified waters were calculated as follows.

2. A buffer was applied on both sides of the planned survey tracklines equivalent to the distances modeled for the proposed 3,280 in^3 seismic source array by JASCO in 2010 at three locations in the project area (Zykov *et al.* 2013). The buffer width corresponding to this 160 (rms) dB re 1 μPa isopleth varied with three water depth categories. Thus, survey tracklines located over waters 17–40 m deep were buffered by 8.5 km, those over waters 41–100 m deep were buffered by 9.9 km, and those over water depths of >100 m were buffered by 15 km.

TABLE 2—ESTIMATED AREA (KM²) ENSONIFIED TO >160 DB (RMS) RE 1 μPA BY SEISMIC IMPULSES ALONG TGS' 2013 PROPOSED SEISMIC LINES AND TURNS IN U.S. AND INTERNATIONAL WATERS OF THE CHUKCHI SEA. ENSONIFIED AREAS ASSUMED THAT THE FULL 3,280 IN³ ARRAY OPERATED CONTINUOUSLY ON SURVEY LINES AND THAT THE SINGLE MITIGATION AIRGUN (60 IN³) OPERATED CONTINUOUSLY ON TURNS (AND TRANSITS) BETWEEN SURVEY LINES

	Above 72°N		Below 72°N		Water depth < 200m		Water depth > 200m		All lines	All turns	All lines & turns
	Total lines area (km²)	Turns area (km²)	Total lines area (km²)	Turns area (km²)	Total lines area (km²)	Turns area (km²)	Total lines area (km²)	Turns area (km²)	Total lines area (km²)	Total turns area (km²)	Total ensonified area (km²)
US	65477	1294	72974	1442	114858	2770	23594	466	138452	2736	141188
International	115135	4200	0	0	45954	1676	69181	2524	115135	4200	119335
Total	180612	5494	72974	1442	160812	3946	92775	2990	253586	6936	260522

3. A smaller buffer was applied to both sides of turn lines between seismic lines equivalent to the measured distance to the 160 dB (rms) re 1 μPa isopleth of a single 60 in³ array as measured by JASCO. The associated area in km² was calculated using Mysticetus™ software. Mysticetus™ identified water depths at 100-m intervals along the survey trackline using bathymetric data. At each 100-m interval, Mysticetus™ applied one of the three aforementioned 160 dB (rms) re 1 μPa radius isopleths corresponding to that water depth. Overlapping areas were treated separately. The resulting World Geodetic System (WGS) 84 polygons were re-projected into North Pole Stereographic coordinates and the total area was calculated.

4. Averaged densities of marine mammals (Table 3 in TGS' IHA application) were adjusted as applicable (Table 4 in TGS' IHA application) then multiplied by the area predicted to be ensonified to ≥160 dB (rms) re 1 μPa. The procedure is outlined below.

• Because TGS expects to conduct seismic lines in U.S. Federal waters sometime between mid-July and mid-September in late summer and early fall, the proportion of U.S. Federal waters ensonified to >160 dB (rms) re 1 μPa was multiplied by the average of summer and fall densities reported from other studies (Table 3 in TGS' IHA application).

• Because TGS expects to conduct seismic lines in international waters starting in fall from mid-to-late September through October, the proportion of international waters ensonified to >160 dB (rms) re 1 μPa was multiplied by the average of fall densities reported from other studies (based nearly exclusively on surveys south of 72° N since it is considered the best and only systematic data available for the region).

• The proportions of ensonified waters north and south of 72° N were also calculated for U.S. and international waters. Species-specific average summer-fall and fall densities associated with these depth categories were multiplied by the corresponding proportion and season.

• In addition, the proportions of ensonified waters where water depth along the seismic line was <200 m deep or >200 m deep were calculated. Species-specific average summer-fall and fall densities associated with these depth categories were multiplied by the corresponding proportion and season.

• Reported fall density estimates for gray, bowhead and beluga whales, and bearded and ringed seals were adjusted for ice-free waters N of 72° N by multiplying reported fall densities for more southern Chukchi waters by low and high adjustment factors described above to provide a range of potential exposures.

In a summary, estimated species exposures are calculated by multiplying seasonally (summer vs. fall) and spatially (above vs. below 72° N at various water depths) marine mammal density by the total ensonified areas with received levels higher than 160 dB re 1μPa (rms).

Potential Number of ''Take by Harassment''

As stated earlier, the estimates of potential Level B takes of marine mammals by noise exposure are based on a consideration of the number of marine mammals that might be present during operations in the Chukchi Sea and the anticipated area exposed to those sound pressure levels (SPLs) above 160 dB re 1 μPa for impulse sources (seismic airgun during 2D seismic surveys).

Some of the animals estimated to be exposed, particularly migrating bowhead whales, might show avoidance reactions before being exposed to sounds at the specified threshold levels. Thus, these calculations actually estimate the number of individuals potentially exposed to the specified sounds levels that would occur if there were no avoidance of the area ensonified to that level.

Numbers of marine mammals that might be present and potentially taken are summarized in Table 3 based on calculation described above.

TABLE 3—ESTIMATES OF THE POSSIBLE MAXIMUM NUMBERS OF MARINE MAMMALS TAKEN BY LEVEL B HARASSMENT (EXPOSED TO ≥160 DB FROM AIRGUN SOUND) DURING TGS' PROPOSED 2D SEISMIC SURVEY IN THE CHUKCHI SEA, JULY–OCTOBER 2013

Species	Level B takes	Percent population
Bowhead whale	794	4.70
Gray whale	1,363	7.13
Fin whale	5	0.09
Humpback whale	5	0.53
Minke whale	5	0.62
Beluga whale	412	11.11
Killer whale	5	1.59
Harbor porpoise	36	0.07
Ringed seal	30,000	14.36
Bearded seal	6000	0.84
Spotted seal	500	0.84
Ribbon seal	100	0.20

Estimated Take Conclusions

Effects on marine mammals are generally expected to be restricted to avoidance of the area around the planned activities and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment''.

Cetaceans—The take calculation estimates suggest a total of 794 bowhead whales may be exposed to sounds at or above 160 dB (rms) re 1 μPa (Table 3). This number is approximately 7.53% of the Bering–Chukchi–Beaufort (BCB) population of 16,892 assessed in 2011 (Givens *et al.* 2013). The total estimated number of gray and beluga whales that

may be exposed to sounds from the activities ranges up to 1,363 and 412, respectively (Table 3). Fewer harbor porpoises are likely to be exposed to sounds during the activities. The small numbers of other whale species that may occur in the Chukchi Sea are unlikely to be present around the planned operations but chance encounters may occur. The few individuals would represent a very small proportion of their respective populations.

Pinnipeds—Ringed seal is by far the most abundant species expected to be encountered during the planned operations. The best estimate of the numbers of ringed seals exposed to sounds at the specified received levels during the planned activities is 30,000, which represent up to 14.36% of the Alaska population. Fewer individuals of other pinniped species are estimated to be exposed to sounds at Level B behavioral harassment level, also representing small proportions of their populations.

Negligible Impact and Small Numbers Analysis and Determination

As a preliminary matter, we typically include our negligible impact and small numbers analysis and determination under the same section heading of our **Federal Register** Notices. Despite co-locating these terms, we acknowledge that negligible impact and small numbers are distinct standards under the MMPA and treat them as such. The analysis presented below does not conflate the two standards; instead, each has been considered independently and we have applied the relevant factors to inform our negligible impact and small numbers determinations.

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.'' In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

No injuries or mortalities are anticipated to occur as a result of TGS' proposed 2013 open-water 2D seismic surveys in the Chukchi Sea, and none are being authorized. Additionally, animals in the area are not expected to incur hearing impairment (i.e., TTS or PTS) or non-auditory physiological effects. Takes will be limited to Level B behavioral harassment. Although it is possible that some individuals of marine mammals may be exposed to sounds from seismic survey activities more than once, the expanse of these multi-exposures are expected to be less extensive since both the animals and the survey vessels will be moving constantly in and out of the survey areas.

Most of the bowhead whales encountered will likely show overt disturbance (avoidance) only if they receive airgun sounds with levels ≥ 160 dB re 1 μPa. Odontocete reactions to seismic airgun pulses are usually assumed to be limited to shorter distances from the airgun(s) than are those of mysticetes, probably in part because odontocete low-frequency hearing is assumed to be less sensitive than that of mysticetes. However, at least when in the Canadian Beaufort Sea in summer, belugas appear to be fairly responsive to seismic energy, with few being sighted within 6–12 mi (10–20 km) of seismic vessels during aerial surveys (Miller *et al.* 2005). Belugas will likely occur in small numbers in the Chukchi Sea during the survey period and few will likely be affected by the survey activity.

As noted, elevated background noise level from the seismic airgun reverberant field could cause acoustic masking to marine mammals and reduce their communication space. However, even though the decay of the signal is extended, the fact that pulses are separated by approximately 10 seconds means that overall received levels at distance are expected to be much lower, thus resulting in less acoustic masking.

Taking into account the mitigation measures that are planned, effects on marine mammals are generally expected to be restricted to avoidance of a limited area around TGS' open-water activities and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment''. The many reported cases of apparent tolerance by cetaceans of seismic exploration, vessel traffic, and some other human activities show that co-existence is possible. Mitigation measures such as controlled vessel speed, dedicated marine mammal observers, non-pursuit, and shut downs or power downs when marine mammals are seen within defined ranges will further reduce short-term reactions and minimize any effects on hearing sensitivity. In all cases, the effects are expected to be short-term, with no lasting biological consequence.

Of the thirteen marine mammal species likely to occur in the seismic survey area, bowhead, fin, and humpback whales and ringed and bearded seals are listed as endangered or threatened under the ESA. These species are also designated as ''depleted'' under the MMPA. Despite these designations, the BCB stock of bowheads has been increasing at a rate of 3.4 percent annually for nearly a decade (Allen and Angliss 2010). Additionally, during the 2001 census, 121 calves were counted, which was the highest yet recorded. The calf count provides corroborating evidence for a healthy and increasing population (Allen and Angliss 2010). The occurrence of fin and humpback whales in the seismic survey areas is considered very rare. There is no critical habitat designated in the U.S. Arctic for the bowhead, fin, and humpback whales. The Alaska stock of bearded seals, part of the Beringia distinct population segment (DPS), and the Arctic stock of ringed seals, have recently been listed by NMFS as threatened under the ESA. None of the other species that may occur in the project area are listed as threatened or endangered under the ESA or designated as depleted under the MMPA.

Potential impacts to marine mammal habitat were discussed previously in this document (see the ''Anticipated Effects on Habitat'' section). Although some disturbance is possible to food sources of marine mammals, the impacts are anticipated to be minor enough as to not affect rates of recruitment or survival of marine mammals in the area. Based on the vast size of the Arctic Ocean where feeding by marine mammals occurs versus the localized area of the seismic survey activities, any missed feeding opportunities in the direct project area would be minor based on the fact that other feeding areas exist elsewhere.

The authorized take represents 11.11% of the Eastern Chukchi Sea population of approximately 3,710 beluga whales, 1.59% of Aleutian Island and Bering Sea stock of approximately 314 killer whales, 0.07% of Bering Sea stock of approximately 48,215 harbor porpoises, 7.13% of the Eastern North Pacific stock of approximately 19,126 gray whales, 7.53% of the Bering-Chukchi-Beaufort population of 10,545 bowhead whales, 0.53% of the Western North Pacific stock of approximately 938 humpback whales, 0.09% of the Northeast Pacific stock of approximately 5,700 fin whales, and 0.62% of the Alaska stock of approximately 810 minke whales. The take estimates presented for ringed, bearded, spotted, and ribbon seals represent 14.36, 2.47, 0.84, and 0.20% of U.S. Arctic stocks of

each species, respectively. The mitigation and monitoring measures (described previously in this document) included in the IHA are expected to reduce even further any potential disturbance to marine mammals.

In addition, no important feeding and reproductive areas are known in the vicinity of the TGS' seismic surveys at the time the surveys are to take place. No critical habitat of ESA-listed marine mammal species occurs in the Chukchi Sea.

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 finds that TGS' 2013 open-water 2D seismic surveys in the Chukchi Sea may result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the seismic surveys will have a negligible impact on the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

NMFS has determined that TGS' 2013 open-water 2D seismic surveys in the Chukchi Sea will not have an unmitigable adverse impact on the availability of species or stocks for taking for subsistence uses. This determination is supported by information contained in this document and TGS' POC. TGS has adopted a spatial and temporal strategy for its Chukchi Sea open-water seismic surveys that will help ensure its survey will have no unmitigable impacts to subsistence hunters. Due to the timing of the project and the distance from the surrounding communities, it is anticipated to have no effects on spring harvesting and little or no effects on the occasional summer harvest of beluga whale, subsistence seal hunts (ringed and spotted seals are primarily harvested in winter while bearded seals are hunted during July–September in the Beaufort Sea), or the fall bowhead hunt.

In addition, based on the measures described in TGS' POC, the required mitigation and monitoring measures (described earlier in this document), and the project design itself, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses from TGS' 2013 open-water 2D seismic surveys in the Chukchi Sea.

Endangered Species Act (ESA)

The bowhead, fin, and humpback whales and ringed and bearded seals are the only marine mammal species currently listed as endangered or threatened under the ESA that could occur during TGS' 2D seismic surveys during the Arctic open-water season. NMFS' Permits and Conservation Division consulted with NMFS' Alaska Regional Office Division of Protected Resources under section 7 of the ESA on the issuance of an IHA to TGS under section 101(a)(5)(D) of the MMPA for this activity. A Biological Opinion was issued on July 10, 2013, which concludes that issuance of the IHA is not likely to jeopardize the continued existence of the ESA-listed marine mammal species. NMFS will issue an Incidental Take Statement under this Biological Opinion which contains reasonable and prudent measures with implementing terms and conditions to minimize the effects of take of listed species.

National Environmental Policy Act (NEPA)

NMFS prepared an EA that includes an analysis of potential environmental effects associated with NMFS' issuance of an IHA to TGS to take marine mammals incidental to conducting its 2D seismic surveys in the Chukchi Sea during the 2013 open-water season. NMFS has finalized the EA and prepared a FONSI for this action. Therefore, preparation of an EIS is not necessary.

Authorization

As a result of these determinations, NMFS has issued an IHA to TGS to take marine mammals incidental to its 2013 seismic survey in the Chukchi Sea, Alaska, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: August 14, 2013.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–20310 Filed 8–19–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0174]

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service (DFAS), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the DFAS 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 October 21, 2013.

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 Finance and Accounting Services-Columbus, 3990 East Broad Street, Columbus, OH 43218 or call Ms. Michelle Estep, (614) 701–2100, Christina Haines-Ball, (614) 701–2123 or Phyllis Wolford, (614) 701–2309.

Title; Associated Form; and OMB Number: 1099 Tax Reporting Program, 1099 MISC, OMB 0730–TBD.

Needs and Uses: The information collection requirement allows the government to gather and capture payment data for the Department of Defense (DoD) Purchase Card Program, the following payment systems: Mechanization of Contract Administration Services (MOCAS), Computerized Accounts Payable System (CAPS), Integrated Accounts Payable

System (IAPS), One Pay, and from the following DoD applications: Defense Enterprise Accounting Management System (DEAMS), General Fund Enterprise Business System (GFEBS), Defense Agencies Initiative (DAI), Logistics Modernization Program (LMP), Navy Enterprise Resource Planning (NAVY ERP), Enterprise Business System (EBS). Once all data files have been loaded, the application will issue a consolidated 1099, if applicable, to a customer instead of separate 1099s from each of the payments systems and DoD Purchase Card Program.

Affected Public: Individuals and Businesses.

Annual Burden Hours: 18,704 hours.

Number of Respondents: 41,564.

Responses per Respondent: 1.

Average Burden per Response: 27 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Tax identification numbers, employer identification number, and/or social security number for individuals and businesses with reportable miscellaneous income that must be submitted annually to the Internal Revenue Service.

Dated: August 14, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–20187 Filed 8–19–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0176]

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service (DFAS), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the DFAS 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 October 21, 2013.

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 Finance and Accounting Services-Cleveland, 1240 East 9th Street, Cleveland, OH 44199, ATTN: JFBDA—Mr. Charles Moss, *charles.moss@dfas.mil,* 216–204–4426.

Title; Associated Form; and OMB Number: Trustee Report, DD 2826, OMB 0730–0012.

Needs and Uses: This form is used to report on the administration of the funds received on behalf of a mentally incompetent member of the uniformed services pursuant to 37 U.S.C. 602–604.

Affected Public: Individuals or households.

Annual Burden Hours: 300 hours.

Number of Respondents: 300.

Responses per Respondent: 1.

Average Burden per Response: 1 hour.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

When a member of the uniformed services is declared mentally incompetent, the need arises to have a trustee appointed to act on their behalf with regard to military pay matters. Trustees will complete this form to report the administration of the funds received on behalf of the member. The requirement to complete this form helps alleviate the opportunity for fraud, waste and abuse of Government funds and member's benefits.

Dated: August 14, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–20205 Filed 8–19–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0173]

Proposed Collection; Comment Request

AGENCY: Defense Threat Reduction Agency, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* Defense Threat Reduction Agency 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 October 21, 2013.

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 Defense Threat Reduction Agency 8725 John J Kingman Rd Stop 6201, Fort Belvoir, VA 22060–6201 Reach Back Software Distribution Center at (703) 767–3419.

Title; Associated Form; and OMB Number: Web interface for DTRA/SCC–WMD Modeling and Simulation Tool Forms OMB Control 0704–TBD.

Needs and Uses: The information collection requirement is necessary to obtain and record the dissemination of research and development chemical, biological, radiological and nuclear modeling and simulation tools used by Federally Funded Academic Research and Development, Contractors, DoD, Federal, State, and Local First responders. The information is also used to vet, track, approve, and ensure compliance of foreign disclosure agreements used in research and development.

Affected Public: Consumers/users of Defense Threat Reduction Agency tools. This is a very narrow customer base composed of Federally Funded Academic Research and Development, Contractor, DoD, Federal, State and Local First responders

Annual Burden Hours: 27.5 hours.

Number of Respondents: 110 annual.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The information is entered into a web-interface database for CAC holders and electronic form submissions for non-CAC holders and is used to track and approve tool dissemination, meteorological access and training requests on research and development scientific modeling and simulation tools. This is a very narrow customer base composed of Federally Funded Academic Research and Development, Contractor, DoD, Federal, State and Local First responders. The tools are used to calculate risk, plans responses, and model first and second order of natural or man-made effects/events.

Dated: August 14, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–20184 Filed 8–19–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0179]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Department of Defense 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 October 21, 2013.

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 Office of the Under Secretary of Defense (Personnel and Readiness) (Defense Human Resource Activity), ATTN: Robert Eves, 4800 Mark Center Drive, Alexandria, VA 22350–4000 or submit an email to *dhracac@osd.pentagon.mil.*

Title; Associated Form; and OMB Number: Application for Identification Card/DEERS Enrollment, OMB Control Number 0704–0415.

Needs and Uses: This information collection requirement is necessary to validate eligibility for all individuals applying for DoD benefits and privileges. These benefits and privileges include but are not limited to, medical coverage, DoD identification cards, access to DoD installations, buildings or facilities, and access to DoD computer systems and networks. This information collection is required to obtain the necessary data elements to determine eligible individual's benefits and privileges, to provide a proper identification card reflecting those benefits and privileges, and to maintain a centralized database of the eligible population.

Affected Public: Individuals or Households.

Annual Burden Hours: 100,000.

Number of Respondents: 2,000,000.

Responses per Respondent: 1.

Average Burden per Response: 3 minutes.

Frequency: On Occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This information collected is used to determine an eligible individual's benefits and privileges, to provide a proper identification card reflecting those benefits and privileges, and to maintain a centralized database of the eligible population.

Dated: August 15, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–20220 Filed 8–19–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0177]

Proposed Collection; Comment Request

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Defense Logistics Agency 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 October 21, 2013.

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, 2nd Floor, 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 Logistics Agency, Security and Emergency Services Suite 3533, ATTN: Mr. Gregory Govan, Fort Belvoir, VA 22060 or call Security and Emergency Services at 703–767–5400.

Title; Associated Form; and OMB Number: Physical Access Control System (Honeywell); DLA Form 1815—Request for DLA Badge; OMB Control Number 0704–TBD.

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 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 (non-federal government employee and non-DoD-issued credential) requesting access to the DLA Aviation installation.

Annual Burden Hours: 6,250

Number of Respondents: 25,000

Responses per Respondent: 1

Average Burden per Response: 15 minutes

Frequency: On occasion

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Security Professionals (security administrators, security assistants, and/or Police officers) process the information to ensure personnel requesting and/or requiring access to the DLA Aviation installation are properly identity proofed and vetted prior to allowing access. Respondents are individuals who require physical access to the DLA Aviation installation. Basic identifying information is collected from the individuals, consisting of biographical data. Additional information may also be collected (such as contact information, vehicle information, organization affiliation, etc.) but may not be required for that individual to be registered and gain access to the DLA installation or facility.

Dated: August 15, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–20221 Filed 8–19–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008–HA–0180]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs 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 October 21, 2013.

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, 2nd Floor, 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 Appeals, Hearings and Claims Collection Division, Office of General Counsel, TRICARE® Management Activity, ATTN: Mark P. Donahue, 16401 East Centretech Parkway, Aurora, CO 80011–9066, or via telephone at (303) 676–3411.

Title; Associated Form; and OMB Number: Professional Qualifications Medical/Peer Reviewers, CHAMPUS Form 780, OMB Number 0720–0005.

Needs and Uses: The information collection requirement is necessary to obtain and record the professional qualifications of medical and peer reviewers utilized within TRICARE®. The form is included as an exhibit in an appeal or hearing case file as evidence of the reviewer's professional qualifications to review the medical documentation contained in the case file.

Affected Public: Business or other for profit.

Annual Burden Hours: 20.

Number of Respondents: 60.

Responses per Respondent: 1.

Average Burden per Response: 20 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are medical professionals who provide medical and peer review of cases appealed to the Appeals, Hearings and Claims Collection Division, Office of General Counsel, TRICARE® Management Activity. CHAMPUS Form 780 records the professional qualifications of the medical or peer reviewer. The completed form is included as an exhibit in the appeal or hearing case file to document the professional qualifications of the medical professional who reviewed the case. If the form is not included in the case file, individuals reviewing the file cannot confirm the qualifications of the reviewing medical professional. Having qualified professionals provide medical and peer review is essential in maintaining the integrity of the appeal and hearing process.

Dated: August 15, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–20257 Filed 8–19–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0178]

Proposed Collection; Comment Request

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Defense Logistics Agency 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 October 21, 2013.

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, 2nd Floor, 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 Logistics Agency, Security and Emergency Services Suite 3533, ATTN: Mr. Gregory Govan, Fort Belvoir, VA 22060, or call Security and Emergency Services at 703–767–5400.

Title; Associated Form; and OMB Number:

Physical Access Control System (Lenel)

DSCC Form 2310–1 ''DSCC Tier 2 (Outside Contractor) ID Card Request''

DSCC Form 2310–2 ''DSCC Tier 3 (Inside Contractor) ID Card & Key Card Request''

DSCC Form 2313 ''DSCC Tier 2 Local Access Badge Request''

DLA Form 1815 ''Request for DLA Badge''

OMB Control Number 0704–TBD

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 (non-federal government employee and non-DoD-issued credential) requesting access to the DLA Distribution San Joaquin, DLA Distribution Susquehanna, or DLA Land and Maritime installations or facilities.

Annual Burden Hours: 15,000.

Number of Respondents: 60,000.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Security Professionals (security administrators, security assistants, and/or Police officers) process the information to ensure personnel requesting and/or requiring access are properly identity proofed and vetted prior to allowing personnel access to the DLA Distribution San Joaquin, DLA Distribution Susquehanna, or DLA Land and Maritime installations. Respondents are individuals who require physical access to these DLA installations. Basic identifying information is collected from the individuals, consisting of biographical data. Additional information may also be collected (such as contact information, vehicle information, organization affiliation, etc.) but may not be required for that individual to be registered and gain access to the DLA installation or facility.

Dated: August 15, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–20230 Filed 8–19–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–HA–0175]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs 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 October 21, 2013.

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 Office of the Assistant Secretary of Defense for Health Affairs, Force Health Protection and Readiness, ATTN: CAPT John Eckert, 7700 Arlington Boulevard, Suite 5101 (CODE: FHP&R), Falls Church, VA 22042–5101, or call (703) 681–8356.

Title; Associated Form; and OMB Number: Researcher Responsibilities Form, OMB Number 0720–0042.

Needs and Uses: The information collection requirement is necessary to document researcher's understanding and acceptance of the regulatory and ethical responsibilities pertaining to including humans as subjects in research. Principal and associate investigators must have the proposed, signed form on file before they may engage in research conducted or supported by entities under the purview of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)).

Affected Public: Federal Government, for-profit businesses, not-for-profit businesses.

Annual Burden Hours: 44.5.

Number of Respondents: 89.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: On occasion; original document submitted one time per researcher. Once their document is on file, a researcher may reaffirm their commitment every three years electronically if they remain engaged in human subject research.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Federal Government institutions wishing to conduct or support research on human subjects must first submit for approval to duly designated authorities an Assurance that they will comply with established guidelines in such research. Such Assurances are granted by components of DoD and by the Department of Health and Human Services (HHS). DoD guidance requires principal and associate investigators individually and explicitly to acknowledge that they understand and accept responsibility for protecting the rights and welfare of human research subjects. All principal and associate investigators engaged in research supported or conducted under the purview of the USD(P&R) must read and sign a document that attests to their commitment to abide by the provisions of: (a) The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research; (b) the U.S. Department of Defense (DoD) regulations for the protection of human subjects at Title 32, Code of Federal Regulations, Part 219 (32 CFR part 219) and DoD Instruction 3216.02; (c) the Assurance of the engaged institution; relevant institutional policies and procedures where appropriate; and other Federal, State, or local regulations where appropriate. The Office of the Assistant Secretary of Defense for Health Affairs announces the intent to renew its Researcher Responsibility Form for this purpose and seeks public comment on the provisions thereof. Respondents are professionals who have been designated as principal or associate investigators. When preparing to initiate work on their first human subject research protocol, each principal investigator and associate investigator must assure they have the proposed Researcher Responsibilities form on file with the OUSD(P&R) Component office. This may require new forms from approximately 90 investigators. The form is two pages in length including statements agreed to and half a page for respondent signature and contact information. Respondents generally will be required to scan the form and forward it electronically. The form will be filed electronically and form completion will be logged into a database. After three years, if a researcher still is engaged in research with OUSD(P&R), he/she will be asked to reaffirm his/her commitment electronically. This information collection does not involve sensitive personal information and requires no special confidentiality measures.

Dated: August 15, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–20252 Filed 8–19–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Reserve Forces Policy Board (RFPB); Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Secretary of Defense, Reserve Forces Policy Board, DoD.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces the following Federal advisory committee meeting of the Reserve Forces Policy Board (RFPB) will take place.

DATES: Thursday, September 5, 2013, from 8:15 a.m. to 4:00 p.m.

ADDRESSES: The address is the Army Navy Country Club, 1700 Army Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: CAPT Steven Knight, Designated Federal Officer, (703) 681–0608 (Voice), (703) 681–0002 (Facsimile), Email—*steven.p.knight.mil@mail.mil.* Mailing address is Reserve Forces Policy Board, 5113 Leesburg Pike, Suite 601, Falls Church, VA 22041. Web site: *http://ra.defense.gov/rfpb/.* The most up-to-date changes to the meeting can be found on the RFPB Web site.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of the meeting is to obtain, review and evaluate information related to strategies, policies, and practices designed to improve and enhance the capabilities, efficiency, and effectiveness of the Reserve Components. Additionally, the Board will review its work from the past year and determine what matters to

include in the annual report required by law to be transmitted to the President and the Congress by the Secretary of Defense.

Agenda: The Reserve Forces Policy Board will hold a meeting from 8:15 a.m. until 4:00 p.m. The meeting will begin with opening remarks by MajGen Arnold L. Punaro, USMCR (Ret), Chairman, Reserve Forces Policy Board followed by remarks by a number of current and former officials of the Department of Defense. Invited speakers include the Under Secretary of Defense (Comptroller); the Principal Deputy Assistant Secretary of Defense (Reserve Affairs); the Chairman of the National Commission on the Structure of the Air Force; the President of the RFPB Fellows Society; the President of the National Guard Association of the United States; the Executive Director of the Reserve Officers Association; and the former Director, Cost Assessment and Program Evaluation. The speakers have been asked to discuss their views regarding strategies, policies and practices affecting the reserve components. The RFPB subcommittees and task groups will discuss progress on current work to develop possible future recommendations to the Secretary of Defense and the status of Department review and implementations of the Board's recommendations made previously. Topics may include Reserve Survivor Benefits Plan Disparity Issue and Reserve Component Duty Status Reform. The Secretary of Defense Strategic Questions Task Group will update the Board on its task to gather information, conduct research, analyze relevant facts, and develop for Board consideration a report or reports of advice and recommendations for the Secretary of Defense regarding the best ways to use the Reserve Components in the future, the AC/RC Mix, the cost of a strong Reserve, and how to achieve savings. The Cyber Task Group presentation will discuss the Group's future work plan in gathering information, conducting research, analyzing relevant facts and to develop for Board consideration, a report or reports of advice and recommendations for the Secretary of Defense concerning current and future policies, practices and strategies of the Department related to the Cyber Domain. The Board may also deliberate on the findings of the subcommittee and task group presentations and approve recommendations to the Secretary of Defense.

Meeting Accessibility: 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, the meeting is open to the public. Seating is on a first-come basis. To request a seat at the meeting, interested persons must email or phone Captain Steven Knight, the Designated Federal Officer, not later than noon on Tuesday, September 3, 2013, as listed in **FOR FURTHER INFORMATION CONTACT** section.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, interested persons may submit written statements to the Reserve Forces Policy Board at any time. Written statements should be submitted to the Reserve Forces Policy Board's Designated Federal Officer at the address or facsimile number listed in **FOR FURTHER INFORMATION CONTACT**. If statements pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five (5) business days prior to the meeting in question. Written statements received after this date may not be provided to or considered by the Reserve Forces Policy Board until its next meeting. The Designated Federal Officer will review all timely submitted written statements and provide copies to all the committee members before the meeting that is the subject of this notice. Please note that since the Board operates under the provisions of the FACA, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Board's Web site.

Dated: August 14, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–20188 Filed 8–19–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the National Commission on the Structure of the Air Force

AGENCY: Director of Administration and Management, DoD.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense (DoD) announces that the following Federal advisory committee meeting of the National Commission on the Structure of the Air Force (''the Commission'') will take place.

DATES: *Date of Open Meeting, including Hearing and Commission Discussion:* Tuesday, August 27, 2013, from 8:30 a.m. to 5:00 p.m. Registration will begin at 8:00 a.m.

ADDRESSES: 2521 South Clark Street Suite 200, Crystal City, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mrs. Marcia Moore, Designated Federal Officer, National Commission on the Structure of the Air Force, 1950 Defense Pentagon, Room 3A874, Washington, DC 20301–1950. Email: *dfoafstrucomm@osd.mil.* Desk (703) 545–9113. Facsimile (703) 692–5625.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: The members of the Commission will hear testimony from individual witnesses and then will discuss the information presented at the hearings.

Agenda: Consultants, representatives from the Department of Defense, and other leaders are invited to speak at the public hearing and are asked to address matters pertaining to the U.S. Air Force, the Air National Guard, and the U.S. Air Force Reserve such as their study results and recommendations. These witnesses are also asked to address the evaluation factors under consideration by the Commission for a U.S. Air Force structure that—(a) meets current and anticipated requirements of the combatant commands; (b) achieves an appropriate balance between the regular and reserve components of the Air Force, taking advantage of the unique strengths and capabilities of each; (c) ensures that the regular and reserve components of the Air Force have the capacity needed to support current and anticipated homeland defense and disaster assistance missions in the United States; (d) provides for sufficient numbers of regular members of the Air Force to provide a base of trained personnel from which the personnel of the reserve components of the Air Force could be recruited; (e) maintains a peacetime rotation force to support operational tempo goals of 1:2 for regular members of the Air Forces and 1:5 for members of the reserve components of the Air Force; and (f) maximizes and appropriately balances affordability, efficiency, effectiveness, capability, and readiness. Individual Commissioners will also report their activities, information collection, and analyses to the full Commission.

Meeting Accessibility: The building is fully handicap accessible. Visitors must show a picture I.D. and complete a security screening. Public parking is available within walking distance.

The Designated Federal Officer (DFO) will review all submitted written statements. Written comments should be submitted to Mrs. Marcia Moore, DFO, via facsimile or electronic mail, the preferred modes of submission. Each page of the comment must include the author's name, title or affiliation, address, and daytime phone number. All contact information may be found in the **FOR FURTHER INFORMATION CONTACT** section.

Due to difficulties finalizing the meeting agenda for the scheduled meeting of August 27, 2013, of the National Commission on the Structure of the Air Force the requirements of 41 CFR § 102–3.150(a) were not met. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Registration: Individuals who wish to attend the public hearing and meeting on August 27, 2013 are encouraged to register for the event with the Designated Federal Officer, using the electronic mail and facsimile contact information found in the **FOR FURTHER INFORMATION CONTACT** section. The communication should include the registrant's full name, title, affiliation or employer, email address, and day-time phone number. If applicable, include written comments and Congressional statements. Registrations and written input must be typed.

Background: The National Commission on the Structure of the Air Force was established by the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239). The Department of Defense sponsor for the Commission is the Director of Administration and Management, Mr. Michael L. Rhodes. The Commission is tasked to submit a report, containing a comprehensive study and recommendations, by February 1, 2014 to the President of the United States and the Congressional defense committees. The report will contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions it may consider appropriate in light of the results of the study. The comprehensive study of the structure of the U.S. Air Force will determine whether, and how, the structure should be modified to best fulfill current and anticipated mission requirements for the U.S. Air Force in a manner consistent with available resources.

Dated: August 13, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–20174 Filed 8–19–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision for the Modernization and Enhancement of Ranges, Airspace, and Training Areas in the Joint Pacific Alaska Range Complex in Alaska

ACTION: Notice of availability (NOA).

SUMMARY: The Environmental Impact Statement (EIS) for the Modernization and Enhancement of Ranges, Airspace, and Training Areas in the Joint Pacific Alaska Range Complex (JPARC) in Alaska Record of Decision (ROD) was signed by the United States Army (Army) on 30 July 2013 and the United States Air Force (Air Force) on 6 August 2013.

The ROD states the Air Force and Army decision on the six definitive proposals analyzed in the EIS. These decisions include (1) Fox 3 Military Operating Area (MOA) Expansion and Paxon MOA Addition (Air Force), (2) Realistic Live Ordnance Delivery (Air Force), (3) Battle Area Complex (BAX) Restricted Area Addition (Army), (4) Expand Restricted Area R–2205, including the Digital Multi-Purpose Training Range (DMPTR) (Army), (5) Night Joint Training (Air Force), and (6) Unmanned Aerial Vehicle Access (Army).

The decision was based on relevant factors discussed in the EIS, including technical considerations, public review and Tribal and agency input. The Final EIS was made available to the public on June 28, 2013 through a NOA in the **Federal Register** (Volume 78, Number 125, Page 38975) with a wait period that ended on July 29, 2013. The ROD documents only the six definitive decisions of the Air Force and Army with respect to the proposed Air Force and Army actions analyzed in the EIS. Decision on programmatic actions analyzed in the EIS could be made at a future date.

Authority: This NOA is published pursuant to the regulations (40 CFR Part 1506.6) implementing the provisions of the NEPA of 1969 (42 USC. 4321, *et seq.*) and the Air Force's Environmental Impact Analysis Process (EIAP) (32 CFR 989.21(b) and 989.24(b)(7)) and the Army's Environmental Analysis of Army Actions (32 CFR 651.26 and 651.45(j)(vi)(3)).

The ROD will be available for download at *http://www.jber.af.mil/jparc.asp.*

FOR FURTHER INFORMATION CONTACT: Captain Tania Bryan, Alaskan Command Public Affairs, 9480 Pease Avenue, Suite 120, JBER, AK 99506, (907) 552–2341, *ALCOM.J08@elmendorf.af.mil.*

Henry Williams Jr,

Acting Air Force Federal Register Officer.

[FR Doc. 2013–20232 Filed 8–19–13; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2013–0012]

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army, (OAA–AAHS), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 21, 2013.

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.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Military Surface Deployment and Distribution Command, 1 Soldier Way, Scott Air Force Base, Illinois, 62225–5006; email to *tony.mayo@us.army.mil;* or call the Department of the Army Reports Clearance Officer at (703) 428–6440.

Title, Associated Form, and OMB Number: Freight Carrier Registration Program (FCRP); SDDC Form 410; OMB Control Number 0702–0121.

Needs and Uses: The FCRP is designed to protect the interest of the Government and to ensure that the Department of Defense deals with responsible carriers having the capability to provide quality and dependable service. Information is vital in determining capability to perform quality service transporting DoD freight. Carriers will furnish SDDC with information to assist in determining through other public records whether the company and its officers are responsible contractors.

Affected Public: Business or other for profit.

Annual Burden Hours: 108.

Number of Respondents: 430.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Freight Carrier Registration Program will be a minimum burden to the carrier industry. The information SDDC collects can now be accessed through the DoD Web site. That will expedite the time to approve the carrier to do business with the DoD.

Dated: August 14, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–20182 Filed 8–19–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive Patent License; ICAP Patent Brokerage, LLC

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to ICAP Patent Brokerage, LLC, a revocable, nonassignable, partially exclusive license in the United States to practice the Government-Owned inventions described in U.S. Patent No. 6,384,953: Micro-Dynamic Optical Device.//U.S. Patent No. 6,433,465: Energy-Harvesting Device Using Electrostrictive Polymers.//U.S. Patent No. 7,245,292: Apparatus and Method for Incorporating Tactile Control and Tactile Feedback Into a Human-Machine Interface.//U.S. Patent No. 7,274,413: Flexible Video Display Apparatus and Method.//U.S. Patent No. 7,277,475: Narrowband Interference Excision Device.//U.S. Patent No. 7,925,496: Method for Summarizing Natural Language Text.//U.S. Patent No. 8,217,382: Optical-Powered Flexible Photonic Bandgap Sensor Device.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than September 4, 2013.

ADDRESSES: Written objections are to be filed with the Office of Research and Technology Applications, Space and Naval Warfare Systems Center Pacific, Code 72120, 53560 Hull St, Bldg A33 Room 2531, San Diego, CA 92152–5001.

FOR FURTHER INFORMATION CONTACT: Brian Suh, Office of Research and Technology Applications, Space and Naval Warfare Systems Center Pacific, Code 72120, 53560 Hull St, Bldg A33 Room 2531, San Diego, CA 92152–5001, telephone 619–553–5118, E-Mail: *brian.suh@navy.mil.*

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: August 14, 2013.

D. G. Zimmerman,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2013–20330 Filed 8–19–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Meeting Minutes for publication and public comment in the **Federal Register**.

SUMMARY: Minutes of the last Ocean Research Advisory Panel (ORAP) meeting will be open for public comment until September 16, 2013.

DATES: Comments will be taken until September 16, 2013.

ADDRESSES: The meeting was held at Marine Acoustics Inc, 4100 Fairfax Drive, Suite 730, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Joan S. Cleveland, Office of Naval Research, 875 North Randolph Street, Suite 1425, Arlington, VA 22203–1995, telephone 703–696–4532.

SUPPLEMENTARY INFORMATION: Dr. Cleveland, Designated Federal Officer, (DFO) called the meeting to order at 9:00 a.m. on May 21, 2013.

Introductions were made around the room and on the phone. Dr. Leinen reviewed the agenda. The minutes from the January 2013 meeting were approved.

National Ocean Council (NOC) Update—Given By M. Weiss (NOC)

- The National Ocean Policy Implementation Plan was released on April 16, 2013—the final looks very different from the Draft Implementation Plan. Public comments were taken into account. The final plan focuses on the importance of incremental change and emphasizes local and regional capacity. Action items are identified by federal agency; many are related to the topics ORAP is working on. The Ocean Science and Technology and the Ocean Resource Management interagency committees are tracking progress and will provide reports annually. The final version clarifies what marine planning means and emphasizes the need for flexibility. States/regions are encouraged, but not required, to establish regional planning bodies. Northeast, the Mid-Atlantic, the Pacific Islands and the Caribbean have established regional planning bodies; the Great Lakes region is discussing options; California expects to form a

regional planning body by the end of the year.

- The NOC received the February memo from ORAP suggesting future topics for ORAP to report on and will consider those ideas while working with the NOC Steering Committee to identify new tasks for ORAP.
- Michael Weiss' term at the NOC ends in June.

Q&A:

- Ecosystem-Based Management
  - Now that the Implementation Plan has been released, are there any changes to the NOC request for the Ecosystem-Based Management (EBM) Report? Reply: No, all the things requested originally are still on point.
- Education
  - The ORAP Education working group needs information from the Office of Science and Technology Policy (OSTP) on the recommendations of the Committee on Science, Technology, Engineering, and Math Education (CoSTEM) and requests a teleconference with the OSTP to obtain updated information to better inform what will be included in the report to the NOC.
- Infrastructure—Agencies have no procedure for decommissioning infrastructure.
- Implementation Plan
  - Alaska is pleased to see some of the things that appear in the Implementation Plan.
  - Will regions that have moved forward pass on information to other Regions and the ORAP?
  - It is important to continue working with the states on marine planning.
- ORAP membership, meetings
  - The ORAP needs members that have multiple skill sets which will help ORAP with calling subject matter experts on the various topics that ORAP is asked to report on; the NOC should consider these when selecting nominees.
  - ORAP would like to connect with the Government Coordinating Committee.
- Office of Management and Budget (OMB)
  - Silos in the OMB negatively impact the ability of the agencies to conduct interagency activities once they have been planned.
  - Comments on this impact should be included in the report(s).

Briefing: Balancing Ocean Infrastructure With Ocean Research—R. Weller Provided the Briefing Over the Phone

Highlights from the brief included:

- The task from the NOC was to report on how best to balance infrastructure and research if there is no new funding.
- The report will:
  - Adopt the National Research Council (NRC) report view of what the elements of the infrastructure are.
  - Review evolution of ocean sciences
- Diversity
- Multidisciplinary
- Capabilities to field infrastructure
- Report Outline—Introduction; Summary & Review of the Portfolio and Processes; Problems, Challenges & Opportunities; Recommendations; and Summary of Recommendations
- Completed portions—Introduction; Summary & Review of the Portfolio and Processes; Problems, Challenges and Opportunities
  - Introduction—contains a review of the tasking and changes that have happened in the field.
  - Summary of the Portfolio—contains a review of the current infrastructure using the NRC definition, current agency funding (later discussion led to decision to not include funding), processes by which agencies make decisions, mechanisms that influence each agency's decision, external influences on agencies that change/modify/shape their decisions (e.g., OMB), role of the community in setting the balance; and the time horizons of processes and procedures (i.e., some decisions like fleet replacement have very long time horizons).
  - Problems, Challenges & Opportunities—there are no multi-year budgets for agencies; how do you coordinate things that you can't share?
  - Mechanisms—still working on this section.
- Some of the former NRC committees that advised on expenditures don't exist any longer.

Highlights from the discussion included:

- Issues include inadequate funding to support both infrastructure and research using the data collected by the infrastructure; lack of agency coordination which leads to both duplication of infrastructure and not considering that one agency's infrastructure is used by other agencies; and absence of mechanisms for sun-setting infrastructure.
- National Science Foundation (NSF) has asked the NRC to undertake a Decadal Survey which will include discussion of the issue of facilities and infrastructure vs. research. Study members are being sought and the chairs of the committee have not yet been selected.
- Initially, the working group bounded the report to cover only federal elements of research vs. infrastructure, but a discussion of public/private partnerships led to the decision to expand.
- OMB budget examination process seems to disfavor multiple agencies supporting similar topics, which discourages interagency or international collaboration and sharing of infrastructure. Should OMB establish a budget examiner for ocean infrastructure?
- The informal Great Lakes Association of Science Vessels has had some success with public/private partnerships after some initial problems. The National Center for Atmospheric Research is a successful example of focusing the community's infrastructure in a single location.
- There are multiple interagency working groups but the agency representatives need to be people who can actually make decisions; this should be highlighted in the infrastructure report.
- The National Ocean Partnership Program (NOPP) is a good example of successful interagency interaction. It allows agencies to plan and collaborate. But ORAP needs to recognize the difficulty of accountability and oversight in collaborative environments.
- Three questions that should be considered in the report are:
  - Is there sufficient research funding to take advantage of the infrastructure?
  - How does research infrastructure transition to operational infrastructure?
- e.g., NOAA's Tropical Ocean Global Atmosphere's Tropical Atmosphere Ocean (TOGA–TAO) deep ocean moorings.
- What mechanisms can be proposed to allow a transition from research to operations without erosion of maintenance?
  - How can we sunset infrastructure or transfer it to another agency?
- Based on the discussion, modifications to the content and structure of the report will include:
  - Discussion of private sector opportunities.
  - Examples: Great Lakes Association of Science Vessels; TOGA–TOA; Repeat hydrographic carbon lines; NOPP; Ships; Global Ocean Observing System; US Global Change Research Program.
  - High level cross-agency discussion rather than analysis of individual agency processes.

Timeline:

- Draft to be provided to full ORAP for consideration at the August meeting.
- If slight revisions required, plan to approve during an October teleconference. If major revision required, discuss again at winter ORAP meeting.

Briefing: Leveraging Ocean Education Opportunities—Given By S. Ramberg and G. Scowcroft

Highlights from the Brief include:

- A full draft should be ready after this meeting—executive summary, introduction/background, and NOC goals for education.
- 3 events related to education have transpired since ORAP started working on this report and need to be considered as the report is developed.
  - The Next Generation Science Standards (NGSS) have been released.
  - There is an OSTP FY14 budget proposal to restructure federal STEM Education programs.
    - CoSTEM has recommended that STEM education funds be taken from mission agencies and given to Department of Education but Education doesn't have a mandate to support ocean literacy or education.
  - The NOP Implementation Plan has been released.

Draft Recommendations—Current Themes

- NOC formally endorses NGSS.
- Ocean literacy is prime leverage for all STEM literacy—motivates learners.
  - Content support to teachers in formal education.
  - Content support to ''free choice'' providers.
  - Target audiences must feature under-represented STEM groups at K–16 levels.
  - Directly involve relevant private institutions and industry.
- Forge NOC connections to Department of Education.

Potential Programmatic Advice

- Be explicit on specific program goals within a larger context and clearly identify the target audiences for each program (suggest a framework for these with examples).
- Use uniform measures of success for all programs (provide examples).
  - Federal STEM/Education portfolio should contain sufficient ''overlays'' to foster overall coherency, best practices and innovation while mitigating risk and avoiding fragmentation.
    - Improve interagency partnerships (suggestions for best practices).
    - Mitigate impediments to collaboration (described).
- Clarify whether OSTP FY14 plan focuses on STEM pipeline or STEM literacy or both.

Federal Agency Comments

- National Oceanic and Atmospheric Administration (NOAA) Education (M. Kaplan, invited discussant)

NOAA has a small amount of money for education but it leverages the entire NOAA investment in science. The education funds connect the agency infrastructure to the education community. The proposed changes in federal education spending could sever the connections between education and science investments. Can ORAP highlight this to the Department of Education and start discussions on how not to lose the benefits of leveraging? The NGSS includes ''Earth and Space Science'' but not ocean science; what can be done to ensure that earth science includes ocean science?

- NSF Education (L. Rom, invited discussant)

NSF has already reorganized their education funding. Geoscience Education and Diversity funds were moved into the Directorate for Education and Human Resources. NSF expects an increase in funding for the graduate research fellowship program; perhaps applicants will include education-related efforts as broader impact. The Research Education for Undergraduates program continues but it is a narrow program. One concern is that if mission agency connections between education and research programs are broken, there is a serious threat to the ability to leverage infrastructure and science capabilities and make them available to educators.

Highlights from the discussion included:

- There was discussion about ORAP meeting with the Department of Education or suggesting that Education meet with the NOC to discuss the impact of the CoSTEM recommendations on ocean education and potential ocean-related science standards content.
  - Even though mission-specific agency funding for STEM Education has been small, it has been effective; moving mission agency responsibilities to Education may result in ocean education being overlooked at the K–12 level.
- The proposed changes in federal education funding give funding and responsibility for informal education efforts to the Smithsonian. How can federal agencies leverage these investments?
- There was discussion about bringing technology-oriented corporations or educational foundations into the conversation about ocean education and science standards content and a suggestion to convene a panel composed of representatives from the private and foundation sectors.
- The ORAP education working group would like to meet (in person or teleconference) with an education representative from OSTP to discuss the CoSTEM recommendations and OSTP's strategy for informal and formal ocean education.
- For informal education, the report may recommend creating education teams composed of 3 members, one each with expertise in learning science, ocean science and delivery of educational content to the public. The report will include examples of successful informal learning programs.

Timeline

- Expect to have a reasonably polished draft ready to share with the full ORAP before the August meeting.

Review of Draft Report: Implementing EBM—Given By A. Rosenberg

EBM Report Summary:

- The draft report was written before the Implementation Plan was released.
  - Need to highlight the local/state lead.
- Had a set of case studies and examples.
  - Need to do more in this section.
  - Things are moving fast and some of the examples/case studies are out of date.
- Possible steps—
  - Following May meeting, make additions based on discussions.
  - Add examples.
  - Emphasize importance of state/regional pull as criteria for pilot projects.
  - Clean up text; review; share with full ORAP; incorporate feedback.
  - Send draft to NOC for comment.

Action Item—Rosenberg, as lead for EBM report, will talk to Deerin Babb-Brott or another NOC EBM expert to find out if the release of the Implementation Plan changes the direction of the original tasking.

Highlights of the discussion:

- The report needs to recommend consistent talking points about EBM to put forward to the community.
- A description of ''best practices'' was the original focus of the report but ''best practices'' is a moving target. The report will be reorganized to emphasize case studies, including examples of regional cooperation and lessons learned, and to define criteria for pilot studies. There was a request to create a mechanism for regions who conduct pilot projects to report what was done and what did or did not work. It was suggested that the NOC facilitate communication between regions and encourage the creation of ''best practices''.
- Commercial enterprise prefers the federal agencies to be more aligned and to have a common way to react. Offshore wind and aquaculture

industries are advancing quickly because they are new and there is not a federal structure in place that they have to fit.

• The report will be reorganized to emphasize the case studies, including examples of regional cooperation and lessons learned. The description of criteria for pilot projects will be expanded and will including geographic and sectoral criteria. The effort in the Chesapeake Bay would make a good example; they could be asked to provide information that assists other regions. It was emphasized that the federal agencies remember that EBM and pilot studies should be led by the regions.

Timeline:

• Intention is to provide a draft to the full ORAP by mid-June.

• Send draft to NOC by early August (the NOC Guidance Memo specifically calls for NOC review of a draft version of the EBM report).

• Approval at August meeting.

The meeting was adjourned for Day 1 at 2:00 p.m.

The meeting was reconvened at 9:00 a.m. on May 22, 2013.

Overview of Progress From Working Groups

Ocean Education Report—Summary—S. Ramberg

• The report will focus on what is needed with respect to ocean education instead of on which agency should do which task. The working group will update the draft then provide it to the full ORAP for review and comment. The working group would like to meet or conference call with an education expert at OSTP to discuss the CoSTEM recommendations.

• The report will suggest approaches to applying the education standards to informal education.

○ Team of 3 experts: Learning scientist/ocean scientist/content delivery expert.

○ Neither the Smithsonian nor the Department of Education can deliver those 3 experts.

○ Identify gaps in the existing strategy or portfolio; then make recommendations to fill those holes.

○ Need to make the case that the full breadth of ocean research and education be leveraged.

○ Expect 2/3 of the Smithsonian funds will be spent on distance learning.

• Since the new NGSS recommend that K–12 formal education institutions cover Earth and Space Science in class, the report might suggest a) that Ocean Science be considered part of Earth and Space Science (the broad range of ocean science topics means much STEM content can be taught using the ocean as an example) and b) the skills of the teachers may need to be upgraded.

• It was suggested that the ORAP ask the World Ocean Council for information on workplace or education initiatives that they are organizing.

EBM Report—Summary—A. Rosenberg

• The report will describe examples of regional cooperation and suggest measures of impact.

• Sector criteria for pilot studies or regional cooperation will be added. The draft report will be reviewed with respect to the NOP Implementation Plan since the Plan had not yet been publically released when the draft was written.

• When the draft report is sent to the NOC, a cover letter will point out that this version is the requested draft, not a final report.

New Topics That the ORAP Might Suggest to the NOC (Discussion)

Diversity

• The February memo from the ORAP to the NOC suggesting future report topics included diversity; it has been recognized as a big issue for several decades but it is a difficult problem to get a handle on it; funding is a big issue to how this is handled; what are contributing factors to this issue?

• Many education programs have been targeted to training researchers but 70% of STEM jobs are not in academia; is the system providing the right set of skills for non-research jobs—government, private sector, etc?

• Diversity is not separated from the other topics that were proposed to the NOC in February. For example, extreme events often have their greatest impact on disadvantaged neighborhoods and those neighborhoods are more diverse.

• What can the ocean education community learn from the military's progress in increasing diversity?

• Previous efforts to increase diversity in the ocean sciences community have taken place but progress has not been made; is there a study that explains why this is intractable in ocean sciences? Could an ORAP report suggest solutions, identify barriers?

• Resources providing data on diversity exist, e.g., Society for Advancement of Chicanos and Native Americans in Science.

Action Item—provide previous ORAP education report to current ORAP.

Public/Private Partnerships

• Economic realities will force changes in the way of doing business by federal and private institutions. Increased sharing and cooperation will be required as financial resources are restricted. The ORAP could examine the needs for and benefits of increased public/private partnerships for providing data and predictions about the ocean.

Action Item—provide report on public/private partnerships that Peter Betzer assisted in writing.

International Cooperation/Collaboration

• Given limited fiscal and infrastructure resources, international cooperation in ocean research and operations may become necessary in order to collect sufficient data to understand and predict the ocean. One example of international cooperation is the Arctic observing network but, in general, the federal agencies and scientific community do not undertake much international cooperation. The World Ocean Assessment, with members from all regions of the world, will be considering the overall state of the world's ocean; their report could be relevant. Australia's requirement that large research programs fit into an international planning framework may be a useful example. The ORAP could examine the existing condition of international collaboration and suggest approaches for increasing collaboration.

Uncertainty

• Public policy decisions require decision-making but ocean data sets are always incomplete and predictions include uncertainty. How can uncertainty be assessed and conveyed to the public? The ORAP could examine uncertainty in decision making, how to improve estimates of uncertainty, and how to improve communication of uncertainty in prediction of ocean-related events.

Ocean Research Enterprise

• What are the emerging ocean research questions? What ocean skill sets are needed to address 21st century issues? Will public/private partnerships provide new approaches? The NRC's Polar Research Board is looking at the broad perspective and emerging issues. The NRC's Ocean Studies Board is beginning a Decadal Study that will address these questions.

Technology Transfer From the Military

• Many ocean sensors and platforms used for research were first developed by the military. Early development of military ocean technology is carried out in an unclassified environment so that information is available in the literature.

Action Item—Co-chairs author a second memo to the NOC revisiting ideas for future topics for ORAP to report on

- Why diversity is important in ocean sciences.
- It is imperative to have international cooperation in the ocean enterprise.
- Uncertainty in data and model output.

Future Meetings

- ONR has sufficient travel money to hold an August meeting, including travel support for invited speakers.
- It costs about the same to bring ORAP to DC or California but if the ORAP wants federal experts to attend, the meeting must be in DC.
- Cancel the August 1 teleconference; the next meeting will be held in DC or Monterey on August 21–22, 2013.
- Possible virtual meeting (must be open to the public) in October to approve the education report and discuss new tasks from the NOC.
- ONR will initiate doodle polls to schedule teleconference in September or October; next in-person meeting perhaps between December 2 and 6 or in January? Last week of March or first half of April?

Overview of Progress From Working Groups—Continued

Ocean Infrastructure Report—Summary—B. Weller by Phone

- The report is on track. The writing team will add a piece on public/private partnerships; offer examples of approaches on infrastructure; provide demographics of proposals submitted to NSF and discuss evolving mechanism(s) of infrastructure funding from research use to operational use.
- Expect to have a draft ready by the August meeting with possible ORAP review either in October or December/January.

Public Comment Period

Susan Roberts, Director of the Ocean Studies Board (OSB), National Research Council Regarding the Upcoming NRC Study on Ocean Priorities

The OSB has been tasked to perform a Decadal Survey; the objective is to establish priorities for NSF ocean research and infrastructure with recognition that resources are limited. The OSB is planning a 20 member panel and is presently seeking recommendations for panel members. It is expected to take 2 years and up to 7 meetings to complete the report. Community outreach will be important. The NSF is sponsoring the report but the panel will consider strategies of other federal ocean agencies. The committee will be very interested in the ORAP reports that are currently being written. Note the ''ocean'' in this context includes the Great Lakes. The members of ORAP can assist the OSB in populating the committee by telling their colleagues of the search.

There were no further comments from the public.

The DFO adjourned the meeting at 12:10pm.

Signed,

Margaret Leinen, Ph.D.,

Chair, Ocean Research Advisory Panel.

Attendees: Margaret Leinen, Molly McCammon, Bob Duce, Gail Scowcroft, Joan Cleveland (DFO), Steve Martin (ADFO), Steve Ramberg, John Gannon, Andy Rosenberg, Bruce Tackett, Kelton Clark, Mike Bruno, Bob Weller (by phone), Michael Weiss, John Andrechik, Heather Mannix, Orlando Florez, Dana Belden

Dated: August 14, 2013.

D. G. Zimmerman,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2013–20331 Filed 8–19–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0025]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Technical Assistance To Promote the Implementation of Re-Engagement Centers for Out-of-School Youth

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before September 19, 2013.

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–0025 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E105, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

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: Technical Assistance to Promote the Implementation of Re-Engagement Centers for Out-of-School youth.

OMB Control Number: 1810–NEW.

Type of Review: New collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 45.

Total Estimated Number of Annual Burden Hours: 68.

Abstract: This collection of information is necessary to fulfill the terms of Solicitation Number ED–ESE–12–R–0102, ''Technical Assistance to Promote the Implementation of Re-Engagement Centers for Out-of-School Youth.'' The information will be used by the Department of Education and its

contractors to produce and disseminate a resource guide that shall provide detailed guidance to Local Education Agencies and community organizations in establishing and operating re-engagement centers. The information collected will ensure that the guide is thoroughly informed by current practice and up-to-date learning from the field.

Dated: August 15, 2013.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–20258 Filed 8–19–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14368–000–CO]

Catamount Metropolitan District; Notice of Availability of Final Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for a small hydropower project exemption for the Catamount Hydroelectric Project, to be located at the existing Catamount dam and Lake Catamount in Routt County, near the City of Steamboat Springs, in the state of Colorado, and has prepared a final Environmental Assessment (final EA). In the final EA, Commission staff analyzed the potential environmental effects of the proposed project and concludes that issuing an exemption for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the final EA is on file with the Commission and is available for public inspection. The EA 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 to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Dated: August 13, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–20162 Filed 8–19–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–527–000]

Sea Robin Pipeline Company, LLC; Notice of Request Under Blanket Authorization

Take notice that on July 31, 2013, Sea Robin Pipeline Company, LLC (Sea Robin), P. O. Box 4967, Houston, Texas 77210, filed in Docket No. CP13–527–000, a prior notice request, pursuant to sections 157.205(b) and 157.216 of the Commission's Regulations under the Natural Gas Act (NGA), and Sea Robin's blanket certificate issued in Docket No. CP82–429–000, for authorization to abandon in place, two segments of pipe and to abandon by removal the T–1 Platform and related facilities located in Vermilion Parish, Louisiana and extending into State and Federal waters, offshore Louisiana, 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, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this Application should be directed to Stephen T. Veatch, Senior Director of Certificates and Tariffs, Sea Robin Pipeline Company, LLC, 1300 Main Street, Houston, TX, 77002, or call (713) 989–2024, facsimile at (713) 989–1205, or via email: *stephen.veatch@energytransfer.com.*

Any person or the Commission's Staff may, within 60 days after the 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 Commission's 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 protest. If a protest is filed and not withdrawn within 30 days after the time allowed 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 commenters 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 commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters 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.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. See, 18CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Dated: August 13, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–20160 Filed 8–19–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–0531, FRL–9900–22–OAR]

Agency Information Collection Activities: Proposed Collection; Comment Request; Restructuring of the Stationary Source Audit Program, EPA ICR Number 2355.03

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the Environmental Protection Agency (EPA) is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on January 31, 2014. Before submitting the ICR to the OMB for review and approval, the EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 21, 2013.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OAR–2008–0531, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 6102T, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

Instructions: Direct your comments to Docket ID number EPA–HQ–OAR–2008–0531. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Candace Sorrell, Air Quality Assessment Division, Environmental Protection Agency; telephone number: (919) 541–1064; fax number: (919) 541–0516; email address: *sorrell.candace@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

The EPA has established a public docket for this ICR under Docket ID number EPA–OAR–2008–0531, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA specifically solicits 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. In particular, the EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that the EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for the EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under DATES.

7. To ensure proper receipt by the EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected Entities: Entities potentially affected by this action are those laboratories that supply audit samples.

Title: Restructuring of Stationary Source Audit Program.

ICR numbers: EPA ICR No. 2355.03, OMB Control No. 2060–0652.

ICR status: This ICR is currently scheduled to expire on January 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. The OMB control numbers for the EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR concerns the reporting of the true value of the audit sample to the compliance authority (state, local or EPA Regional Office) by the accredited audit sample provider (AASP) as required in the General Provisions of Parts 51, 60, 61 and 63. This ICR reflects revisions of the previous ICR of 2011, and it covers the period of 2014–2016. The number of audit sample reports is expected to remain stable for 2014–2016.

A regulated emisson source conducting a compliance test would purchase an audit sample from an AASP. The AASP would report the true value of the audit sample to the compliance authority (state, local or EPA Regional Office). The AASP would, in most cases, make the report by electronic mail. A report would be made for each audit sample that the AASP sold to a regulated emission source that was conducting an emissions test to determine compliance with an emission limit.

Although this ICR has been in place for three years, the audit program only started being required on June 16, 2013; therefore, the cost estimates are on historic data of the time that the EPA conducted the audit program.

Burden Statement: The EPA estimates that there will be about 1,000 audit samples sold each year generating the need for about 1,000 reports which corresponds to 80 hours burden or 0.08 hours per response for reporting and recordkeeping. The estimated cost burden is $5.05 per response or an annual burden of $5,050. The annual public reporting and recordkeeping burden for this collection of information is estimated to average 294 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 9.

Frequency of response: There is no regular schedule for collecting information. The information is event driven and information is collected only when an AASP supplies an audit sample to a user.

Estimated total annual burden hours: 2,646 hours.

Estimated total annual costs: $201,116. This includes the cost of preparing, validating, distributing and reporting the audit results.

Are there changes in the estimates from the last approval?

No.

What is the next step in the process for this ICR?

The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to the OMB for review and approval pursuant to 5 CFR 1320.12. At that time, the EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to the OMB and the opportunity to submit additional comments to the OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: August 13, 2013.

Mary E. Henigin,

Acting Director, Air Quality Assessment Division.

[FR Doc. 2013–20319 Filed 8–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R10–OAR–2013–0441, FRL–9900–16–Region 10]

Air Pollution Control: Proposed Actions on Clean Air Act Section 105 Grant to the Lane Regional Air Protection Agency; Proposed Determination With Request for Comments; and a Notice of Opportunity for a Public Hearing

AGENCY: U. S. Environmental Protection Agency (EPA).

ACTION: Notice; Proposed determination with request for comments; and notice of opportunity for public hearing.

SUMMARY: The EPA has made a proposed determination that a reduction in recurring expenditures of non-Federal funds for the Lane Regional Air Protection Agency (LRAPA) in Eugene, Oregon is a result of agency wide non-selective reductions in expenditures. This determination, when final, will permit the LRAPA to continue to receive grant funding under Section 105 of the Clean Air Act for the state fiscal year (SFY) 2014. This determination will also reset the LRAPA required maintenance of effort level for SFY 2012 and 2013 to reflect the non-selective reductions made to address reductions in revenue due to adverse economic conditions in Lane County, Oregon.

DATES: Comments and/or requests for a public hearing must be received by EPA at the address stated below by September 19, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2013–0441, by one of the following methods:

- *http://www.regulations.gov,* Follow the online instructions for submitting comments.
- *Email: Koprowski.Paul@epa.gov*
- *Mail:* Paul Koprowski, U.S. Environmental Protection Agency, Region 10, 805 SW. Broadway, Suite 500, Portland, OR 97205.

FOR FURTHER INFORMATION CONTACT: Paul Koprowski, Region10, Oregon Operations Office, 805 SW. Broadway, Portland, OR, 97205, phone: (503) 326–6363, fax: (503) 326–3399 or email: *Koprowski.Paul@epa.gov*.

SUPPLEMENTARY INFORMATION: Section 105 of the Clean Air Act (CAA) provides grant support for the continuing air programs of eligible state, local and tribal agencies. Section 105 contains two cost-sharing requirements agencies must meet to qualify for grants under CAA § 105(a)(1)(A). Eligible entities must meet a minimum match and a

maintenance of effort (MOE) requirement under CAA § 105(c)(1). The match requires that at least two-fifths (40%) of the total costs for approved Section 105 program activities must be paid by the state/local recipient. Program activities relevant to the match consist of both recurring and non-recurring (unique, one-time only) expenses. The LRAPA is currently meeting the two-fifths (40%) match requirement. The MOE provision requires that a state or local agency spend at least the same dollar level of funds as it did in the previous grant year for recurring activities. Specifically, CAA § 105(c)(1) [42 U.S.C. 7405(c)(1)], provides that ''no agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year.'' Pursuant to CAA § 105(c)(2), however, the EPA may award a grant to an agency not meeting the requirements of CAA § 105(c)(1), ''if the Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government.'' These statutory requirements are repeated in the EPA's implementing regulations at 40 CFR 35.140 through 35.148.

The EPA issued additional guidance to recipients on what constitutes a non-selective reduction on September 30, 2011. In consideration of legislative history, the guidance clarified that a non-selective reduction does not necessarily mean that each executive branch agency or units of a single-purpose local air district need be reduced in equal proportion. However, it must be clear to the EPA, from the weight of evidence, that a recipient's CAA-related air program is not being disproportionately reduced or singled out for a reduction.

No later than 90 days after the close of its grant period a CAA § 105 recipient must submit a Federal Financial Report (FFR) that documents all of its federal and non-federal expenditures for the completed period. A recipient seeking an adjustment to its MOE for that period must provide the rationale and the documentation necessary the EPA to make a determination that a non-selective reduction has occurred. To expedite that determination, the recipient must provide details of the budget action and the comparative fiscal impacts on all the jurisdiction's executive branch agencies, the recipient agency itself, and the agency's air program. The recipient should identify any executive branch agencies or programs that should not be included in the comparison and explain why. The recipient must provide evidence that the air program is not being singled out for a reduction or being disproportionately reduced. Documentation in two key areas is required: Budget data specific to the recipient's air program and comparative budget data between the recipient's air program, the agency containing the air program and the other executive branch agencies. The EPA may also request information from the recipient about how impacts on its program operations will affect its ability to meet its CAA obligations and requirements.

The LRAPA is a single purpose local air agency authorized to implement most aspects of the federal Clean Air Act in Lane County, Oregon. The chief executive is the LRAPA Executive Director and the fiscal decision-making body is the 9-member LRAPA Board of Directors.

The EPA provides annual grant funding under the authority of CAA Section 105 to help the LRAPA support the operation of its CAA-related continuing environmental program for air quality. The LRAPA's annual grant period is based on the state fiscal year from July 1 through June 30. For the SFY 2012 grant year, the EPA allocated $275,609 in CAA Section 105 funds to the LRAPA. The LRAPA's contribution to the total approved program funding for this period was $935,855. This represents a match of 78% for the period ending June 30, 2012.

The LRAPA's FFR for SFY 2011 indicated that the LRAPA's MOE level was $1,068,396. This was the LRAPA's final level of recurrent expenditures for the SFY 2011 grant period and constituted the required MOE level for the SFY 2012 grant year. However, the LRAPA's FFR dated November 8, 2012 showed the actual SFY 2012 MOE was $935,855. On December 31, 2012 the LRAPA informed the EPA in writing that due to continued reductions in the state and local contributions to the LRAPA's budget the LRAPA fell short of its required MOE level by $132,541 for the SFY 2012 grant year. The LRAPA also projected a shortfall of an additional $135,542 in SFY 2013. As a result, the LRAPA requests the EPA adjust the MOE level to $935,855 for SFY 2012 and to $800,313 for SFY 2013.

In the letter submitted on December 31, 2012 the LRAPA provided the rationale and essential documentation necessary to support approval of a non-selective reduction to the LRAPA's MOE level. The documentation includes details of the actions LRAPA took to address the shortfall including comparative fiscal impacts. The shortfall stems from budget actions taken to reduce state and local general funds available to the LRAPA due to adverse economic conditions in Oregon.

The Oregon Department of Environmental Quality (ODEQ) is responsible for passing on state general funds to the LRAPA for air quality management in Lane County. For the SFY 2011–2013 biennial budget the Oregon Legislature reduced the amount of general funds available to the ODEQ by about 24% overall. The general fund resources available to manage ODEQ air and water quality programs were cut by 31% each while land quality program funds were cut by 44%. ODEQ then reduced the amount of general fund passed through to the LRAPA to manage air quality programs in Lane County by 31%, from $364,929 to $252,385. To address the general fund reductions to executive branch agencies in Oregon, the Governor imposed across-the-board unpaid furlough leave for state employees, wage and spending freezes and other agency-specific budget cuts necessary to address the shortfall to each agency.

Since 2008 Lane County and the cities (Eugene, Springfield, Cottage Grove and Oakridge) that contribute locally to the LRAPA's budget have been subject to adverse economic conditions. These conditions are primarily due to the recession, reduced timber sales and property tax limitations. The Lane County general fund budget overall declined by 11% in SFY 2012 and 17% in SFY 2013 primarily due to a decrease in revenue from timber sales on federal land in Lane County. These overall reductions were applied to other executive branch agencies in Lane County and were passed on to the Lane Regional Air Protection Agency. The following table illustrates the overall impact of local budget reductions on the local contribution to the LRAPA budget between SFY 2011 and SFY 2013.

Fiscal year	*Total local contribution*	*Percent reduction*
SFY 2011	$333,440	.....
SFY 2012	159,360	52
SFY 2013	121,670	23

Examples of reductions to the budgets of other programs or departments in Lane County include:

Department/program	Fiscal year	Percent reduction
Justice Courts Program	SFY 12–13	53.7
Animal Services Program	SFY 12–13	71.3
Health and Human Services	SFY 12–13	26.3
Public Safety	SFY 12–13	16.9

To operate within the limits of the reduced budgets for SFY 2012 and SFY 2013, the LRAPA reduced recurring expenditures by imposing unpaid furlough days, work schedule reductions, and other systematic across-the-board reductions in materials and services, as well as not filling positions vacated due to retirements or resignations.

For the LRAPA to be eligible to receive its SFY 2014 CAA Section 105 grant, the EPA must make a determination (after notice and an opportunity for a public hearing and comment) that the reduction in expenditures is attributable to a non-selective reduction in the budget of the Lane Regional Air Protection Agency. Accordingly, consistent with criteria set forth in CAA Section 105(c)(2) and consistent with the Agency's September 30, 2011 guidance on qualifying for a non-selective reduction, the EPA has determined that it is appropriate to approve the LRAPA's request for a non selective reduction in its level of recurring expenditures for the SFY 2012 and SFY 2013 grant budget period. The revised MOE level for SFY 2012 is $935,855 and the level for SFY2013 is $800,313.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by September 19, 2013 on this proposal will be considered. The EPA will conduct a public hearing on this proposal only if a written request for such is received by the EPA at the address above by September 19, 2013. If no written request for a hearing is received, the EPA will proceed to the final determination. While notice of the final determination will not be published in the **Federal Register**, copies of the determination can be obtained by sending a written request to Paul Koprowski at the above address.

Dated: August 6, 2013.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2013–20156 Filed 8–19–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 9900–15–OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Consent Decree; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA''), notice is hereby given of a proposed consent decree, to resolve a deadline suit filed by Air Alliance Houston, California Communities Against Toxics, Coalition For A Safe Environment, Community In-Power and Development Association, Del Amo Action Committee, Environmental Integrity Project, Louisiana Bucket Brigade, and Texas Environmental Justice Advocacy Services (collectively, ''Plaintiffs'') in the United States District Court for the District of Columbia: *Air Alliance Houston, et al.* v. *McCarthy,* No. 12–1607 (RMC) (D.D.C.). On September 27, 2012, Plaintiffs filed a complaint concerning EPA's obligation to develop residual risk and technology standards for the petroleum refineries source category, which is subject to two different maximum achievable control technology (MACT) standards. The consent decree would require EPA to propose action by February 14, 2014 and take final action by December 19, 2014.

DATES: Written comments on the proposed consent decree must be received by September 19, 2013.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2013–0580, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Jan Tierney, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–5598; fax number (202) 564–5603; email address: *tierney.jan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit filed by the Plaintiffs seeking to compel the Administrator to take final action under section 112(d)(6), 42 U.S.C. 7412(d)(6), to ''review, and revise as necessary'' the national emission standards for hazardous air pollutants (''NESHAP'') and to take final action addressing residual risk under CAA section 112(f)(2), 42 U.S.C. 7412(f)(2), for petroleum refineries under 40 CFR Part 63, Subpart CC and 40 CFR Part 63, Subpart UUU, within 8 years of the promulgation of such standards. The proposed consent decree provides that no later than February 14, 2014, EPA shall (1) review and either sign a proposal to revise the emission standards in 40 CFR Part 63, Subparts CC and UUU under CAA section 112(d)(6), 42 U.S.C. 7412(d)(6), or sign a proposed determination that revision of Subparts CC and UUU is not necessary under CAA section 112(d)(6) and (2) review and either sign a proposal to promulgate residual risk standards for the Petroleum Refineries source category subject to NESHAP Subparts CC and UUU under CAA section 112(f)(2), 42 U.S.C. 7412(f)(2), or sign a proposed determination that promulgation of such standards is not required under CAA section 112(f)(2). The proposed consent decree also provides that no later than December 19, 2014, EPA shall, (1) sign a final rule promulgating revisions to the emission standards in NESHAP Subparts CC and UUU under CAA section 112(d)(6), or sign a final determination that revision of NESHAP Subparts CC and UUU is not necessary under CAA section 112(d)(6) and (2) sign a final rule promulgating residual risk standards for the Petroleum Refineries source

category subject to NESHAP Subparts CC and UUU under CAA section 112(f)(2), or sign a final determination that promulgation of such standards is not required under CAA section 112(f)(2).

Within 15 business days following signature of each rule or determination or combination thereof as described in the proposed consent decree, EPA is also required to send the signed notice of each action to the Office of the Federal Register for review and publication in the **Federal Register**. After EPA fulfills all of its obligations under the consent decree, the proposed consent decree provides that EPA may move to have the consent decree terminated and the case dismissed.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to this consent decree should be withdrawn, the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC- 2013–0580) contains a copy of the proposed consent decree (including Attachment A). The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov*. You may use the *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: August 9, 2013.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2013–20027 Filed 8–19–13; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

[NV–13–19 (13–AUG–2013)]

Equal Employment Opportunity and Diversity

AGENCY: Farm Credit Administration.

ACTION: Policy statement.

SUMMARY: The Farm Credit Administration (FCA) Board recently updated its Policy Statement on Equal Employment Opportunity and Diversity. This update resulted in two minor revisions discussed below.

DATES: Effective Date: August 13, 2013.

FOR FURTHER INFORMATION CONTACT: Thais Burlew, Director of Equal Employment Opportunity and Inclusion, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4290, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION: The FCA conducted its periodic review of Policy Statement FCA–PS–62 on Equal Employment Opportunity (EEO) and Diversity and made minor changes. The policy was changed to explicitly state that FCA provides reasonable religious accommodations consistent with Title VII and to clarify that opposition to or participation in the EEO process may be a basis for reprisal claims.

The text of the updated Policy Statement is set forth below in its entirety. All FCA Board policy statements may be viewed on FCA's Web site. From *www.fca.gov,* select ''Laws & Regulations,'' then select ''FCA Handbook,'' then select ''FCA Board Policy Statements.''

Equal Employment Opportunity and Diversity—NV–13–19 (13–AUG–2013) FCA–PS–62

Effective Date: 13–AUG–13.

Effect on Previous Action: Updates FCA–PS–62 [BM–13–JUL–06–03] (71 FR 46481, 8/14/2006) 7–13–06; amended by NV–11–15 (08–JUL–11); amended by NV–12–16 (07–SEPT–12); NV–13–19 (13–AUG–13).

Source of Authority: Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e *et seq.*); Age Discrimination in Employment Act (29 U.S.C. 621 *et seq.*); Rehabilitation Act of 1973, as amended (29 U.S.C. 721 *et seq.*); Equal Pay Act of 1974 (29 U.S.C. 206(d)); Civil Service Reform Act of 1978 (5 U.S.C. 3112); Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (NO FEAR Act) (5 U.S.C. 2301); Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff *et seq.*); section 5.9 of the Farm Credit Act of 1971, as amended (12 U.S.C. 2243); Executive Order 11478 (Equal Employment Opportunity in the Federal Government), as amended by Executive Orders 13087 and 13152 to include prohibitions on discrimination based on sexual orientation and status as a parent; Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency); 29 CFR part 1614; Equal Employment Opportunity Commission Management Directives.

Purpose

The Farm Credit Administration (FCA or Agency) Board reaffirms its commitment to Equal Employment Opportunity (EEO) and Diversity (EEOD) and its belief that all FCA employees should be treated with dignity and respect. The Board also provides guidance to Agency management and staff for deciding and taking action in these critical areas.

Importance

Unquestionably, the employees who comprise the FCA are its most important resource. The Board fully recognizes that the Agency draws its strength from the dedication, experience, and diversity of its employees. The Board is firmly committed to taking whatever steps are needed to protect the rights of its staff and to carrying out programs that foster the development of each employee's potential. We believe an investment in efforts that strongly promote EEOD will prevent the conflict and the high costs of correction for taking no, or inadequate, action in these areas.

The Farm Credit Administration (FCA) Board Adopts the Following Policy Statement

It is the policy of the FCA to prohibit discrimination in Agency policies, program practices, and operations. Employees, applicants for employment, and members of the public who seek to take part in FCA programs, activities, and services will be treated fairly. The Chairman and Chief Executive Officer (CEO) is ultimately responsible for ensuring that FCA meets all EEOD requirements and initiatives in accordance with laws and regulations, to maintain a workplace that is free from discrimination and that values all employees. FCA, under the appropriate laws and regulations, will:

- Ensure equal employment opportunity based on merit and qualification, without discrimination because of race, color, religion, sex, age, national origin, disability, sexual orientation, status as a parent, genetic information, or filing of a complaint, participation in discrimination or harassment complaint proceedings, or other opposition to discrimination;
- Provide for the prompt and fair consideration of complaints of discrimination;
- Make reasonable accommodations for qualified applicants for employment and employees with physical or mental disabilities under law;
- Make reasonable accommodations based on applicants' and employees' religious beliefs or practices, consistent with Title VII;
- Provide an environment free from harassment to all employees;
- Create and maintain an organizational culture that recognizes, values, and supports employee and public diversity and inclusion;
- Develop objectives within the Agency's operation and strategic planning process to meet the goals of EEOD and this policy;
- Implement affirmative programs to carry out this policy within the Agency; and
- To the extent practicable, seek to encourage the Farm Credit System to continue its efforts to promote and increase diversity.

Diversity and Inclusion

The FCA intends to be a model employer. That is, as far as possible, FCA will build and maintain a workforce that reflects the rich diversity of individual differences evident throughout this Nation. The Board views individual differences as complementary and believes these differences enrich our organization. When individual differences are respected, recognized, and valued, diversity becomes a powerful force that can contribute to achieving superior results. Therefore, we will create, maintain, and continuously improve on an organizational culture that fully recognizes, values, and supports employee diversity. The Board is committed to promoting and supporting an inclusive environment that provides to all employees, individually and collectively, the chance to work to their full potential in the pursuit of the Agency's mission. We will provide everyone the opportunity to develop to his or her fullest potential. When a barrier to someone achieving this goal exists, we will strive to remove this barrier.

Affirmative Employment

The Board reaffirms its commitment to ensuring FCA conducts all of its employment practices in a nondiscriminatory manner. The Board expects full cooperation and support from everyone associated with recruitment, selection, development, and promotion to ensure such actions are free of discrimination. All employees will be evaluated on their EEOD achievements as part of their overall job performance. Though staff commitment is important, the role of supervisors is paramount to success. Agency supervisors must be coaches and are responsible for helping all employees develop their talents and give their best efforts in contributing to the mission of the FCA.

Workplace Harassment

It is the policy of the FCA to provide a work environment free from unlawful discrimination in any form, and to protect all employees from any form of harassment, either physical or verbal. The FCA will not tolerate harassment in the workplace for any reason. The FCA also will not tolerate retaliation against any employee for reporting harassment or for aiding in any inquiry about reporting harassment.

Disabled Veterans Affirmative Action Program (DVAAP)

A disabled veteran is defined as someone who is entitled to compensation under the laws administered by the Veterans Administration or someone who was discharged or released from active duty because of a service-connected disability.

The FCA is committed to increasing the representation of disabled veterans within its organization. Our Nation owes a debt to those veterans who

served their country, especially those who were disabled because of service. To honor these disabled veterans, the FCA shall place emphasis on making vacancies known to and providing opportunities for employing disabled veterans.

Dated This 13th Day of August, 2013.

By Order of the Board.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2013–20277 Filed 8–19–13; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10097, First BankAmericano, Elizabeth, NJ

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for First BankAmericano, Elizabeth, New Jersey (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of First BankAmericano on July 31, 2009. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 32.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: August 14, 2013.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–20185 Filed 8–19–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

[Notice 2013–12]

Filing Dates for the Alabama Special Elections in the 1st Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special elections.

SUMMARY: Alabama has scheduled special elections to fill the U.S. House seat in the 1st Congressional District vacated by Representative Jo Bonner. There are three possible special elections, but only two may be necessary.

- Primary Election: September 24, 2013.
- Possible Runoff Election: November 5, 2013. In the event that one candidate does not achieve a majority vote in his/her party's Special Primary Election, the top two vote-getters will participate in a Special Runoff Election.
- General Election: December 17, 2013. However, if a Special Runoff Election is not necessary, the Special General will instead be held on November 5, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 999 E Street NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

Special Primary Only

All principal campaign committees of candidates *only* participating in the Alabama Special Primary shall file a Pre-Primary Report on September 12, 2013. (See chart below for the closing date for the report).

Special Primary and General Without Runoff

If only two elections are held, all principal campaign committees of candidates participating in the Alabama Special Primary and Special General Elections shall file a Pre-Primary Report on September 12, 2013; a Pre-General Report on October 24, 2013; and a Post-General Report on December 5, 2013. (See chart below for the closing date for each report).

Special Primary and Runoff Elections

If three elections are held, all principal campaign committees of candidates *only* participating in the Alabama Special Primary and Special Runoff Elections shall file a Pre-Primary Report on September 12, 2013; and a Pre-Runoff Report on October 24, 2013. (See chart below for the closing date for each report.)

Special Primary, Runoff and General Elections

All principal campaign committees of candidates participating in the Alabama Special Primary, Special Runoff and Special General Elections shall file a Pre-Primary Report on September 12, 2013; a Pre-Runoff Report on October 24, 2013; a Pre-General Report on December 5, 2013; and a Post-General Report on January 21, 2014. (See chart below for the closing date for each report.)

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a semi-annual basis in 2013 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Alabama Special Primary, Special Runoff or Special General Elections by the close of books for the applicable report(s). (See chart below for the closing date for each report).

Since disclosing financial activity from two different calendar years on one report would conflict with the calendar year aggregation requirements stated in the Commission's disclosure rules, if three elections are held, unauthorized committees that trigger the filing of the Post-General Report will be required to file this report on two separate forms. One form to cover 2013 activity, labeled as the Year-End Report; and the other form to cover only 2014 activity, labeled as the Post-General Report. Both forms must be filed by January 21, 2014.

Committees filing monthly that make contributions or expenditures in connection with the Alabama Special Primary, Special Runoff or Special General Elections will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the Alabama Special Elections may be found on the FEC Web site at *http://www.fec.gov/info/report_dates.shtml.*

Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and Leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of $17,100 during the special election reporting periods (see charts below for closing date of

each period). 11 CFR 104.22(a)(5)(v) and (b).

CALENDAR OF REPORTING DATES FOR ALABAMA SPECIAL ELECTIONS

Report	Close of books[1]	Reg./cert. & overnight mailing deadline	Filing deadline
Quarterly Filing Committees Involved in *Only* the Special Primary (09/24/13) Must File:			
Pre-Primary	09/04/13	09/09/13	09/12/13
October Quarterly	09/30/13	10/15/13	10/15/13
Semi-Annual Filing Committees Involved in *Only* the Special Primary (09/24/13) Must File:			
Pre-Primary	09/04/13	09/09/13	09/12/13
Year-End	12/31/13	01/31/14	01/31/14
If Only Two Elections Are Held, Quarterly Filing Committees Involved in the Special Primary (09/24/13) and Special General (11/05/13)[2] Must File:			
Pre-Primary	09/04/13	09/09/13	09/12/13
October Quarterly		—WAIVED—	
Pre-General	10/16/13	10/21/13	10/24/13
Post-General	11/25/13	12/05/13	12/05/13
Year-End	12/31/13	01/31/14	01/31/14
If Only Two Elections Are Held, Semi-Annual Filing Committees Involved in the Special Primary (09/24/13) and Special General (11/05/13)[2] Must File:			
Pre-Primary	09/04/13	09/09/13	09/12/13
Pre-General	10/16/13	10/21/13	10/24/13
Post-General	11/25/13	12/05/13	12/05/13
Year-End	12/31/13	01/31/14	01/31/14
If Only Two Elections Are Held, Quarterly Filing Committees Involved in *Only* the Special General (11/05/13)[2] Must File:			
October Quarterly		—WAIVED—	
Pre-General	10/16/13	10/21/13	10/24/13
Post-General	11/25/13	12/05/13	12/05/13
Year-End	12/31/13	01/31/14	01/31/14
If Only Two Elections Are Held, Semi-Annual Filing Committees Involved in *Only* the Special General (11/05/13)[2] Must File:			
Pre-General	10/16/13	10/21/13	10/24/13
Post-General	11/25/13	12/05/13	12/05/13
Year-End	12/31/13	01/31/14	01/31/14
If Three Elections Are Held, Quarterly Filing Committees Involved in the Special Primary (09/24/13) and Special Runoff (11/05/13) Must File:			
Pre-Primary	09/04/13	09/09/13	09/12/13
October Quarterly		—WAIVED—	
Pre-Runoff	10/16/13	10/21/13	10/24/13
Year-End	12/31/13	01/31/14	01/31/14
If Three Elections Are Held, Semi-Annual Filing Committees Involved in the Special Primary (09/24/13) and Special Runoff (11/05/13) Must File:			
Pre-Primary	09/04/13	09/09/13	09/12/13
Pre-Runoff	10/16/13	10/21/13	10/24/13
Year-End	12/31/13	01/31/14	01/31/14
If Three Elections Are Held, Quarterly Filing Committees Involved in *Only* the Special Runoff (11/05/13) Must File:			
October Quarterly		—WAIVED—	
Pre-Runoff	10/16/13	10/21/13	10/24/13
Year-End	12/31/13	01/31/14	01/31/14
If Three Elections Are Held, Semi-Annual Filing Committees Involved in *Only* the Special Runoff (11/05/13) Must File:			
Pre-Runoff	10/16/13	10/21/13	10/24/13
Year-End	12/31/13	01/31/14	01/31/14

CALENDAR OF REPORTING DATES FOR ALABAMA SPECIAL ELECTIONS—Continued

Report	Close of books[1]	Reg./cert. & overnight mailing deadline	Filing deadline
Quarterly Filing Committees Involved in the Special Primary (09/24/13), Special Runoff (11/05/13) and Special General (12/17/13) Must File:			
Pre-Primary	09/04/13	09/09/13	09/12/13
October Quarterly		—WAIVED—	
Pre-Runoff	10/16/13	10/21/13	10/24/13
Pre-General	11/27/13	12/02/13	12/05/13
Post-General	01/06/14	01/21/14	01/21/14
Year-End		—WAIVED—	
Semi-Annual Filing Committees Involved in the Special Primary (09/24/13), Special Runoff (11/05/13) and Special General (12/17/13) Must File:			
Pre-Primary	09/04/13	09/09/13	09/12/13
Pre-Runoff	10/16/13	10/21/13	10/24/13
Pre-General	11/27/13	12/02/13	12/05/13
Post-General	01/06/14	01/21/14	01/21/14
Year-End		—WAIVED—	
If Three Elections Are Held, Quarterly Filing Committees Involved in *Only* the Special General (12/17/13) Must File:			
Pre-General	11/27/13	12/02/13	12/05/13
Post-General	01/06/14	01/21/14	01/21/14
Year-End		—WAIVED—	
If Three Elections Are Held, Semi-Annual Filing Committees Involved in *Only* the Special General (12/17/13) Must File:			
Pre-General	11/27/13	12/02/13	12/05/13
Post-General	01/06/14	01/21/14	01/21/14
Year-End		—WAIVED—	

[1] These dates indicate the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee with the Commission up through the close of books for the first report due.

[2] If a Special Runoff Election is necessary, it will be held on November 5, 2013, and the Special General Election will be held on December 17, 2013.

On behalf of the Commission,
Dated: August 13, 2013.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 2013–20189 Filed 8–19–13; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, August 22, 2013 at 10:00 a.m..

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes for July 25, 2013

Draft Advisory Opinion 2013–04: Democratic Governors Association and Jobs & Opportunity

Draft Advisory Opinion 2013–08: American Veterinary Medical Association

Draft Advisory Opinion 2013–09: Special Operations Speaks PAC and Robert L. Maness

Draft Advisory Opinion 2013–10: National Republican Senatorial Committee, National Republican Congressional Committee, Democratic Senatorial Campaign Committee, and Democratic Congressional Campaign Committee

Audit Division Recommendation Memorandum on the Arizona Republican Party (ARP) (A11–21)

Audit Division Recommendation Memorandum on the Mississippi Democratic Party PAC (MDP) (A11–10)

OGC Enforcement Manual

Management and Administrative Matters

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

Person to Contact for Information: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2013–20344 Filed 8–16–13; 11:15 am]

BILLING CODE 6715–01–P

GENERAL SERVICES ADMINISTRATION

[Notice-GTAC–2013–02; Docket No. 2013–0002; Sequence 23]

Government-wide Travel Advisory Committee (GTAC); Public Advisory Committee Meeting

AGENCY: Office of Government-wide Policy, General Services Administration (GSA).

ACTION: Notice.

SUMMARY: The Government-wide Travel Advisory Committee (GTAC) (the Committee), is a Federal Advisory Committee established in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C., App 2. This

notice provides the public meeting date of the GTAC: September 3, 2013. The meeting is open to the public via teleconference.

DATES: The meeting will be held on Tuesday, September 3, 2013, beginning at 9:00 a.m. Eastern Standard Time, and ending no later than 4:00 p.m. Eastern Standard Time.

FOR FURTHER INFORMATION CONTACT: Ms. Marcerto Barr, Designated Federal Officer (DFO), Government-wide Travel Advisory Committee (GTAC), Office of Government-wide Policy, General Services Administration, 1800 F Street NW., Washington, DC 20405, 202–208–7654 or by email to: *gtac@gsa.gov.*

SUPPLEMENTARY INFORMATION:

Authority: The GSA Office of Asset and Transportation Management, Travel and Relocation Division, establishes policy that governs travel by Federal civilian employees and others authorized to travel at Government expense on temporary duty travel through the Federal Travel Regulation.

Agenda: The Committee will continue any outstanding discussion on lodging per diem. It is expected the Committee will discuss private sector business practices of internal controls for attendance at conferences, training sessions, and travel associated with such events. The Committee may discuss other topics to be determined at a later date associated with the Federal Travel Regulations.

Meeting Access: The meeting is open to the public via teleconference. Members of the public wishing to listen in on the GTAC discussion are recommended to visit the GTAC Web site at: *www.gsa.gov/gtac* to obtain registration details. Members of the public will not have the opportunity to ask questions or otherwise participate in the meeting. However, members of the public wishing to comment on the discussion or topics outlined in the agenda should follow the steps detailed in Procedures for Providing Public Comments.

Availability of Materials for the Meeting: Please see the GTAC Web site *www.gsa.gov/gtac* for any available materials and detailed meeting notes after the meeting.

Procedures for Providing Public Comments: In general, public comments will be posted to *www.gsa.gov/gtac*. Non-electronic documents will be made available for public inspection and copying at GSA, 1800 F Street NW., Washington, DC 20405, on official business days between the hours of 10:00 a.m. Eastern Standard Time and 4:00 p.m. Eastern Standard Time. The public can make an appointment to inspect comments by telephoning the DFO at 202–208–7654. All comments, including attachments and other supporting materials received, are part of the public record and subject to public disclosure. Any comments submitted in connection with the GTAC meeting will be made available to the public under the provisions of the Federal Advisory Committee Act.

The public is invited to submit written comments after the closing of this meeting until 4:00 p.m. Eastern Standard Time on Tuesday, September 10, 2013, by either of the following methods and cite Meeting Notice-GTAC–2013–02.

Electronic or Paper Comments: (1) submit electronic comments to *gtac@gsa.gov;* or (2) submit paper comments to the attention of Ms. Marcerto Barr at GSA, 1800 F Street NW., Washington, DC 20405.

Dated: August 14, 2013.

Carolyn Austin-Diggs,

Acting Deputy Associate Administrator, Office of Asset and Transportation Management, Office of Government-wide Policy.

[FR Doc. 2013–20197 Filed 8–19–13; 8:45 am]

BILLING CODE 6820–14–P

GENERAL SERVICES ADMINISTRATION

[Notice-WWICC–2013–01; Docket No. 2013–0007; Sequence 1]

World War I Centennial Commission; Notification of Upcoming Public Advisory Meeting; Sunshine Act Meetings

TIME AND DATE: Open: 9:30 a.m.–5:30 p.m. (Central Time) on Friday, September 13, 2013.

PLACE: The meeting will be held at the National World War 1 Museum at Liberty Memorial, 100 W. 26th Street, Kansas City, MO 64108.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Agenda

September 13, 2013

- Introductions and plans for today's meeting—DFO
- Swearing in of Commissioners—GSA HR
- Ethics Brief for Commissioners—GSA Legal
- Election of Chairperson and Vice Chairperson—DFO
- 30 minute public comment period for individuals pre-registered per instructions below. Each individual will be able to speak for no more than 5 minutes.
- Project/Activity discussion
- Foundation brief
- Other business
- Closing comments

Procedures for Public Participation

Contact Daniel S. Dayton at 202–254–5607 to register to comment during the meeting's 30 minute public comment period. Registered speakers/organizations will be allowed 5 minutes and will need to provide written copies of their presentations. Requests to comment at the meeting must be received by 5:00 p.m. Eastern time, September 10, 2013. Written comments may be provided to Mr. Dayton at *daniel.dayton@dhs.gov* until 5:00 p.m. Eastern time, September 10, 2013. Please contact Mr. Dayton at the email address above to obtain meeting materials.

Contact Person for More Information: Daniel S. Dayton, Designated Federal Officer, Department of Homeland Security, Science and Technology Directorate, 245 Murry Lane, Mailstop 0203, Washington, DC 20528, telephone 202–254–5607 (note: this is not a toll-free number).

Dated: August 8, 2013.

Daniel S. Dayton,

Designated Federal Official.

[FR Doc. 2013–20327 Filed 8–16–13; 11:15 am]

BILLING CODE 6820–95–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0656]

Secure Supply Chain Pilot Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the start of the Secure Supply Chain Pilot Program (SSCPP). The SSCPP is intended to assist FDA in its efforts to prevent the importation of adulterated, misbranded, or unapproved drugs by allowing the Agency to focus its resources on imported drugs that fall outside the program and may pose risks. Such a program would increase the likelihood of expedited entry for specific finished drug products and active pharmaceutical ingredients (APIs) imported into the United States that meet the criteria for selection under the program. This notice outlines the

eligibility requirements and the process for applying for participation in the SSCPP.

DATES: FDA will be accepting applications for participation in the SSCPP beginning September 16, 2013, and continuing through December 31, 2013. The SSCPP will be piloted for 2 years, from February 2014 through February 2016.

FOR FURTHER INFORMATION CONTACT: Katharine Neckers, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–3339, email: *katharine.neckers@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Participation in the SSCPP described in this notice is voluntary. FDA plans to increase the rate at which entries of the finished drug products and APIs selected for the pilot program are given a ''May Proceed'' without human entry review or examination; thus, the Agency anticipates that participation in the program will increase the likelihood of expedited entry when products covered by the program are offered for importation into the United States.

This pilot program is closely related to section 713(4)(B)(i) of the recently enacted Food and Drug Administration Safety and Innovation Act (FDASIA). Section 713 of FDASIA authorizes FDA to require the submission of drug compliance information as a condition of granting admission to imported drugs, and subsection (4)(B)(i) specifically states that in issuing the implementing regulations FDA ''may, as appropriate, take into account differences among importers and types of imports, and based on the level of risk posed by the imported drug, provide for expedited clearance for those importers that volunteer to participate in partnership programs for highly compliant companies and pass a review of internal controls. . . .'' Thus, the information provided through this pilot program will help inform the Agency's approach to implementing the program mentioned in section 713(4)(B) of FDASIA.

To the extent allowed by law, and in a manner consistent with applicable laws and policies, the Agency intends to share the names of the participants and information related to these companies with other Federal Agencies, such as Customs and Border Protection (CBP). FDA is collaborating with CBP regarding the Customs-Trade Partnership Against Terrorism (C–TPAT) portion of the application. Nothing in this notice restricts FDA, CBP, or any other Agency from examining or inspecting any product or establishment, or affects the legal responsibilities of participants or the legal requirements of products that they are importing.

FDA announced this pilot program in the **Federal Register** of January 15, 2009 (74 FR 2605), requesting comments on the program and proposed collection of information. A subsequent request for comments on the collection of information was issued June 20, 2012 (77 FR 37055). The 2009 and 2012 notices contain further background and clarification regarding the pilot program. FDA has made a few changes to the pilot program announced in 2009, and this notice describes the requirements to participate and other aspects of the program.

To help determine whether participants in the SSCPP continue to meet the program's criteria and help evaluate the program, FDA intends to periodically examine records and conduct random field examinations to audit shipments. FDA may withdraw its selection of an application if the applicant, foreign manufacturer, or Ultimate Consignee: (1) Receives communications, such as an Untitled Letter, Cyber Letter, or Warning Letter, that cite violations of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) relating to drug products that FDA otherwise deems to have violated any requirements of the FD&C Act relating to drug products or (2) fails to comply with the SSCPP. Termination of participation in the SSCPP will result in a return to the routine manual drug entry review process.

II. Secure Supply Chain Pilot Program Requirements

To be selected to participate in the SSCPP, an applicant must meet the following criteria:

1. The applicant must submit a complete application using Form FDA 3676 and be the sponsor of the New Drug Application (NDA) or the Abbreviated New Drug Application (ANDA), or be the foreign manufacturer of the imported finished drug product or API.

2. If the Ultimate Consignee identified in the SSCPP application is an establishment subject to section 510 of the FD&C Act (21 U.S.C. 360), then it must be in compliance with FDA's registration, drug listing, and current good manufacturing practice requirements, and must have been in compliance over the past 3 years.

3. If the drug product identified in the SSCPP is a finished dosage form, then the firm identified as the Ultimate Consignee for the drug product must be identified in the approved NDA or ANDA.

4. If the drug identified in the SSCPP application is an API, then the source must be an acceptable source per the approved NDA or ANDA, and the API must be used in the manufacture of the FDA-approved drug product.

5. The importation of the finished drug product or API must: (a) Be from the foreign manufacturer identified in the SSCPP application; (b) arrive through the identified port of entry and port of arrival; (c) use the identified Customs House Broker/Entry Filer; and (d) be intended for the identified Ultimate Consignee.

6. The foreign manufacturer and the finished drug product or API identified in the SSCPP application must be in compliance with requirements of the FD&C Act relating to drugs.

7. The SSCPP importer of record must have a validated Tier II or Tier III secure supply chain per the CBP Customs–C–TPAT Program.

8. The primary and secondary contacts identified in the SSCPP application must be able to answer questions and resolve issues raised by FDA. The primary contact must be the sponsor or the U.S. agent for the sponsor.

9. The applicant must have a plan in place for promptly correcting concerns that FDA identifies regarding its secure supply chain or specific importations.

10. The applicant must have a sufficient plan in place for recalling or correcting any finished drug products or APIs that do not meet, or are discovered not to have been manufactured in accordance with, FDA requirements. Deviations from the recall procedures for products associated with the SSCPP must be reported to FDA within 3 business days of identification by the applicant.

11. Applicants must comply with recordkeeping requirements of the FD&C Act and its implementing regulations. For the purposes of participating in this pilot, applicants must make these records readily available to FDA upon request. Regardless of whether required by law, applicants must also maintain records that confirm the information provided in their SSCPP applications, including documentation of their C–TPAT validation status. These records must be maintained for the duration of the applicant's participation in the program and be readily available when requested by FDA. FDA requests, however, that these records be maintained and be readily available when requested by FDA for a period of at least 3 years after

the pilot ends or the applicant's participation in the pilot ends. In addition, regardless of whether required by law, for each shipment of finished drug product or API, applicants must maintain, for the duration of the applicant's participation, records that document the product's movement through the secure supply chain from the point of manufacture to the point of receipt by the Ultimate Consignee.

12. The Customs House Broker/Entry Filer identified in the SSC pilot application must be qualified for paperless entry filing to FDA's Operational and Administrative System for Import Support.

III. Definitions for the Purposes of This Program

- *Affirmation of Compliance (AofC) Code:* A code designated by FDA for use by filers to convey information related to product or firm compliance with Agency requirements, used to help expedite entry processing. Some AofC codes require a qualifier to provide additional information to aid in expedited processing.
- *Automated Broker Interface (ABI):* An integral part of the Automated Commercial System, ABI is the means by which brokers or importers transmit entry data to the U.S. Customs and Border Protection.
- *Automated Commercial System (ACS):* The system used by CBP to track, control, and process all commercial goods imported into the United States.
- *Customs House Broker/Entry Filer:* A licensed Customs broker hired to file entries for another party or a Customs ABI participant that files its own entries.
- *Customs-Trade Partnership Against Terrorism:* C–TPAT is the CBP initiative that partners with members of the trade community on a voluntary basis to better secure the international product supply chain to the United States.
- *Foreign Shipper:* The firm identified or declared as the shipper at time of entry into the United States.
- *Importer of Record:* The person, establishment, or representative responsible for making entry of imported goods in accordance with all laws affecting such importation.
- *''May Proceed'':* This term means that an FDA-regulated imported product may proceed into domestic commerce after the electronic screening. This is not a decision by FDA about the product's regulatory status, and it does not preclude FDA action at a later time.
- *Manufacturer ID:* Manufacturer identification code constructed with specific segments of the manufacturer's or shipper's name and address. Refer to CBP Customs Directive Number 3550–055 (Old Number 3500–13), dated November 24, 1986, for instructions on determining the manufacturer ID.
- *Ultimate Consignee:* The party in the United States, at the time of entry or release, to whom the overseas shipper sold the imported merchandise. If at the time of entry the imported merchandise has not been sold, then the Ultimate Consignee at the time of entry or release is defined as the party in the United States to whom the overseas shipper consigned the imported merchandise.

IV. Process for Applying To Participate in the Pilot

Due to resource constraints, FDA intends to limit the SSCPP to no more than 100 qualified applicants, with no more than 5 drug products per applicant. FDA may, at its discretion, increase or decrease the number of applications that it selects or the number of products per applicant. The application (Form FDA 3676) to participate in the SSCPP can be found at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Forms/default.htm.*

The SSCPP application should be submitted electronically as a document in Portable Document Format (PDF) and using the Electronic Common Technical Document (eCTD) format and the Electronic Submissions Gateway (ESG). The SSCPP application form should be referenced and placed in the 1.2 Cover Letter section. The PDF file name should contain ''3676'' as part of the file name, and the eCTD leaf title should include ''3676,'' the sponsor name, and the drug name, e.g., ''3676 Form—ABC Drug Company for XYZ Pain Pill.'' If a firm is unable to submit the application electronically, it should submit a hard copy of the application form via mail to: U.S. Food and Drug Administration, Attention: OC Office of Drug Security, Integrity, and Recalls, Central Document Room, 5901B Ammendale Rd., Beltsville, MD 20705–1266.

For further information regarding eCTD, please refer to the Web site at *http://www.fda.gov/Drugs/DevelopmentApprovalProcess/FormsSubmissionRequirements/ElectronicSubmissions/ucm153574.htm.* For communications other than the submission of the SSCPP application (Form FDA 3676), please contact the CDER SSCPP mailbox at *SSCPPMailBox@fda.hhs.gov.*

FDA will be accepting applications for participation in the SSCPP (see **DATES**). Applications will be processed as they are received, on a first-come, first-served basis. FDA anticipates finishing its review of the applications and selection of the participants by February 2014. All required fields must be completed on the application; incomplete applications will be returned to the U.S. primary contact named in the application. Please do not attach additional documents to the application submission. For the narrative sections of the application, please use the space provided to respond to the question. Applicants will be notified in writing as to whether their application has been selected.

FDA will assign a qualifier to each selected SSCPP application. Each Customs House Broker/Entry Filer will transmit the qualifier when filing the entry for the product. The qualifier will accompany an AofC code, which FDA has designated as a Secure Supply Chain (SSC). Once accepted into the SSCPP, the applicant must notify FDA of any changes to the information contained in Form FDA 3676 by email to the SSCPP mailbox at *SSCPPMailBox@fda.hhs.gov.* FDA anticipates responding to the applicant's modified application within 15 business days after receipt. Continued participation in the SSCPP is dependent on FDA's authorization of those changes.

V. Evaluation

FDA intends to evaluate the SSCPP based on several factors, including, but not limited to, the following: Timeframes for passage of drugs through the imports entry process, the level of adherence by the program participants to the program's criteria, and the impact of the SSCPP. This evaluation will help FDA determine whether establishment of an SSC program is supported and, if so, the parameters of such a program. FDA may also determine that it should extend the pilot program to continue its evaluation, or may terminate the pilot program before the close of the 2-year period. Such decisions will be announced in the **Federal Register**.

Dated: August 14, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–20215 Filed 8–19–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Discretionary Advisory Committee on Heritable Disorders in Newborns and Children; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, codified at 5 U.S.C. App.), notice is hereby given of the following meeting:

Name: Discretionary Advisory Committee on Heritable Disorders in Newborns and Children.

Dates and Times: September 19, 2013, 10:00 a.m. to 2:15 p.m. September 20, 2013, 9:00 a.m. to 3:10 p.m.

Place: Webinar (Committee members have the option to participate in the webinar through in-person attendance at the Health Resources and Services Administration (HRSA) Headquarters, 5600 Fishers Lane, Rockville, Maryland 20857, but due to space limitations, in-person attendance is not available to the public).

Status: The meeting is open to the public via webinar. Individuals are asked to register for the meeting by going to the registration Web site at *https://www.blsmeetings.net/SACHDNC/index.cfm.* The registration deadline is Wednesday, September 11, 2013. If there are questions/concerns about registration, contact Sydney Vranna, Seamon Corporation; telephone: (301) 577–0244, ext. 2800; email: *svranna@seamoncorporation.com.*

Purpose: The Discretionary Advisory Committee on Heritable Disorders in Newborns and Children (Committee), as authorized by Public Health Service Act (PHS), 42 U.S.C. 217a: Advisory councils or committees, was established to advise the Secretary of the Department of Health and Human Services about the development of newborn screening activities, technologies, policies, guidelines, and programs for effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders. Note: The Committee's recommendations regarding additional conditions/inherited disorders for screening that have been adopted by the Secretary are included in the Recommended Uniform Screening Panel and constitute part of the comprehensive guidelines supported by the Health Resources and Services Administration. Pursuant to section 2713 of the Public Health Service Act, codified at 42 U.S.C. 300gg–13, non-grandfathered health plans are required to cover screenings included in the HRSA-supported comprehensive guidelines without charging a co-payment, co-insurance, or deductible for plan years (i.e., policy years) beginning on or after the date that is one year from the Secretary's adoption of the condition for screening.

Agenda: The meeting will include: (1) A report on assessing the impact of the Committee's recommendations on long-term follow-up on state newborn screening programs, (2) a discussion on the policy impact of the Committee's previous recommendations regarding sickle cell trait screening in athletes, (3) a presentation on genome sequencing, (4) a panel on the Affordable Care Act, and (5) updates on priority projects from the Committee's Laboratory Standards and Procedures, Follow-up and Treatment, and Education and Training subcommittees.

Agenda items may be subject to change as necessary or appropriate. The agenda, webinar information, Committee Roster, Charter, presentations, and other meeting materials are located on the Advisory Committee's Web site at *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders.*

Public Comments: Members of the public may register to present oral comments and/or submit written comments. All comments, whether oral or written, are part of the official Committee record and will be available on the Committee's Web site. Advanced registration is required to present oral comments. The public comment period is scheduled for the morning of September 20, 2013. Written comments may be submitted at *https://www.blsmeetings.net/SACHDNC/index.cfm.* Written comments should identify the individual's name, address, email, telephone number, professional or business affiliation, type of expertise (i.e., parent, researcher, clinician, public health, etc.), and the topic/subject matter of comment. Individuals who wish to make oral comments are required to register for the meeting by Wednesday, September 11, 2013, at *https://www.blsmeetings.net/SACHDNC/index.cfm.* To ensure that all individuals who have registered to make oral comments can be accommodated, the allocated time may be limited. Individuals who are associated with groups or have similar interests may be requested to combine their comments and present them through a single representative. No audiovisual presentations are permitted. For additional information or questions on public comments, please contact Lisa Vasquez, Maternal and Child Health Bureau, Health Resources and Services Administration; telephone: (301) 443–1080; email: *lvasquez@hrsa.gov.*

For More Information Contact: Anyone interested in obtaining other relevant information should contact Debi Sarkar, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: (301) 443–1080; email: *dsarkar@hrsa.gov.*

More information on the Advisory Committee is available at *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders.*

Dated: August 14, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–20233 Filed 8–19–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Biological Aging Review Committee

Date: October 3–4, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree by Hilton Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Bita Nakhai, Ph.D., Scientific Review Branch, National Institute On Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7701, *nakhaib@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 14, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–20208 Filed 8–19–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Neurological Sciences Training Initial Review Group NST–1 Subcommittee.

Date: September 23–24, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street NW., Washington, DC 20037.

Contact Person: Raul A. Saavedra, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, *saavedrr@ninds.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 14, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–20210 Filed 8–19–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.

Date: September 11–12, 2013.

Time: September 11, 2013, 1:20 p.m. to 5:00 p.m.

Agenda: The NIH Recombinant DNA Advisory Committee (RAC) will review and discuss selected human gene transfer protocols and related data management activities. Please check the meeting agenda at OBA Meetings Page (available at the following URL: *http://oba.od.nih.gov/rdna_rac/rac_meetings.html*) for more information.

Place: Hyatt Regency Bethesda Hotel, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Time: September 12, 2013, 8:30 a.m. to 2:00 p.m.

Agenda: The NIH Recombinant DNA Advisory Committee (RAC) will review and discuss selected human gene transfer protocols and related data management activities. Please check the meeting agenda at OBA Meetings Page (available at the following URL: *http://oba.od.nih.gov/rdna_rac/rac_meetings.html*) for more information.

Place: Hyatt Regency Bethesda Hotel, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Chezelle George, Office of Biotechnology Activities, Office of Science Policy/OD, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892, 301–496–9838, *georgec@od.nih.gov*

Information is also available on the Institute's/Center's home page: *http://oba.od.nih.gov/rdna/rdna.html,* where an agenda and any additional information for the meeting will be posted when available.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: August 14, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–20207 Filed 8–19–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Juvenile Protective Factors I.

Date: September 18, 2013.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bita NakhaI, Ph.D., Scientific Review Branch, National Institute

On Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; NIA Institutional Research Training Grants.

Date: September 23, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alfonso R. Latoni, Ph.D., Deputy Chief and Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–402–7702, *Alfonso.Latoni@nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Unique Association Between Growth Hormone and Aging.

Date: October 23, 2013.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bita Nakhai, Ph.D., Scientific Review Branch, National Institute On Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 14, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–20209 Filed 8–19–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2013–0055]

DHS Data Privacy and Integrity Advisory Committee

AGENCY: Privacy Office, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The DHS Data Privacy and Integrity Advisory Committee will meet on September 12, 2013, in Washington, DC. The meeting will be open to the public.

DATES: The DHS Data Privacy and Integrity Advisory Committee will meet on Thursday, September 12, 2013, from 2:00 p.m. to 6:00 p.m. Please note that the meeting may end early if the Committee has completed its business.

ADDRESSES: The meeting will be held both in person in Washington, DC (650 Massachusetts Ave. NW., Washington, DC 20001) and via online forum (URL will be posted on the Privacy Office Web site in advance of the meeting at *www.dhs.gov/privacy*).

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Shannon Ballard, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, as soon as possible.

To facilitate public participation, we invite public comment on the issues to be considered by the Committee as listed in the ''Supplementary Information'' section below. A public comment period will be held during the meeting from 5:15 p.m. to 5:30 p.m., and speakers are requested to limit their comments to three minutes. If you would like to address the Committee at the meeting, we request that you register in advance by contacting Shannon Ballard at the address provided below or sign up at the registration desk on the day of the meeting. The names and affiliations, if any, of individuals who address the Committee are included in the public record of the meeting. Please note that the public comment period may end before the time indicated, following the last call for comments. Written comments should be sent to Shannon Ballard, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, by September 3, 2013. Persons who wish to submit comments and who are not able to attend or speak at the meeting may submit comments at any time. All submissions must include the Docket Number (DHS–2013–0055) and may be submitted by any *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: PrivacyCommittee@hq.dhs.gov*. Include the Docket Number (DHS–2013–0055) in the subject line of the message.
- *Fax:* (202) 343–4010
- *Mail:* Shannon Ballard, Designated Federal Officer, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, 245 Murray Lane SW., Mail Stop 0655, Washington, DC 20528.

Instructions: All submissions must include the words ''Department of Homeland Security Data Privacy and Integrity Advisory Committee'' and the Docket Number (DHS–2013–0055). Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

If you wish to attend the meeting, please bring a photo I.D. and plan to arrive at 650 Massachusetts Ave. NW., Washington, DC 20001 *no later than* 1:45 p.m. so as to allow extra time to be processed through security and to be escorted to the conference room. The DHS Privacy Office encourages you to register for the meeting in advance by contacting Shannon Ballard, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, at *PrivacyCommittee@hq.dhs.gov*. Advance registration is voluntary. The Privacy Act Statement below explains how DHS uses the registration information you may provide and how you may access or correct information retained by DHS, if any.

Docket: For access to the docket to read background documents or comments received by the DHS Data Privacy and Integrity Advisory Committee, go to *http://www.regulations.gov* and search for docket number DHS–2013–0055.

FOR FURTHER INFORMATION CONTACT: Shannon Ballard, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, Department of Homeland Security, 245 Murray Lane SW., Mail Stop 0655, Washington, DC 20528, by telephone (202) 343–1717, by fax (202) 343–4010, or by email to *PrivacyCommittee@hq.dhs.gov*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act* (FACA), 5 U.S.C. App. 2. The DHS Data Privacy and Integrity Advisory Committee provides advice at the request of the Secretary of Homeland Security and the DHS Chief Privacy Officer on programmatic, policy, operational, administrative, and technological issues within DHS that relate to personally identifiable information, as well as data integrity and other privacy-related matters. The Committee was established by the Secretary of Homeland Security under the authority of 6 U.S.C. 451.

Agenda

During the meeting, the Acting Chief Privacy Officer will provide the Committee an update on the activities of the DHS Privacy Office. He will announce reappointment of certain members and welcome new members to the Committee. DHS subject matter experts plan to brief the Committee on privacy updates regarding DHS's use of unmanned aerial systems and federated information sharing policy and technology practices, and

implementation of the February 2013 Cybersecurity Executive Order. The Committee plans to review and may vote on the Policy Subcommittee's report to the Department providing recommendations on establishing a DHS Privacy Policy for the Use of Live Data in Testing, Research, or Training. The draft report will be posted on the Committee's Web site (*www.dhs.gov/privacy*) in advance of the meeting. If you wish to submit written comments on the draft report, you may do so in advance of the meeting by forwarding them to the Committee at the locations listed under **ADDRESSES**. The final agenda will be posted on or before September 3, 2013, on the Committee's Web site at *www.dhs.gov/privacy*. Please note that the meeting may end early if all business is completed.

Privacy Act Statement: DHS's Use of Your Information

Authority: DHS requests that you voluntarily submit this information under its following authorities: the *Federal Records Act,* 44 U.S.C. 3101; the FACA, 5 U.S.C. App. 2; and the *Privacy Act of 1974,* 5 U.S.C. 552a.

Principal Purposes: When you register to attend a DHS Data Privacy and Integrity Advisory Committee meeting, DHS collects your name, contact information, and the organization you represent, if any. We use this information to contact you for purposes related to the meeting, such as to confirm your registration, to advise you of any changes in the meeting, or to assure that we have sufficient materials to distribute to all attendees. We may also use the information you provide for public record purposes such as posting publicly available transcripts and meeting minutes.

Routine Uses and Sharing: In general, DHS will not use the information you provide for any purpose other than the Principal Purposes, and will not share this information within or outside the agency. In certain circumstances, DHS may share this information on a case-by-case basis as required by law or as necessary for a specific purpose, as described in the DHS/ALL–002 Mailing and Other Lists System of Records Notice (November 25, 2008, 73 FR 71659).

Effects of Not Providing Information: You may choose not to provide the requested information or to provide only some of the information DHS requests. If you choose not to provide some or all of the requested information, DHS may not be able to contact you for purposes related to the meeting.

Accessing and Correcting Information: If you are unable to access or correct this information by using the method that you originally used to submit it, you may direct your request in writing to the DHS Deputy Chief FOIA Officer at *foia@hq.dhs.gov*.

Additional instructions are available at *http://www.dhs.gov/foia* and in the DHS/ALL–002 Mailing and Other Lists System of Records referenced above.

Dated: August 13, 2013.

Jonathan R. Cantor,

Acting Chief Privacy Officer,

Department of Homeland Security.

[FR Doc. 2013–20256 Filed 8–19–13; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2013–0037; OMB No. 1660–0023]

Agency Information Collection Activities: Proposed Collection; Comment Request; Effectiveness of a Community's Implementation of the NFIP Community Assistance Program CAC and CAV Reports

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 effectiveness of a community's implementation of the NFIP Community Assistance Program Community Assistance Contact (CAC) and Community Assistance Visit (CAV) Reports.

DATES: Comments must be submitted on or before October 21, 2013.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under Docket ID FEMA–2013–0037. 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 840, Washington, DC 20472–3100.

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 *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bret Gates, Program Specialist, Risk Reduction Division, Federal Emergency Management Agency, (202) 646–4133. 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 Federal Emergency Management Agency (FEMA) administers the National Flood Insurance Program (NFIP) (codified at 42 U.S.C. 4001, *et seq.*), and a major objective of the NFIP is to assure that participating communities are achieving the flood loss reduction objectives through implementation and enforcement of adequate land use and control measures. FEMA's authority to collect information that will allow for the evaluation of how well communities are implementing their floodplain management programs is found at 42 U.S.C. 4022 and 42 U.S.C. 4102. FEMA's regulations, at 44 CFR 59.22, direct respondents to submit evidence of the corrective and preventive measures taken to meet the flood loss reduction objectives.

Collection of Information

Title: Effectiveness of a Community's Implementation of the NFIP Community Assistance Program CAC and CAV Reports.

OMB Number: 1660–0023.

Type of Information Collection: Revision of a currently approved information collection.

FEMA Forms: FEMA Form 086–0–28(E), Community Visit Report; FEMA Form 086–0–29(E), Community Contact Report.

Abstract: Through the use of a Community Assistance Contact (CAC) or Community Assistance Visit (CAV), FEMA can make a comprehensive assessment of a community's floodplain management program. Through this assessment, FEMA can assist the community to understand the NFIP's requirements, and implement effective

flood loss reductions measures. Communities can achieve cost savings through flood mitigation actions by way of insurance premium discounts and reduced property damage.

Affected Public: State, local or Tribal Government.

Number of Respondents: 3,000.

Number of Responses: 3,000.

Estimated Total Annual Burden Hours: 4,000 hours.

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form No.	No. of respondents	No. of responses per respondent	Total No. of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
State, local or Tribal Government.	FEMA Form 086–0–28 (E)/Community Visit Report.	1,000	1	1,000	2	2,000	$35.39	$70,780
State, local or Tribal Government.	FEMA Form 086–0–29 (E)/Community Contact Report.	2,000	1	2,000	1	2,000	35.39	70,780
Total		3,000		3,000		4,000		141,560

• 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 $141,560.00. 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 $213,096.00.

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: August 9, 2013.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2013–20304 Filed 8–19–13; 8:45 am]

BILLING CODE 9111–47–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4126–DR; Docket ID FEMA–2013–0001]

Iowa; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–4126–DR), dated July 2, 2013, and related determinations.

DATES: *Effective Date:* August 8, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 2, 2013.

Howard and Worth Counties for Public Assistance, including direct federal assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–20269 Filed 8–19–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4132–DR; Docket ID FEMA–2013–0001]

West Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–4132–DR), dated July 26, 2013, and related determinations.

DATES: *Effective Date:* July 26, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 26, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of West Virginia resulting from severe storms and flooding on June 13, 2013, is of sufficient severity and magnitude to warrant a major disaster 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 a major disaster exists in the State of West Virginia.

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 disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act.

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, under Executive Order 12148, as amended, Jack Schuback, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of West Virginia have been designated as adversely affected by this major disaster:

Mason and Roane Counties for Public Assistance.

All counties within the State of West Virginia are eligible to apply for assistance under the Hazard Mitigation Grant 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. 2013–20308 Filed 8–19–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4137–DR; Docket ID FEMA–2013–0001]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–4137–DR), dated August 2, 2013, and related determinations.

DATES: *Effective Date:* August 2, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 2, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of South Dakota resulting from severe storms, tornadoes, and flooding during the period of June 19–29, 2013, is of sufficient severity and magnitude to warrant a major disaster 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 a major disaster exists in the State of South Dakota.

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 disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act.

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, under Executive Order 12148, as amended, Gary R. Stanley, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of South Dakota have been designated as adversely affected by this major disaster:

Beadle, Codington, Deuel, Grant, Hamlin, Hughes, and Kingsbury Counties for Public Assistance.

All counties within the State of South Dakota are eligible to apply for assistance under the Hazard Mitigation Grant 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. 2013–20314 Filed 8–19–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4138–DR; Docket ID FEMA–2013–0001]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–4138–DR), dated August 2, 2013, and related determinations.

DATES: *Effective Date:* August 2, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 2, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Florida resulting from severe storms and flooding during the period of July 2–7, 2013, is of sufficient severity and magnitude to warrant a major disaster 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 a major disaster exists in the State of Florida.

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 disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act.

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, under Executive Order 12148, as amended, Terry L. Quarles, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Florida have been designated as adversely affected by this major disaster:

Holmes, Walton, and Washington Counties for Public Assistance.

All counties within the State of Florida are eligible to apply for assistance under the Hazard Mitigation Grant 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. 2013–20263 Filed 8–19–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4140–DR; Docket ID FEMA–2013–0001]

Vermont; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Vermont (FEMA–4140–DR), dated August 2, 2013, and related determinations.

DATES: *Effective Date:* August 2, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 2, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Vermont resulting from severe storms and flooding during the period of June 25 to July 11, 2013, is of sufficient severity and magnitude to warrant a major disaster 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 a major disaster exists in the State of Vermont.

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 disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act.

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, under Executive Order 12148, as amended, Mark H. Landry, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Vermont have been designated as adversely affected by this major disaster:

Caledonia, Chittenden, Orange, Orleans, Rutland, Washington, and Windsor Counties for Public Assistance.

All counties within the State of Vermont are eligible to apply for assistance under the Hazard Mitigation Grant 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. 2013–20272 Filed 8–19–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4141–DR; Docket ID FEMA–2013–0001]

Wisconsin; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA–4141–DR), dated August 8, 2013, and related determinations.

DATES: *Effective Date:* August 8, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 8, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Wisconsin resulting from severe storms, flooding, and mudslides during the period of June 20–28, 2013, is of sufficient severity and magnitude to warrant a major disaster 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 a major disaster exists in the State of Wisconsin.

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 disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act.

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, under Executive Order 12148, as amended, Warren J. Riley, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Wisconsin have been designated as adversely affected by this major disaster:

Ashland, Bayfield, Crawford, Grant, Iowa, Richland, St. Croix, and Vernon Counties and the Red Cliff Band of Lake Superior Chippewa in Bayfield County for Public Assistance.

All counties and Indian Tribes within the State of Wisconsin are eligible to apply for assistance under the Hazard Mitigation Grant 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. 2013–20270 Filed 8–19–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4131–DR; Docket ID FEMA–2013–0001]

Minnesota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Minnesota (FEMA–4131–DR), dated July 25, 2013, and related determinations.

DATES: *Effective Date:* July 25, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 25, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Minnesota resulting from severe storms, straight-line winds, and flooding during the period of June 20–26, 2013, is of sufficient severity and magnitude to warrant a major disaster 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 a major disaster exists in the State of Minnesota.

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 disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act.

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, under Executive Order 12148, as amended, Kari Suzann Cowie, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Minnesota have been designated as adversely affected by this major disaster:

Benton, Big Stone, Douglas, Faribault, Fillmore, Freeborn, Grant, Hennepin, Houston, McLeod, Morrison, Pope, Sibley, Stearns, Stevens, Swift, Traverse, and Wilkin Counties for Public Assistance.

All counties within the State of Minnesota are eligible to apply for assistance under the Hazard Mitigation Grant 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. 2013–20311 Filed 8–19–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4139–DR; Docket ID FEMA–2013–0001]

New Hampshire; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA–4139–DR), dated August 2, 2013, and related determinations.

DATES: *Effective Date:* August 2, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 2, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of New Hampshire resulting from severe storms, flooding, and landslides during the period of June 26 to July 3, 2013, is of sufficient severity and magnitude to warrant a major disaster 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 a major disaster exists in the State of New Hampshire.

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 disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act.

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, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Hampshire have been designated as adversely affected by this major disaster:

Cheshire, Grafton, and Sullivan Counties for Public Assistance.

All counties within the State of New Hampshire are eligible to apply for assistance under the Hazard Mitigation Grant 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. 2013–20271 Filed 8–19–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4135–DR; Docket ID FEMA–2013–0001]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–4135–DR), dated July 31, 2013, and related determinations.

DATES: *Effective Date:* July 31, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 31, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Iowa resulting from severe storms, tornadoes, and flooding during the period June 21–28, 2013, is of sufficient severity and magnitude to warrant a major disaster 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 a major disaster exists in the State of Iowa.

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 disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act.

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, under Executive Order 12148, as amended, Joe M. Girot, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Iowa have been designated as adversely affected by this major disaster:

Allamakee, Benton, Buchanan, Butler, Cedar, Clayton, Delaware, Howard, Jones, and Winneshiek Counties for Public Assistance.

All counties within the State of Iowa are eligible to apply for assistance under the Hazard Mitigation Grant 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. 2013–20321 Filed 8–19–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4134–DR; Docket ID FEMA–2013–0001]

Colorado; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Colorado (FEMA–4134–DR), dated July 26, 2013, and related determinations.

DATES: *Effective Date:* July 26, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 26, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Colorado resulting from the Black Forest Fire during the period of June 11–21, 2013, is of sufficient severity and magnitude to warrant a major disaster 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 a major disaster exists in the State of Colorado.

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 disaster assistance and administrative expenses.

You are authorized to provide Crisis Counseling, Disaster Unemployment Assistance, and Public Assistance in the designated area and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act. 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, under Executive Order 12148, as amended, Thomas J. McCool, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Colorado have been designated as adversely affected by this major disaster:

El Paso County for Crisis Counseling and Disaster Unemployment Assistance.

El Paso County for Public Assistance.

All counties within the State of Colorado are eligible to apply for assistance under the Hazard Mitigation Grant 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. 2013–20262 Filed 8–19–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4133–DR; Docket ID FEMA–2013–0001]

Colorado; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Colorado (FEMA–4133–DR), dated July 26, 2013, and related determinations.

DATES: *Effective Date:* July 26, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 26, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Colorado resulting from the Royal Gorge Fire during the period of June 11–16, 2013, is of sufficient severity and magnitude to warrant a major disaster 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 a major disaster exists in the State of Colorado.

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 disaster assistance and administrative expenses.

You are authorized to provide Disaster Unemployment Assistance and Public Assistance in the designated area and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act.

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, under Executive Order 12148, as amended, Thomas J. McCool, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Colorado have been designated as adversely affected by this major disaster:

Fremont County for Disaster Unemployment Assistance.

Fremont County for Public Assistance.

All counties within the State of Colorado are eligible to apply for assistance under the Hazard Mitigation Grant 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. 2013–20324 Filed 8–19–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2013–N058; FXRS12650400000S3–123–FF04R02000]

Culebra National Wildlife Refuge, PR; Final Comprehensive Conservation Plan and Finding of No Significant Impact for the Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of the final comprehensive conservation plan and finding of no significant impact for the environmental assessment (Final CCP/FONSI) for Culebra National Wildlife Refuge (NWR) in the municipality of Culebra, Puerto Rico. In the Final CCP/FONSI, we describe how we will manage this refuge for the next 15 years.

ADDRESSES: You may obtain a copy of the Final CCP/FONSI by writing to: Ms. Ana Román, via U.S. mail at P.O. Box 510, Boquerón, PR 00622. Alternatively, you may download the document from our Internet Site at *http://southeast.fws.gov/planning* under ''Final Documents.''

FOR FURTHER INFORMATION CONTACT: Ms. Ana Román, at 787/851–7258 (telephone).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for Culebra NWR. We started the process through a notice in the **Federal Register** on December 19, 2008 (73 FR 77827). For more about the refuge and planning process, please see that notice.

Culebra NWR is located within the municipality of Culebra, Puerto Rico, and consists of several units on the main island of Culebra and numerous small islands surrounding Culebra.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Comments

We made copies of the Draft Comprehensive Conservation Plan and Environmental Assessment (Draft CCP/EA) available for a 30-day public review and comment period via a **Federal Register** notice on July 11, 2012 (77 FR 40895). We received comments on the Draft CCP/EA from two Federal agencies, nine non-governmental organizations, and eight members of the general public. Some of the comments we received dealt with the following: (1) Controlling access and utilization of Culebrita beaches; (2) ensuring a consistent policy for special use permits; (3) clarifying all unresolved boundary issues; (4) developing plans to repair the Observation Point at Punta Flamenco; (5) increasing funding for sea turtle projects; (6) controlling or eliminating invasive species; (7) developing hiking trails; and (8) permitting the development of renewable energy projects (i.e., particularly wind energy) on the refuge.

CCP Alternatives, Including Our Preferred Alternative

We developed three alternatives for managing the refuge (Alternatives A, B, and C), with Alternative C selected for implementation. This alternative expands both wildlife and habitat management and public use activities.

The preferred alternative provides for expanded seasonal surveys to determine seabird abundance, research on nesting success, manipulation of vegetation to improve nesting habitat, and control of invasive predators.

We will also continue surveys and protection of sea turtles, develop and implement annual surveys for resident and migratory birds, and establish additional populations of two species of listed plants—*Pepperomia wheelerii* and *Leptocereus grantianus.*

This management action also calls for restoring hydrology to areas of degraded mangrove habitat and restoring dry forest through selective invasive species removal and planting of propagated trees. We will also intensify efforts at invasive species control and eradication and pursue habitat restoration on offshore cays.

Within 5 years of the date of the Final CCP/FONSI, we will clearly delineate all refuge boundaries, work to resolve boundary issues, and pursue opportunities for boundary expansion through acquisitions from willing sellers. We will also complete and begin to implement a cultural resources management plan.

We will maintain our current schedule of being open to the public during daylight hours only. Working with the Army Corps of Engineers to determine safety of areas cleared of unexploded ordnance, we will evaluate the potential for opening additional areas to the public, considering both safety and biological factors. We will continue to permit water taxis under special use permit for access to cays. We will also develop partnerships to restore and reopen the Observation Post for

environmental research and/or education purposes.

We will continue to provide for opportunistic wildlife observation and photography opportunities. We will develop additional public use facilities, such as trails, towers, boardwalks, and blinds, to increase opportunities for wildlife observation and photography. We will also develop environmental education and interpretation programs and materials (e.g., curriculum, teacher training) to be used both on and off the refuge.

Based on the availability of funding, we will add the following positions: Public use specialist, biologist, one full-time and one part-time biological technician, and maintenance worker.

This management action provides for the maintenance of all current equipment and facilities, including two boats and the office and residence buildings. It also provides for the development and maintenance of additional trails, towers, boardwalks, blinds, and the construction of a new headquarters/visitor contact station.

We will facilitate the formation of a friends group, increase cooperation with partners in habitat and wildlife management and public use, and establish formal agreements.

Contingent upon adding a public use specialist, we will develop and begin to implement a communication's plan.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd et seq.).

Dated: April 25, 2013.

Mike Oetker,

Acting Regional Director.

[FR Doc. 2013–20234 Filed 8–19–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000–L63100000–HD0000–13XL1116AF: HAG13–0264]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management, Oregon State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 10 S., R. 11 E., accepted July 22, 2013

T. 19 S., R. 2 W., accepted July 22, 2013

T. 17 S., R. 7 W., accepted July 26, 2013

T. 41 S., R. 44 E., accepted July 30, 2013

ADDRESSES: A copy of the plats may be obtained from the Public Room at the Bureau of Land Management, Oregon State Office, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6132, Branch of Geographic Sciences, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: A person or party who wishes to protest against this survey must file a written notice with the Oregon State Director, Bureau of Land Management, stating that they wish to protest. A statement of reasons for a protest may be filed with the notice of protest and must be filed with the Oregon State Director within thirty days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Timothy J. Moore,

Acting, Chief Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2013–20236 Filed 8–19–13; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–DPOL–13795; PPWODIREP0][PPMPSPD1Y.YM0000]

Notice of October 15–16, 2013, Meeting of the National Park System Advisory Board

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, and parts 62 and 65 of title 36 of the Code of Federal Regulations, that the National Park System Advisory Board will meet October 15–16, 2013, in Washington, DC. The agenda will include the review of proposed actions regarding the National Historic Landmarks Program and the National Natural Landmarks Program. The Board also may consider recommendations in the Draft Feasibility Study and Environmental Assessment for the Proposed Butterfield Overland National Historic Trail prepared in compliance with Section 7209 of Public Law 111–11. Interested parties are encouraged to submit written comments and recommendations that will be presented to the Board. Interested parties also may attend the board meeting and upon request may address the Board concerning an area's national significance.

DATES: (a) Written comments regarding any proposed National Historic Landmarks matter or National Natural Landmarks matter listed in this notice will be accepted by the National Park Service until October 21, 2013. (b) The Board will meet on October 15–16, 2013.

ADDRESSES: The meeting will be held in Meeting Room A of the American Geophysical Union, 3000 Florida Avenue NW., Washington, DC 20009, telephone (202) 462–6900.

Agenda: On the morning of October 15, the Board will tour and be briefed on sites within the National Capital Region. The Board will convene its business meeting at 2:00 p.m., and adjourn for the day at 5:00 p.m. On October 16, the Board will reconvene at 8:30 a.m., and adjourn at 3:30 p.m. During the course of the two days, the Board may be addressed by Secretary of the Interior Sally Jewell, and National Park Service Director Jonathan Jarvis; briefed by other National Park Service officials regarding education, leadership development and science; deliberate and make recommendations concerning National Historic Landmarks Program,

National Natural Landmarks Program, and National Historic Trails Program proposals; and receive status briefings on matters pending before committees of the Board.

FOR FURTHER INFORMATION CONTACT: (a) For information concerning the National Park System Advisory Board or to request to address the Board, contact Shirley Sears, Office of Policy, National Park Service, 1201 I Street NW., 12th Floor, Washington, DC 20005, telephone (202) 354–3955, email *Shirley_Sears@nps.gov*. (b) To submit a written statement specific to, or request information about, any National Historic Landmarks matter listed below, or for information about the National Historic Landmarks Program or National Historic Landmarks designation process and the effects of designation, contact J. Paul Loether, Chief, National Register of Historic Places and National Historic Landmarks Program, National Park Service, 1849 C Street NW. (2280), Washington, DC 20240, email *Paul_Loether@nps.gov*. (c) To submit a written statement specific to, or request information about the National Historic Trails Program matter listed below, or for information about the National Historic Trails Program or the National Trails System, contact Aaron Mahr Yáñez, Superintendent, National Trails, Intermountain Region, National Park Service, P.O. Box 728, Santa Fe, New Mexico 97504, telephone (505) 988–6736, email *Aaron_Mahr@nps.gov*. (d) To submit a written statement specific to, or request information about, any National Natural Landmarks matter listed below, or for information about the National Natural Landmarks Program or National Natural Landmarks designation process and the effects of designation, contact Dr. Margaret Brooks, Program Manager, National Natural Landmarks Program, National Park Service, 225 N. Commerce Park Loop, Tucson, Arizona 85745, email *Margi_Brooks@nps.gov*.

SUPPLEMENTARY INFORMATION: Matters concerning the National Historic Landmarks Program, National Historic Trails Program, and National Natural Landmarks Program will be considered by the Board as follows:

A. National Historic Landmarks (NHL) Program

NHL Program matters will be considered at the morning session of the business meeting on October 16, during which the Board may consider the following:

Nominations for New NHL Designations

Illinois

- Adlai E. Stevenson II Farm, Mettawa, IL

Michigan

- The Detroit Industry Murals, Detroit Institute of Arts, Detroit, MI

Pennsylvania

- George Nakashima Woodworker Complex, Bucks County, PA

B. National Historic Trails (NHT) Program

NHT Program matters will be considered at the morning session of the business meeting on October 16, during which the Board may consider the following proposed National Historic Trail:

Proposed National Historic Trail

- Proposed Butterfield Overland National Historic Trail, MO, TN, AR, OK, TX, NM, AZ, CA.

(National Historic Significance Recommendation)

C. National Natural Landmarks (NNL) Program

NNL Program matters will be considered at the morning session of the business meeting on October 16, during which the Board may consider the following:

Nomination for New NNL Designation

New York

- Albany Pine Bush, Albany County, NY

The board meeting will be open to the public. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board also will permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time. Before including your address, telephone 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.

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting in the 12th floor conference room at 1201 I Street NW., Washington, DC.

Dated: August 14, 2013.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2013–20288 Filed 8–19–13; 8:45 am]

BILLING CODE 4310–EE–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKR–DENA–KOVA–DTS–13608; PPAKAKROR4; PPMPRLE1Y.LS0000]

Kobuk Valley National Park Subsistence Resource Commission (SRC) and the Denali National Park SRC; Meetings

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: As required by the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), the National Park Service (NPS) is hereby giving notice that the Kobuk Valley National Park Subsistence Resource Commission (SRC) and the Denali National Park SRC will hold meetings to develop and continue work on NPS subsistence program recommendations and other related subsistence management issues. The NPS SRC program is authorized under Title VIII, Section 808 of the Alaska National Interest Lands Conservation Act, Public Law 96–487.

Kobuk Valley National Park SRC Meeting Date And Location: The Kobuk Valley National Park SRC will meet from 1:00 p.m. to 5:00 p.m. on Tuesday, September 3, 2013, and from 9:00 a.m. to 5:00 p.m. on Wednesday, September 4, 2013, at the NPS Northwest Alaska Heritage Center in Kotzebue, AK. If additional time is needed, the SRC will meet on Wednesday, September 11, 2013, from 10:00 a.m. to 1:30 p.m. or until business is completed. For more detailed information regarding this meeting, contact Designated Federal Official Frank Hays, Superintendent, at (907) 442–3890; or Clarence Summers, Subsistence Manager, at (907) 644–3603. If you are interested in applying for Kobuk Valley National Park SRC membership, contact the Superintendent at P.O. Box 1029, Kotzebue, AK 99752, or visit the park Web site at: *http://www.nps.gov/kova/contacts.htm*.

Denali National Park SRC Meeting Date and Location: The Denali National Park SRC will meet from 10:00 a.m. to 5:00 p.m. or until business is completed

on Saturday, October 5, 2013, at the Cantwell Community Hall, Cantwell, AK. For more detailed information regarding this meeting, contact Designated Federal Official Don Striker, Superintendent, at (907) 683–9581 or Clarence Summers, Subsistence Manager, at (907) 644–3603. If you are interested in applying for Denali National Park SRC membership, contact the Superintendent at P.O. Box 9, Denali Park, AK 99755, or visit the park Web site at: *http://www.nps.gov/dena/contacts.htm*.

SRC Proposed Meeting Agenda:

The proposed meeting agenda for each meeting includes the following:

1. Call to Order—Confirm Quorum
2. Welcome and Introduction
3. Review and Adoption of Agenda
4. Approval of Minutes
5. Welcome by Local Community
6. Superintendent's Welcome and Review of the Commission Purpose
7. Commission Membership Status
8. SRC Chair and Members' Reports
9. Superintendent's Report
10. Old Business
11. New Business
12. Federal Subsistence Board Update
13. Alaska Boards of Fish and Game Update
14. National Park Service Reports
    a. Ranger Update
    b. Resource Management Update
    c. Subsistence Manager's Report
15. Public and Other Agency Comments
16. Work Session
17. Set Tentative Date and Location for Next SRC Meeting
18. Adjourn Meeting

SRC meeting locations and dates may change based on inclement weather or exceptional circumstances. If the meeting date and location are changed, the Superintendent will issue a press release and use local newspapers and radio stations to announce the meeting.

SUPPLEMENTARY INFORMATION: These meetings are open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the SRC. The meetings will be recorded and meeting minutes will be available upon request from the Park Superintendent for public inspection approximately six weeks after the meeting. Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 15, 2013.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2013–20284 Filed 8–19–13; 8:45 am]

BILLING CODE 4312–EF–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–KAHO–13485; PPPWKAHOS0, PPMPSPD1Z.YM0000]

Request for Nominations for the Na Hoa Pili O Kaloko-Honokohau Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of Request for Nominations for the Na Hoa Pili O Kaloko-Honokohau Advisory Commission.

SUMMARY: The National Park Service, U.S. Department of the Interior, proposes to appoint new members to the Na Hoa Pili O Kaloko-Honokohau (The Friends of Kaloko-Honokohau), an Advisory Commission for the park. The Superintendent, Kaloko-Honokohau National Historical Park, acting as administrative lead, is requesting nominations for qualified persons to serve on the Commission.

DATES: Nomination must be postmarked not later than October 21, 2013.

ADDRESSES: Nominations or requests for further information should be sent to Tammy Duchesne, Superintendent, Kaloko-Honokohau National Historical Park, 73–4786 Kanalani Street, Suite #14, Kailua-Kona, Hawaii 96740.

FOR FURTHER INFORMATION CONTACT: Jeff Zimpfer, National Park Service, Environmental Protection Specialist, Kaloko-Honokohau National Park, 73–4786 Kanalani St., #14, Kailua Kona, Hawaii 96740, phone (808) 329–6881, ext. 1500, email *jeff_zimpfer@nps.gov*.

SUPPLEMENTARY INFORMATION: The Kaloko-Honokohau National Historical Park Advisory Commission scope and objectives are as follows: the Kaloko-Honokohau National Historical Park was established by Section 505(a) of Public Law 95–625, November 10, 1978, as amended. Section 505(f) of that law, as amended, established the Na Hoa Pili O Koloko-Honokohau (The Friends of Kaloko-Honokohau), as advisory commission for the park. The Commission was re-established by Title VII, Subtitle E, Section 7401 of Public Law 111–11, the Omnibus Public Land Management Act of 2009, March 30, 2009. The Commission's new termination date is December 18, 2018.

The purpose of the Commission is to advise the Superintendent and the Director, National Park Service, with respect to the historical, archeological, cultural, and interpretive programs of the park. The Commission is to afford particular emphasis to the quality of traditional Native Hawaiian cultural practices demonstrated in the park.

For the purposes of Section 505(e), native Hawaiians are defined as any lineal descendents of the race inhabiting the Hawaiian Islands prior to the year 1778.

Nominations are needed to represent the following category: member to represent Native Hawaiian interests.

Submitting Nominations:

Nominations should be typed and must include each of the following:

A. Brief summary of no more than two (2) pages explaining the nominee's suitability to serve on the Commission.

B. Resume or curriculum vitae.

C. At least one (1) letter of reference.

The Commission consists of nine members, each appointed by the Secretary of the Interior, and four ex officio non-voting members, as follows: (a) All nine Secretarial appointees will be residents of the State of Hawaii, and at least six of those appointees will be native Hawaiians; (b) Native Hawaiian organizations will be invited to nominate members, and at least five members will be appointed from those nominations to represent the interests of those organizations. The other four members will represent Native Hawaiian interests; (c) the nine voting members will be appointed for 5-year terms. No member may serve more than one term consecutively. Any vacancy in the Commission shall be filled by appointment for the remainder of the term; (d) the four ex officio members include the Park Superintendent, the Pacific West Regional Pacific Islands Director, one person appointed by the Governor of Hawaii, and one person appointed by the Mayor of the County of Hawaii. The Secretary of the Interior shall designate one member of the Commission to be Chairman.

Members of the Commission will receive no pay, allowances, or benefits by reason of their service on the Commission. However, while away from their homes or regular places of business in the performance of services for the Commission as approved by the DFO, members will be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed such

expenses under Section 5703 of Title 5 of the United States Code.

The Obama Administration prohibits individuals who are currently federally registered lobbyists to serve on all Federal Advisory Committee Act (FACA) and non-FACA boards, committees, or councils.

All required documents must be compiled and submitted in one complete nomination package. Incomplete submissions (missing one or more of the items described above) will not be considered.

Nominations should be postmarked no later than October 21, 2013, to Tammy Duchesne, Superintendent, Kaloko-Honokohau National Historical Park, 73–4786 Kanalani Street, Suite #14, Kailua-Kona, Hawaii 96740.

Dated: August 12, 2013.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2013–19918 Filed 8–19–13; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[DN 2973]

Certain Tires and Products Containing Same Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Tires and Products Containing Same,* DN 2973; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *EDIS*,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *USITC*.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *EDIS*.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Toyo Tire & Rubber Co., Ltd.; Toyo Tire Holdings of Americas Inc.; Toyo Tire U.S.A. Corp.; Nitto Tire U.S.A. Inc.; and Toyo Tire North America Manufacturing Inc. on August 14, 2013. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain tires and products containing same. The complaint names as respondents Hong Kong Tri-Ace Tire Co., Ltd. of China; Weifang Shunfuchang Rubber & Plastic Co., Ltd. of China; Doublestar Dong Feng Tyre Co., Ltd. of China; Shandong Yongtai Chemical Group Co., Ltd. of China; MHT Luxury Alloys of CA; Wheel Warehouse, Inc. of CA; Shandong Linglong Tyre Co., Ltd. of China; Dunlap & Kyle Company, Inc. d/b/a Gateway Tire and Service of MS; Unicorn Tire Corp. of TN; West KY Customs, LLC of KY; Svizz-One Corporation Ltd. of Thailand; South China Tire and Rubber Co., Ltd. of China; American Omni Trading Co., LLC of TX; Tire & Wheel Master, Inc. of CA; Simple Tire of TN; WTD Inc. of CA; Guangzhou South China Tire & Rubber Co., Ltd. of China; Turbo Wholesale Tires, Inc. of CA; TireCrawler.com of CA; Lexani Tires Worldwide, Inc. of CA; Vittore Wheel & Tire of NC; and RTM Wheel & Tire of NC. The complainant requests that the Commission issue a limited exclusion order and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2973'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *Electronic Filing Procedures*[4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: August 15, 2013.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–20219 Filed 8–19–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Halo Pharmaceutical, Inc.

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 8, 2013, Halo Pharmaceutical, Inc., 30 North Jefferson Road, Whippany, New Jersey 07981, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

Dihydromorphine is an intermediate in the manufacture of Hydromorphone and is not for commercial distribution.

The company plans to manufacture Hydromorphone HCL for sale to other manufacturers and to manufacture other controlled substances for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than October 21, 2013.

Dated: August 14, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–20260 Filed 8–19–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Chattem Chemicals, Inc.

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 21, 2013, Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Chattanooga, Tennessee 37409, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010)	I
4-Methoxyamphetamine (7411)	I
Dihydromorphine (9145)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Pentobarbital (2270)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Opium tincture (9630)	II
Opium, powdered (9639)	II
Opium, granulated (9640)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Tapentadol (9780)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution and sale to its customers. Regarding (9640) the company plans to manufacture another controlled substance for sale to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than October 21, 2013.

Dated: August 14, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–20259 Filed 8–19–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–NEW]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Office for Victims of Crime Training and Technical Assistance Center (OVC TTAC) Online Trainings Package

ACTION: 30-day notice.

The Department of Justice, Office of Justice Programs, Office for Victims of Crime, 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. This proposed information collection was previously published in the **Federal Register** on Volume 78, Number 117, pages 36578–36579, on June 18, 2013, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 19, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Shelby Jones Crawford,

Victim Justice Program Specialist, Office for Victims of Crime, Office of Justice Programs, Department of Justice, 810 7th Street NW., Washington, DC 20530.

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:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the 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, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: New Collection.

(2) The Title of the Form/Collection: OVC TTAC Online Trainings Package.

(3) The Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number(s): NA. Office for Victims of Crime, Office of Justice Programs, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: State, Local or Tribal agencies/organizations. Other: Federal Government; Individuals or households; Not-for-profit institutions; Businesses or other for-profit. Abstract: The Office for Victims of Crime Training and Technical Assistance Center (OVC TTAC) Online Trainings Package is designed to collect the data necessary to continuously assess the satisfaction and outcomes of assistance provided through OVC TTAC online trainings for both monitoring and accountability purposes to continuously meet the needs of the victim services field. OVC TTAC will deliver these forms to recipients of online training and technical assistance and, in some cases, to online instructors or participants' supervisors. The purpose of this data collection will be to capture important feedback on the respondent's satisfaction and outcomes of the resources provided. The data will then be used to advise OVC on ways to improve the support that it provides to the victim services field at-large.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: There are approximately 17,315 respondents who will require an average of 8 minutes (ranging from 5 to 10 minutes across all forms) to respond to a single form each year.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual public burden hours for this information collection are estimated to be 2,456 hours.

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 1407B, Washington, DC 20530.

Dated:August 15, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–20227 Filed 8–19–13; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Announcement Regarding a Change in Eligibility for Unemployment Insurance (UI) Claimants in Louisiana, Maine, New Jersey, West Virginia and the Virgin Islands in the Emergency Unemployment Compensation 2008 (EUC08) Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The U.S. Department of Labor (Department) produces trigger notices indicating which states qualify for EUC08 benefits, and provides the beginning and ending dates of payable periods for each qualifying state. The trigger notices covering state eligibility for this program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.asp*.

The following changes have occurred since the publication of the last notice regarding states' EUC08 trigger status:

- Louisiana has triggered ''on'' to Tier 2 of EUC08 effective July 14, 2013.

Based on data released by the Bureau of Labor Statistics on June 21, 2013, the three month average, seasonally adjusted total unemployment rate (TUR) in Louisiana was 6.5 percent, exceeding the 6.0 percent trigger rate threshold to trigger ''on'' to Tier 2 of EUC08. However, Louisiana was in a mandatory 13 week ''off'' period that started April 13, 2013, and did not conclude before July 13, 2013. As a result, Louisiana remained in an ''off'' period in Tier 2 of EUC08 through July 13, 2013, and triggered ''on'' to Tier 2 of EUC08 effective July 14, 2013. The week beginning July 14, 2013, was the first week in which EUC08 claimants in Louisiana who had exhausted Tier 1, and were otherwise eligible, could establish Tier 2 eligibility.

- Maine has triggered ''off'' Tier 3 of EUC08 effective July 13, 2013.

Based on data released by the Bureau of Labor Statistics on June 21, 2013, the three month average, seasonally adjusted TUR in Maine was 6.9 percent, falling below the 7.0 percent trigger rate threshold to remain ''on'' in Tier 3 of EUC08. The week ending July 13, 2013, was the last week in which EUC08 claimants in Maine who had exhausted Tier 2, and were otherwise eligible, could establish Tier 3 eligibility.

- New Jersey has triggered ''off'' Tier 4 of EUC08 effective July 13, 2013.

Based on data released by the Bureau of Labor Statistics on June 21, 2013, the three month average, seasonally adjusted TUR in New Jersey was 8.8 percent, falling below the 9.0 percent trigger rate threshold to remain ''on'' in Tier 4 of EUC08. The week ending July 13, 2013, was the last week in which EUC08 claimants in New Jersey who had exhausted Tier 3, and were otherwise eligible, could establish Tier 4 eligibility.

- The Virgin Islands has triggered ''on'' to Tier 2 and Tier 3 of EUC08 effective June 30, 2013.

Based on data released by the Bureau of Labor Statistics on June 7, 2013, the estimated three month average, seasonally adjusted total unemployment rate in the Virgin Islands was 7.6 percent, exceeding the 7.0 percent trigger rate threshold to trigger ''on'' in Tier 2 and Tier 3 of EUC08. However, the Virgin Islands was in a mandatory 13 week ''off'' period until June 29, 2013. The week beginning June 30, 2013, was the first week in which EUC08 claimants in the Virgin Islands who had exhausted Tier 1 or Tier 2, and were otherwise eligible, could establish Tier 2 or Tier 3 eligibility.

- West Virginia has triggered ''off'' Tier 3 of EUC08 effective July 13, 2013.

Based on data released by the Bureau of Labor Statistics on June 21, 2013, the

three month average, seasonally adjusted total unemployment rate in West Virginia was 6.6 percent, falling below the 7.0 percent trigger rate threshold to remain ''on'' in Tier 3 of EUC08. The week ending July 13, 2013, was the last week in which EUC08 claimants in West Virginia who had exhausted Tier 2, and were otherwise eligible, could establish Tier 3 eligibility.

Information for Claimants

The duration of benefits payable in the EUC08 program, and the terms and conditions under which they are payable, are governed by public laws 110–252, 110–449, 111–5, 111–92, 111–118, 111–144, 111–157, 111–205, 111–312, 112–96, and 112–240, and the operating instructions issued to the states by the Department.

In the case of a state beginning or concluding a payable period in EUC08, the State Workforce Agency (SWA) will furnish a written notice of any change in potential entitlement to each individual who could establish, or had established, eligibility for benefits (20 CFR 615.13 (c)(1) and (c)(4)). Persons who believe they may be entitled to benefits in the EUC08 program, or who wish to inquire about their rights under this program, should contact their SWA.

FOR FURTHER INFORMATION CONTACT: Tony Sznoluch, U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW., Frances Perkins Bldg. Room S–4524, Washington, DC 20210, telephone number (202) 693–3176 (this is not a toll-free number) or by email: *sznoluch.anatoli@dol.gov*.

Signed in Washington, DC, this 5th day of August, 2013.

Eric M. Seleznow,

Acting Assistant Secretary for Employment and Training.

[FR Doc. 2013–20216 Filed 8–19–13; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2013–041]

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 September 19, 2013. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums 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.

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, using the Standard Form (SF) 115, Request for Records Disposition Authority. 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 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 Defense, Office of the Secretary of Defense (DAA–0330–2013–0002, 3 items, 3 temporary items).

Records relating to security breaches within the Department of Defense including case files and reports.

2. Department of Energy, Lawrence Berkeley National Laboratory (DAA–0434–2013–0002, 1 item, 1 temporary item). Records relating to the policy, standards, and procedures of the safety program at the Lawrence Berkeley National Laboratory.

3. Department of the Navy, U.S. Marine Corps (DAA–0127–2012–0004, 4 items, 4 temporary items). Master files and other records of an electronic information system used to manage the surveillance of Marine Corps installations, including sensor data and textual information.

4. Department of the Navy, U.S. Marine Corps (DAA–0127–2013–0006, 1 item, 1 temporary item). Master files of an electronic information system used to monitor the status and mission readiness of Marine Corps installations.

5. Department of the Navy, U.S. Marine Corps (DAA–0127–2013–0013, 1 item, 1 temporary item). Master files of an electronic information system used to manage construction projects on Marine Corps installations.

6. Department of State, Bureau of Diplomatic Security (DAA–0059–2011–0009, 22 items, 21 temporary items). Records of the Office of Foreign Missions including routine administrative files and correspondence, day-to-day operational files, and master files of an electronic information system used to support the issuance of privileges, benefits, and immunities to the foreign diplomatic community. Proposed for permanent retention are office program files.

7. Department of Transportation, Federal Highway Administration (N1–406–11–1, 2 items, 1 temporary item). Master files of an electronic information system used to report on traffic data. Proposed for permanent retention are summary reports of all travel on public roads.

8. Department of Transportation, Federal Highway Administration (N1–406–11–2, 3 items, 3 temporary items). Master files and output files of an electronic information system used to report on highway finance and motor fuel data.

9. Department of Transportation, Federal Railroad Administration (DAA–0399–2012–0002, 5 items, 2 temporary items). Records related to local and short-term emergency response. Proposed for permanent retention are emergency preparedness plans, exercise files, and catastrophic disaster response records.

10. Department of Transportation, Federal Railroad Administration (DAA–0399–2013–0002, 12 items, 6 temporary items). Records related to public affairs including working papers, community relations records, and photographs and motion pictures of non-mission activities. Proposed for permanent retention are biographies and portraits of senior officials, press releases, photographs and motion pictures of mission activities, and education files.

11. Peace Corps, Office of Safety and Security (DAA–0490–2013–0002, 2 items, 1 temporary item). Master files of an electronic information system used to report on security incidents and crimes against volunteers, trainees, or property. Proposed for permanent retention is the associated annual report.

Dated: August 13, 2013.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2013–20242 Filed 8–19–13; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of document availability under the Antarctic Conservation of 1978, as amended by the Antarctic Science, Tourism and Conservation Act of 1996, (16 U.S.C 2401 et seq).

SUMMARY: On March 31, 2003, the National Science Foundation (NSF) issued a final rule that authorized the collection of meteorites in Antarctica for scientific purposes only. In addition the regulations provide requirements for appropriate collection, handling, documentation, and curation of Antarctic meteorites to preserve their scientific value. These regulations implement the Antarctic Conservation Act of 1978, as amended by the Antarctic Science, Tourism and Conservation Act of 1996, (16 U.S.C 2401 et seq.), and Article 7 of the Protocol on Environmental Protection to the Antarctic Treaty done at Madrid on October 4, 1991. The NSF is required to publish notice of the availability of Meteorite Collection Plans received under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Polly A. Penhale, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 or *ppenhale@nsf.gov*

SUPPLEMENTARY INFORMATION: A Meteorite Collection Plan has been received from Dr. Ralph Harvey of Case Western Reserve University. Interested parties are invited to submit written data, comments, or views with respect to this plan by September 4, 2013.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2013–20224 Filed 8–19–13; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0193: EA–13–147]

In the Matter of Certain Licensees Requesting Unescorted Access to Radioactive Material; Order Imposing Trustworthiness and Reliability Requirements for Unescorted Access to Certain Radioactive Material (Effective Immediately)

I

The licensee identified in Attachment 1 [1] to this Order holds a license issued by the U.S. Nuclear Regulatory Commission or an Agreement State, in accordance with the Atomic Energy Act (AEA) of 1954, as amended. The license authorizes it to perform services on devices containing certain radioactive material for customers licensed by the NRC or an Agreement State to possess and use certain quantities of the radioactive materials listed in Attachment 2 to this Order. The Commission's regulations in § 20.1801 of Title 10 of the *Code of Federal Regulations* (10 CFR) or equivalent Agreement State regulations require licensees to secure, from unauthorized removal or access, licensed materials that are stored in controlled or unrestricted areas. The Commission's regulations in § 20.1802 or equivalent Agreement State regulations require licensees to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

II

Subsequent to the terrorist events of September 11, 2001, the NRC issued immediately effective Security Orders to NRC and Agreement State licensees under the Commission's authority to protect the common defense and security of the nation. The Orders required certain manufacturing and distribution (M&D) licensees to

[1] Attachment 1 contains sensitive information and will not be released to the public.

implement Additional Security Measures (ASMs) for the radioactive materials listed in Attachment 2 to this Order (the radionuclides of concern), to supplement the existing regulatory requirements. The ASMs included requirements for determining the trustworthiness and reliability of individuals that require unescorted access to the radionuclides of concern. Section 652 of the Energy Policy Act of 2005, which became law on August 8, 2005, amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check for ''any individual who is permitted unescorted access to . . . radioactive materials or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks.'' Section 149 of the AEA also requires that ''all fingerprints obtained by an individual or entity . . . shall be submitted to the Attorney General of the United States through the Commission for identification and a criminal history records check.'' Due to the 2005 revision of the AEA, the trustworthiness and reliability requirements of the ASMs were updated and the M&D licensees were issued additional Orders imposing the new fingerprinting requirements.

In late 2005, the NRC and the Agreement States began issuing Increased Controls (IC) Orders or other legally binding requirements to licensees who are authorized to possess the radionuclides of concern at IC licensee facilities. Paragraph IC 1.c, in Attachment B of the December 1, 2005 IC Order, ''Increased Controls for Licensees That Possess Sources Containing Radioactive Material Quantities of Concern,'' stated that ''service providers shall be escorted unless determined to be trustworthy and reliable by an NRC-required background investigation as an employee of a manufacturing and distribution licensee'' (70 FR 72130). Starting in December 2007, the NRC and the Agreement States began issuing additional Orders or other legally binding requirements to the IC licensees, imposing the new fingerprinting requirements. In the December 13, 2007, Fingerprinting Order, paragraph IC 1.c of the prior Order was superseded by the requirement that ''Service provider licensee employees shall be escorted unless determined to be trustworthy and reliable by an NRC-required background investigation'' (72 FR 70901). However, the NRC did not require background investigations for non-M&D service provider licensees. Consequently, only service representatives of certain M&D licensees may be granted unescorted access to the radionuclides of concern at an IC licensee facility, even though non-M&D service provider licensees provide similar services and have the same degree of knowledge of the devices they service as M&D licensees. To maintain appropriate access control to the radionuclides of concern, and to allow M&D licensees and non-M&D service provider licensees to have the same level of access at customers' facilities, NRC is imposing trustworthiness and reliability requirements for unescorted access to radionuclides of concern, as set forth in this Order. These requirements apply to non-M&D service provider licensees that request and have a need for unescorted access by their representatives to the radionuclides of concern at IC licensee facilities. These trustworthiness and reliability requirements are equivalent to the requirements for M&D licensees who perform services requiring unescorted access to the radionuclides of concern.

In order to provide assurance that non-M&D service provider licensees are implementing prudent measures to achieve a consistent level of protection for service providers requiring unescorted access to the radionuclides of concern at IC licensee facilities, the licensee identified in Attachment 1 to this Order shall implement the requirements of this Order. In addition, pursuant to 10 CFR 2.202, because of potentially significant adverse impacts associated with a deliberate malevolent act by an individual with unescorted access to the radionuclides of concern, I find that the public health, safety, and interest require this Order to be effective immediately.

III

Accordingly, pursuant to Sections 81, 149, 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 Parts 20, 30 and 33, *it is hereby ordered, effective immediately, that the licensee identified in attachment 1 to this order comply with the requirements set forth in this order.*

A.1. The licensee shall establish and maintain a fingerprinting program that meets the requirements of Attachment 3 to this Order for individuals that require unescorted access to the radionuclides of concern. The licensee shall complete implementation of the requirements of Attachment 3 to this Order within one hundred eighty (180) days of the date of this Order, or before providing written verification to another licensee subject to the IC requirements, or attesting to or certifying the trustworthiness and reliability of a service provider for unescorted access to the radionuclides of concern at a customer's facility.

A.2. Within ninety (90) days of the date of this Order, the licensee shall designate a ''Reviewing Official'' for determining unescorted access to the radioactive materials as listed in Attachment 2 to this Order by other individuals. The designated Reviewing Official shall be determined to be trustworthy and reliable by the licensee in accordance with the requirements described in Attachment 3 to this Order and must be authorized unescorted access to the radioactive materials listed in Attachment 2 to this Order as part of his or her job duties.

A.3. Fingerprints for unescorted access need not be taken if a designated Reviewing Official is relieved from the fingerprinting requirement by 10 CFR 73.61, or has been favorably adjudicated by a U.S. Government program involving fingerprinting and a FBI identification and criminal history records check [2] within the last five (5) years, or for any person who has an active federal security clearance (provided in the latter two cases that they make available the appropriate documentation [3]). The licensee may provide, for NRC review, written confirmation from the Agency/employer which granted the federal security clearance or reviewed the FBI identification and criminal history records results based upon a fingerprint identification check. The NRC will

[2] Examples of such programs include (1) National Agency Check, (2) Transportation Worker Identification Credentials in accordance with 49 CFR Part 1572, (3) Bureau of Alcohol Tobacco Firearms and Explosives background checks and clearances in accordance with 27 CFR Part 555, (4) Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 42 CFR Part 73, and (5) Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license in accordance with 49 CFR Part 1572, Customs and Border Protection's Free and Secure Trade (FAST) Program. The FAST program is a cooperative effort between the Bureau of Customs and Border Protection and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the U.S.-Canada and U.S.-Mexico borders. Participants in the FAST program, which requires successful completion of a background records check, may receive expedited entrance privileges at the northern and southern borders.

[3] This documentation must allow the NRC or NRC-approved Reviewing Official to verify that the individual has fulfilled the unescorted access requirements of Section 149 of the AEA by submitting to fingerprinting and a FBI identification and criminal history records check.

determine whether, based on the written confirmation, the designated Reviewing Official may have unescorted access to the radioactive materials listed in Attachment 2 to this Order, and therefore, be permitted to serve as the licensee's Reviewing Official [4].

A.4. A designated Reviewing Official may not review the results from the FBI identification and criminal history records checks or make unescorted access determinations until the NRC has approved the individual as the licensee's Reviewing Official.

A.5. The NRC will determine whether this individual (or any subsequent Reviewing Official) may have unescorted access to the radionuclides of concern, and therefore, will be permitted to serve as the licensee's Reviewing Official. The NRC-approved Reviewing Official shall be the recipient of the results of the FBI identification and criminal history records check of the other licensee employees requiring unescorted access to the radioactive materials listed in Attachment 2 to this Order, and shall control such information as specified in the ''Protection of Information'' section of Attachment 3 to this Order.

A.6. The NRC-approved Reviewing Official shall determine whether an individual may have unescorted access to radioactive materials that equal or exceed the quantities in Attachment 2 to this Order, in accordance with the requirements described in Attachment 3 to this Order.

B. Prior to requesting fingerprints from a licensee employee, a copy of this Order shall be provided to that person.

C.1. The licensee shall, in writing, within twenty-five (25) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in this Order, including Attachment 3 to this Order, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause the licensee to be in violation of the provisions of any Commission or Agreement State regulation or its license. The notification shall provide the licensee's justification for seeking relief from or variation of any specific requirement.

C.2. The licensee shall complete implementation of the requirements of Attachment 3 to this Order within one hundred eighty (180) days of the date of this Order.

C.3. The licensee shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 3 to this Order. The report shall be made within twenty-five (25) days after full compliance has been achieved.

C.4. If during the implementation period of this Order, the licensee is unable, due to circumstances beyond its control, to meet the requirements of this Order by January 11, 2014, the licensee shall request, in writing, that the Commission grant an extension of time to implement the requirements. The request shall provide the licensee's justification for seeking additional time to comply with the requirements of this Order.

C.5. Licensees shall notify the NRC's Headquarters Operations Office at 301–816–5100 within 24 hours if the results from a FBI identification and criminal history records check indicate that an individual is identified on the FBI's Terrorist Screening Data Base.

Licensee responses to C.1, C.2., C.3., and C.4. above shall be submitted in writing to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Licensee responses shall be marked as ''Security-Related Information—Withhold Under 10 CFR 2.390.''

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the licensee.

IV

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within twenty-five (25) days of the date of this Order. In addition, the licensee and any other person adversely affected by this Order may request a hearing of this Order within twenty-five (25) days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made, in writing, to the Director, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which the licensee relies and the reasons as to why the Order should not have been issued. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

A request for a hearing must be filed in accordance with the NRC's E-Filing rule, which became effective on October 15, 2007. The E-Filing Final Rule was issued on August 28, 2007, (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by email to *hearing.docket@nrc.gov*, or by calling 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 NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE) System, a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be

[4] The NRC's determination of this individual's unescorted access to the radionuclides of concern in accordance with the process described in Enclosure 4 to the transmittal letter of this Order is an administrative determination that is outside the scope of this Order.

submitted to the EIE 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 EIE system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday. The help line number is 1–866–672–7640.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, 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.

Documents submitted in adjudicatory proceedings will appear in 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, an Atomic Safety and Licensing Board, or a 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. 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 works.

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the licensee may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty-five (25) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 13th day of August, 2013.

For the Nuclear Regulatory Commission.

Brian J. McDermott,

Director, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs.

Attachment 1: List of Applicable Materials Licensees Redacted

Attachment 2: Table 1: Radionuclides of Concern

TABLE 1: RADIONUCLIDES OF CONCERN

Radionuclide	Quantity of concern [1] (TBq)	Quantity of Concern [2] (Ci)
Am-241	0.6	16
Am-241		
Am-241/Be	0.6	16
Am-241/Be		
Cf-252	0.2	5.4
Cf-252		
Cm-244	0.5	14
Cm-244		
Co-60	0.3	8.1
Co-60		
Cs-137	1	27
Cs-137		
Gd-153	10	270
Gd-153		
Ir-192	0.8	22
Ir-192		
Pm-147	400	11,000
Pm-147		
Pu-238	0.6	16
Pu-238		
Pu-239/Be	0.6	16
Pu-239/Be		
Ra-226	0.4	11

TABLE 1: RADIONUCLIDES OF CONCERN—Continued

Radionuclide	Quantity of concern [1] (TBq)	Quantity of Concern [2] (Ci)
Se-75	2	54
Se-75		
Sr-90 (Y–90)	10	270
Sr-90 (Y–90)		
Tm-170	200	5,400
Tm-170		
Yb-169	3	81
Yb-169		
Combinations of radioactive materials listed above [3]	See Footnote Below [4]	

[1] The aggregate activity of multiple, collocated sources of the same radionuclide should be included when the total activity equals or exceeds the quantity of concern.

[2] The primary values used for compliance with this Order are Terabecquerels (TBq). The curie (Ci) values are rounded to two significant figures for informational purposes only.

[3] Radioactive materials are to be considered aggregated or collocated if breaching a common physical security barrier (e.g., a locked door at the entrance to a storage room) would allow access to the radioactive material or devices containing the radioactive material.

[4] If several radionuclides are aggregated, the sum of the ratios of the activity of each source, *i,* of radionuclide, *n,* $A_{(i,n)}$, to the quantity of concern for radionuclide *n,* $Q_{(n)}$, listed for that radionuclide equals or exceeds one. [(aggregated source activity for radionuclide A) ÷ (quantity of concern for radionuclide A)] + [(aggregated source activity for radionuclide B) ÷ (quantity of concern for radionuclide B)] + etc.....>1.

Guidance for Aggregation of Sources

The NRC supports the use of the International Atomic Energy Association's (IAEA) source categorization methodology as defined in IAEA Safety Standards Series No. RS–G–1.9, ''Categorization of Radioactive Sources,'' (2005) (see *http://www-pub.iaea.org/MTCD/publications/PDF/Pub1227_web.pdf*) and as endorsed by the agency's Code of Conduct for the Safety and Security of Radioactive Sources, January 2004, (see *http://www-pub.iaea.org/MTCD/publications/PDF/Code-2004_web.pdf*). The Code defines a three-tiered source categorization scheme. Category 1 corresponds to the largest source strength (equal to or greater than 100 times the quantity of concern values listed in Table 1.) and Category 3, the smallest (equal or exceeding one-tenth the quantity of concern values listed in Table 1.). Additional security measures apply to sources that are equal to or greater than the quantity of concern values listed in Table 1, plus aggregations of smaller sources that are equal to or greater than the quantities in Table 1. Aggregation only applies to sources that are collocated.

Licensees who possess individual sources in total quantities that equal or exceed the Table 1 quantities are required to implement additional security measures. Where there are many small (less than the quantity of concern values) collocated sources whose total aggregate activity equals or exceeds the Table 1 values, licensees are to implement additional security measures.

Some source handling or storage activities may cover several buildings, or several locations within specific buildings. The question then becomes, ''When are sources considered collocated for purposes of aggregation?'' For purposes of the additional controls, sources are considered collocated if breaching a single barrier (e.g., a locked door at the entrance to a storage room) would allow access to the sources. Sources behind an outer barrier should be aggregated separately from those behind an inner barrier (e.g., a locked source safe inside the locked storage room). However, if both barriers are simultaneously open, then all sources within these two barriers are considered to be collocated. This logic should be continued for other barriers within or behind the inner barrier.

The following example illustrates the point: A lockable room has sources stored in it. Inside the lockable room, there are two shielded safes with additional sources in them. Inventories are as follows:

The room has the following sources outside the safes: Cf–252, 0.12 TBq (3.2 Ci); Co–60, 0.18 TBq (4.9 Ci), and Pu–238, 0.3 TBq (8.1 Ci). Application of the unity rule yields: (0.12 ÷ 0.2) + (0.18 ÷ 0.3) + (0.3 ÷ 0.6) = 0.6 + 0.6 + 0.5 = 1.7. Therefore, the sources would require additional security measures.

Shielded safe #1 has a 1.9 TBq (51 Ci) Cs–137 source and a 0.8 TBq (22 Ci) Am–241 source. In this case, the sources would require additional security measures, regardless of location, because they each exceed the quantities in Table 1.

Shielded safe #2 has two Ir–192 sources, each having an activity of 0.3 TBq (8.1 Ci). In this case, the sources would not require additional security measures while locked in the safe. The combined activity does not exceed the threshold quantity 0.8 TBq (22 Ci).

Because certain barriers may cease to exist during source handling operations (e.g., a storage location may be unlocked during periods of active source usage), licensees should, to the extent practicable, consider two modes of source usage — ''operations'' (active source usage) and ''shutdown'' (source storage mode). Whichever mode results in the greatest inventory (considering barrier status) would require additional security measures for each location.

Use the following method to determine which sources of radioactive material require implementation of the Additional Security Measures:

- Include any single source equal to or greater than the quantity of concern in Table.
- Include multiple collocated sources *of the same radionuclide* when the combined quantity equals or exceeds the quantity of concern.
- For combinations of radionuclides, include multiple collocated sources of *different radionuclides* when the aggregate quantities satisfy the following unity rule: [(amount of radionuclide A) ÷ (quantity of concern of radionuclide A)] + [(amount of radionuclide B) ÷ (quantity of concern of radionuclide B)] + etc. . . . .≥ 1.

Attachment 3: Requirements for Service Provider Licensees Providing Written Verification Attesting to or Certifying the Trustworthiness and Reliability of Service Providers for Unescorted Access to Certain Radioactive Material at Customer Facilities, Including Requirements for Fingerprinting and Criminal History Checks

A. General Requirements

Licensees subject to the provisions of this Order shall comply with the requirements of this attachment. The term ''certain radioactive material'' means the radionuclides in quantities equal to or greater than the quantities listed in Attachment 2 to this Order.

1. The Licensee shall provide the customer's facility written verification attesting to or certifying the trustworthiness and reliability of an individual as a service provider only for employees the Licensee has approved in writing (see requirement A.3 below). The Licensee shall request unescorted access to certain radioactive material at customer licensee facilities only for approved service providers that require the unescorted access in order to perform a job duty.

2. The trustworthiness, reliability, and true identity of a service provider shall be determined based on a background investigation. The background investigation shall address at least the past three (3) years, and as a minimum, include fingerprinting and a Federal Bureau of Investigation (FBI) criminal history records check as required in Section B, verification of employment history, education, and personal references. If a service provider's employment has been less than the required three (3) year period, educational references may be used in lieu of employment history.

3. The Licensee shall document the basis for concluding that there is reasonable assurance that a service provider requiring unescorted access to certain radioactive material at a customer facility is trustworthy and reliable, and does not constitute an unreasonable risk for unauthorized use of the radioactive material. The Licensee shall maintain a list of service providers approved for unescorted access to certain radioactive material.

4. The Licensee shall retain documentation regarding the trustworthiness and reliability of approved service providers for three years after the individual no longer requires unescorted access to certain radioactive material associated with the Licensee's activities.

5. Each time the Licensee revises the list of approved service providers (see requirement 3 above), the Licensee shall retain the previous list for three (3) years after the revision.

6. The Licensee shall provide to a customer written certification for each service provider for whom unescorted access to certain radioactive material at the customer's facility is required and requested. The written certification shall be dated and signed by the Reviewing Official. A new written certification is not required if an individual service provider returns to the customer facility within three years, provided the customer has retained the prior certification.

B. Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks

1. The Licensee shall fingerprint each service provider to be approved for unescorted access to certain radioactive materials following the procedures outlined in Enclosure 3 of the transmittal letter. The Licensee shall review and use the information received from the FBI identification and criminal history records check and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints for unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61, or any person who has been favorably-decided by a U.S. Government program involving fingerprinting and an FBI identification and criminal history records check (e.g., National Agency Check, Transportation Worker Identification Credentials in accordance with 49 CFR Part 1572, Bureau of Alcohol Tobacco Firearms and Explosives background checks and clearances in accordance with 27 CFR Part 555, Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 42 CFR Part 73, Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license in accordance with 49 CFR Part 1572, Customs and Border Protection's Free and Secure Trade Program [5]) within the last five (5) years, or any person who has an active federal security clearance (provided in the latter two cases that they make available the appropriate documentation [6]). Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the FBI criminal history records results based upon a fingerprint identification check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires unescorted access to certain radioactive material associated with the Licensee's activities.

4. All fingerprints obtained by the Licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements of Section A of this attachment, in making a determination whether to approve and certify the individual for unescorted access to certain radioactive materials.

6. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access to certain radioactive materials.

7. The Licensee shall document the basis for its determination whether to approve the individual for unescorted access to certain radioactive materials.

C. Prohibitions

A Licensee shall not base a final determination to not provide certification for unescorted access to certain radioactive material for an individual solely on the basis of information received from the FBI involving: an arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A Licensee shall not use information received from a criminal history check obtained pursuant to this Order in a

[5] The FAST program is a cooperative effort between the Bureau of Customs and Border Protection and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the U.S.—Canada and U.S.—Mexico borders. Participants in the FAST program, which requires successful completion of a background records check, may receive expedited entrance privileges at the northern and southern borders.

[6] This documentation must allow the Reviewing Official to verify that the individual has fulfilled the unescorted access requirements of Section 149 of the AEA by submitting to fingerprinting and an FBI identification and criminal history records check.

manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

D. Right To Correct and Complete Information

Prior to any final adverse determination, the Licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR Part 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an Official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI identification and criminal history records check after the record is made available for his/her review. The Licensee may make a final unescorted access to certain radioactive material determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on unescorted access to certain radioactive material, the Licensee shall provide the individual its documented basis for denial. Unescorted access to certain radioactive material shall not be granted to an individual during the review process.

E. Protection of Information

1. Each Licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining whether to verify the individual for unescorted access to certain radioactive material. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another Licensee if the Licensee holding the criminal history record check receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining Licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The Licensee shall retain all fingerprints and criminal history records from the FBI, or a copy if the individual's file has been transferred:

a. for three (3) years after the individual no longer requires unescorted access, or

b. for three (3) years after unescorted access to certain radioactive material was denied.

After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

[FR Doc. 2013–20261 Filed 8–19–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0191]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 25, 2013 to August 7, 2013. The last biweekly notice was published on August 6, 2013 (78 FR 47785).

ADDRESSES: You may submit comment 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–2013–0191. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.*

• *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN, 06A44M, 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.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0191 when contacting the NRC about the availability of information regarding this document. You may access

publicly-available information related to this action by the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0191.

• *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.* Documents may be viewed in ADAMS by performing a search on the document date and docket number.

• *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–2013–0191 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 posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of Title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. 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 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 requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which 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's adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on 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 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 agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email to *MSHD.Resource@nrc.gov*, or by a toll-free call at 1–866 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such

information. However, 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.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1)(i)–(iii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC's Library at *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*.

Carolina Power and Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit 2, (HBRSEP) Darlington County, South Carolina

Date of amendment request: June 7, 2013.

Description of amendment request: The proposed change would delete the current HBRSEP Surveillance Requirements (SRs) 3.1.7.1, 3.1.7.2, and 3.1.7.3 of Technical Specification 3.1.7, ''Rod Position Indication,'' and renumber current SR 3.1.7.4 as SR 3.1.7.1. This change deletes a redundant SR and eliminates a minimum of eight reactivity manipulations per year.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The initiating conditions and assumptions for dose consequences of accidents described in the Updated Final Safety Analyses Report remain as previously analyzed. The proposed change does not introduce a new accident initiator nor does it introduce changes to any existing accident initiators described in the Updated Final Safety Analyses Report. The proposed change eliminates requirements to periodically demonstrate agreement of individual rod position with average rod position and group demand step counter position during control rod movement while maintaining less frequent requirements for control rod movement associated with verification of control rod freedom of movement (SR 3.1.4.2) and confirmation that the two rod position indication systems are within alignment limits (SR 3.1.4.1). Control rod movement is a potential accident initiator and less frequent surveillances involving less control rod movement will not increase the probability or consequences of an accident.

The proposed change also eliminates surveillance requirements which are redundant to the requirements of SR 3.1.4.1 and modifies SR 3.1.7.4 to renumber it as SR 3.1.7.1. The elimination of redundant surveillance requirements does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Current SR 3.1.7.4 and proposed SR 3.1.7.1 involve the maintenance and configuration of instrumentation used to indicate rod position. The proposed change renumbers SR 3.1.7.4 as SR 3.1.7.1 and maintains the requirement to perform a Channel Calibration on an 18 Month-Frequency which does not change the means and manner of control of control rod movement and therefore does not involve a significant increase in the probability of consequences of an accident previously evaluated.

Based on the above, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change will not introduce any new failure modes to the required protection functions. The proposed change modifies surveillance requirements associated with operation and function of instrumentation indicating rod position that is part of the control rod control system (demand step counter position) and individual analog rod position indication instrumentation. The proposed change does not alter the manner in which the respective rod position indications function or the control system controls control rod movement such that the modified surveillance requirements of TS 3.1.7 cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The proposed amendment does not involve revisions to any safety analysis limits or safety system settings that will adversely impact plant safety. The proposed amendment does not alter the functional capabilities assumed in a safety analysis for any system, structure, or component important to the mitigation and control of design bases accident conditions within the facility. Nor does this amendment revise any parameters or operating restrictions that are assumptions of a design basis accident. In addition, the proposed amendment does not affect the ability of safety systems to ensure that the facility can be placed and maintained in a shutdown condition for extended periods of time.

The Technical Specifications continue to assure that the applicable operating parameters and systems are maintained within the design requirements and safety analysis assumptions. Therefore, the proposed changes which eliminate surveillance requirements that are either redundant or inconsistent with industry standards for the partial movement of control rods and rod position indication system surveillance and add a new requirement that the rod position indication systems agree within a prescribed value will not result in a significant reduction in the margin of safety as defined in the Updated Final Safety Analyses Report or Technical Specifications.

Therefore, the proposed change does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Manager—Senior Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Acting Branch Chief: Douglas A. Broaddus.

Detroit Edison, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: April 17, 2013.

Description of amendment request: The proposed amendment would modify the Fermi 2 technical specification (TS) related to control room envelope habitability in accordance with NRC-approved Technical Specifications Task Force (TSTF) change traveler TSTF–448, ''Control Room Habitability,'' Revision 3. The proposed amendment is consistent with the Consolidated Line

Item Improvement Process that adopts changes to TS Section 3.7.3, ''Control Room Emergency Filtration (CREF) System,'' and adds TS Section 5.5.14, ''Control Room Envelope Habitability Program.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration, is presented below. The licensee incorporated, by reference, the proposed no significant hazards consideration published in the **Federal Register** on January 9, 2007 (72 FR 2032).

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits.

The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment involves no significant hazards consideration.

Attorney for licensee: Bruce R. Masters, DTE Energy, General Counsel—Regulatory, 688 WCB, One Energy Plaza, Detroit, MI 48226–1279.

NRC Branch Chief: Robert D. Carlson.

Dominion Energy Kewaunee (DEK), Docket No. 50–305, Kewaunee Power Station (KPS), Kewaunee County, Wisconsin

Date of amendment request: April 16, 2013.

Description of amendment request: The proposed amendment would revise the Renewed Facility Operating License by deleting a license condition associated with license renewal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed amendment would modify the KPS renewed facility operating license by deleting a license condition that pertains to plant operation during the period of extended operation. KPS is permanently ceasing operation and will permanently defuel the reactor vessel prior to the start of the period of extended operation. Therefore, the probability of occurrence of previously evaluated accidents is not affected, since the original license did not contain this license condition. The license condition being deleted pertains to operation beyond the term of the original license. Additionally, the occurrence of postulated accidents associated with reactor operation is no longer credible in a permanently defueled reactor.

Since KPS is permanently ceasing operation, the generation of fission products will cease and the remaining source term will decay. This significantly reduces the consequences of the remaining applicable postulated accident. Therefore, the proposed amendment does not involve a significant increase in the consequences of a previously evaluated accident.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The activities and programs that were the subject of this license condition were intended to ensure that systems, structures, and components (SSCs) continue to respond properly in the event of a previously analyzed accident during the period of extended operation of the renewed facility operating license. However, the reactor will not operate during the period of extended operation.

The proposed amendment does not involve a physical alteration of the plant. No new or different types of equipment will be installed and there are no physical modifications to existing equipment associated with the proposed amendment. Similarly, the proposed amendment would not physically change any SSCs involved in the mitigation of any postulated accidents. Thus, no new initiators or precursors of a new or different kind of accident are created. Furthermore, the proposed amendment does not create the possibility of a new failure mode associated with any equipment or personnel failures.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Because the 10 CFR part 50 license for KPS will no longer authorize operation

of the reactor or emplacement or retention of fuel into the reactor vessel, as specified in 10 CFR 50.82(a)(2), the occurrence of postulated accidents associated with reactor operation is no longer credible. The remaining credible accident (90 days after shutdown) is a fuel handling accident (FHA) in the auxiliary building. The proposed amendment does not affect the inputs or assumptions of any of the design basis analyses that impact a FHA in the auxiliary building and the current design limits continue to be met for the accident of concern.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., Counsel for Dominion Energy Kewaunee, Inc., 120 Tredegar Street, Richmond, VA 23219.

NRC Branch Chief: Robert D. Carlson.

Dominion Energy Kewaunee (DEK), Docket No. 50–305, Kewaunee Power Station (KPS), Kewaunee County, Wisconsin

Date of amendment request: May 29, 2013.

Description of amendment request: The proposed amendment would revise the operating license and revise the associated technical specifications (TSs) to the permanently defueled technical specifications (PDTSs) consistent with the permanent cessation of reactor operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

KPS has permanently ceased operation. The proposed amendment would modify the KPS renewed facility operating license and TS by deleting the portions of the license and TS that are no longer applicable to a permanently defueled facility, while modifying the remaining portions to correspond to the permanently shutdown condition. This change is consistent with the Standard TS and with the criteria set forth in 10 CFR 50.36 for the contents of TS.

Section 14 of the KPS Updated Safety Analysis Report (USAR) described the design basis accident (DBA) and transient scenarios applicable to KPS during power operations. With the reactor in a permanently defueled condition, the spent fuel pool and its systems have been isolated and are dedicated only to spent fuel storage. In this condition the spectrum of credible accidents is much smaller than for an operational plant. As a result of the certifications submitted by DEK in accordance with 10 CFR 50.82(a)(1), and the consequent removal of authorization to operate the reactor or to place or retain fuel in the reactor in accordance with 10 CFR 50.82(a)(2), most of the accident scenarios postulated in the USAR are no longer possible.

The definition of safety-related structures, systems, and components (SSCs) in 10 CFR 50.2 states that safety-related SSCs are those relied on to remain functional during and following design basis events to assure:

1. The integrity of the reactor coolant boundary;

2. The capability to shutdown the reactor and maintain it in a safe shutdown condition; or

3. The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to the applicable guideline exposures set forth in 10 CFR 50.43(a)(1) or 100.11.

The first two criteria (integrity of the reactor coolant pressure boundary and safe shutdown of the reactor) are not applicable to a plant in a permanently defueled condition. The third criterion is related to preventing or mitigating the consequences of accidents that could result in potential offsite exposures exceeding limits. However, after the termination of reactor operations at KPS and the permanent removal of the fuel from the reactor vessel (following 90 days of decay time after shutdown) and purging of the contents of the waste gas decay tanks and liquid waste tanks, none of the SSCs at KPS are required to be relied on for accident mitigation. Therefore, none of the SSCs at KPS meet the definition of a safety-related SSC stated in 10 CFR 50.2 (with the exception of the passive spent fuel pool structure).

The deletion of TS definitions and rules of usage and application, that are currently not applicable in a defueled condition, has no impact on facility SSCs or the methods of operation of such SSCs. The deletion of design features and safety limits not applicable to the permanently shutdown and defueled status of KPS has no impact on the remaining DBA (the fuel handling accident in the auxiliary building). The removal of limiting conditions for operation (LCOs) or surveillance requirements (SRs) that are related only to the operation of the nuclear reactor or only to the prevention, diagnosis, or mitigation of reactor-related transients or accidents do not affect the applicable DBAs previously evaluated since these DBAs are no longer applicable in the defueled mode. The safety functions involving core reactivity control, reactor heat removal, reactor coolant system inventory control, and containment integrity are no longer applicable at KPS as a permanently defueled plant. The analyzed accidents involving damage to the reactor coolant system, main steam lines, reactor core, and the subsequent release of radioactive material are no longer possible at KPS.

Since KPS has permanently ceased operation, the future generation of fission products has ceased and the remaining source term will decay. The radioactive decay of the irradiated fuel since shutdown of the reactor will have reduced the consequences of the fuel handling accident to levels well below those previously analyzed. The relevant parameter (water level) associated with the fuel pool provides an initial condition for the fuel handling accident analysis and is included in the permanently defueled TS.

The spent fuel pool water level, spent fuel pool boron concentration, and spent fuel pool storage LCOs are retained to preserve the current requirements for safe storage of irradiated fuel.

Fuel pool cooling and makeup related equipment and support equipment (e.g., electrical power systems) are not required to be continuously available since there is sufficient time to effect repairs, establish alternate sources of makeup flow, or establish alternate sources of cooling in the event of a loss of cooling and makeup flow to the spent fuel pool.

The deletion and modification of provisions of the administrative controls do not directly affect the design of SSCs necessary for safe storage of irradiated fuel or the methods used for handling and storage of such fuel in the fuel pool. The changes to the administrative controls are administrative in nature and do not affect any accidents applicable to the safe management of irradiated fuel or the permanently shutdown and defueled condition of the reactor.

The probability of occurrence of previously evaluated accidents is not increased, since extended operation in a defueled condition is the only operation currently allowed, and therefore bounded by the existing analyses. Additionally, the occurrence of postulated accidents associated with reactor operation is no longer credible in a permanently defueled reactor. This significantly reduces the scope of applicable accidents.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes have no impact on facility SSCs affecting the safe storage of irradiated fuel, or on the methods of operation of such SSCs, or on the handling and storage of irradiated fuel itself. These changes are consistent with the standard TS. The removal of TS that are related only to the operation of the nuclear reactor or only to the prevention, diagnosis, or mitigation of reactor-related transients or accidents cannot result in different or more adverse failure modes or accidents than previously evaluated because the reactor is permanently shutdown and defueled and KPS is no longer authorized to operate the reactor.

The proposed deletion of requirements of the KPS TS do not affect systems credited in the accident analysis for the fuel handling accident in the auxiliary building at KPS. The proposed permanently defueled TS (PDTS) continue to require proper control and monitoring of safety significant parameters and activities.

The proposed restriction on the fuel pool level is fulfilled by normal operating conditions and preserves initial conditions assumed in the analyses of the postulated DBA. The spent fuel pool water level, spent fuel pool boron concentration, and spent fuel pool storage LCOs are retained to preserve the current requirements for safe storage of irradiated fuel.

The proposed amendment does not result in any new mechanisms that could initiate damage to the remaining relevant safety barriers for defueled plants (i.e., fuel cladding and spent fuel cooling). Since extended operation in a defueled condition is the only operation currently allowed, and therefore bounded by the existing analyses, such a condition does not create the possibility of a new or different kind of accident.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No

Because the 10 CFR Part 50 license for KPS no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel, as specified in 10 CFR 50.82(a)(2), the occurrence of postulated accidents associated with reactor operation is no longer credible. The only remaining credible accident is a fuel handling accident (FHA). The proposed amendment does not adversely affect the inputs or assumptions of any of the design basis analyses that impact a FHA.

The proposed changes are limited to those portions of TS and license that are not related to the safe storage of irradiated fuel. The requirements for SSCs that have been deleted from the KPS TS are not credited in the existing accident analysis for the remaining applicable postulated accident; and as such, do not contribute to the margin of safety associated with the accident analysis. Postulated DBAs involving the reactor are no longer possible because the reactor is permanently shutdown and defueled and KPS is no longer authorized to operate the reactor.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety because the current design limits continue to be met for the accident of concern.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., Counsel for Dominion Energy Kewaunee, Inc., 120 Tredegar Street, Richmond, VA 23219.

NRC Branch Chief: Robert D. Carlson.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit 2, New London County, Connecticut

Date of amendment request: May 3, 2013.

Description of amendment request: The proposed amendment would revise the Millstone Power Station, Unit 2 (MPS2) Technical Specification (TS) 3/4.7.11, ''Ultimate Heat Sink'', to increase the current ultimate heat sink water temperature limit from 75 °F to 80 °F and change the TS Action to state, ''With the ultimate heat sink water temperature greater than 80 °F, be in HOT STANDBY within 6 hours and in COLD SHUTDOWN within the following 30 hours.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Previously evaluated accident consequences are not impacted because credited mitigating equipment continues to perform its design function. The proposed change does not significantly impact the probability of an accident previously evaluated because those SSCs that can initiate an accident are not significantly impacted.

Based on the above, DNC concludes that the proposed increased temperature limits do not involve a significant increase in the probability or consequences of an accident or transient previously evaluated in the safety analysis report.

Criterion 2

Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

A new or different accident from any accident previously evaluated is not created because previously credited SSCs, are not impacted, there is no new reliance upon equipment not previously credited, there is no new equipment installed (except for monitoring equipment), there is no impact upon the existing failure modes and effects analysis, and conformance to the single failure criterion is maintained. The increased limits do not introduce any new mode of plant operation and will not result in a change to the design function or the operation of any SSC that is used for mitigating accidents.

Based on the above, DNC concludes that the proposed changes do not create the possibility of a new or different kind of accident or transient from any previously evaluated.

Criterion 3

Do the proposed changes involve a significant reduction in the margin of safety?

Response: No.

This change does not involve a significant reduction in margin of safety because the containment analysis acceptance criteria continue to be met when operating with the proposed increased UHS temperature limit. Containment integrity will not be challenged and will continue to meet its design basis acceptance criteria following a large break LOCA or MSLB. The proposed change has no impact upon fuel cladding or RCS fission product barrier margin because credited SSCs continue to perform their design functions with an 80 °F UHS temperature.

Based on the above, DNC concludes that the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Acting Branch Chief: Robert H. Beall.

Dominion Nuclear Connecticut, Inc., Docket No. 50–423, Millstone Power Station, Unit 3, New London County, Connecticut

Date of amendment request: May 3, 2013.

Description of amendment request: The proposed amendment would revise the Millstone Power Station, Unit 3 (MPS3) Technical Specification (TS) 3/4.7.5, ''Ultimate Heat Sink'', to increase the current ultimate heat sink water temperature limit from 75 °F to 80 °F and change the TS Action to state, ''With the ultimate heat sink water temperature greater than 80 °F, be in HOT STANDBY within 6 hours and in COLD SHUTDOWN within the following 30 hours.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Previously evaluated accident consequences are not impacted because credited mitigating equipment continues to perform its design function. The proposed change does not significantly impact the probability of an accident previously evaluated because those SSCs that can initiate an accident are not significantly impacted.

Based on the above, DNC concludes that the proposed increased temperature limits do not involve a significant increase in the probability or consequences of an accident or transient previously evaluated in the safety analysis report.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

A new or different accident from any accident previously evaluated is not created because previously credited SSCs, are not impacted; there is no new reliance upon equipment not previously credited; there is no new equipment installed (except for monitoring equipment); there is no impact upon the existing failure modes and effects analysis; and conformance to the single failure criterion is maintained.

The increased limits do not introduce any new mode of plant operation and will not result in a change to the design function or the operation of any SSC that is used for mitigating accidents.

Based on the above, DNC concludes that the proposed changes do not create the possibility of a new or different kind of accident or transient from any previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety?

Response: No.

This change doesn't involve a significant reduction in margin of safety because containment structure fission product barrier design margin is unaffected because peak pressure/temperature occurs early in the accident before UHS temperature can influence the containment response. The proposed change has no impact upon fuel cladding or RCS fission product barrier margin because credited SSCs continue to perform their design functions with an 80 °F UHS temperature.

Based on the above, DNC concludes that the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Acting Branch Chief: Robert H. Beall.

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: June 13, 2013.

Description of amendment request: The amendment will adopt Technical Specification Task Force (TSTF)-423, Revision 1, ''Technical Specifications End States.'' Specifically, the proposed amendment would modify Technical Specifications (TSs) to risk-informed requirements regarding selected Required Action end states. The proposed changes are consistent with NRC-approved TSTF–423, Revision 1, with some deviations noted.

The NRC issued a ''Notice of Availability of the Proposed Models for Plant-Specific Adoption of Technical Specifications Task Force (TSTF) Traveler TSTF–423, Revision 1, 'Technical Specifications End States, NEDC–32988–A,' for Boiling Water Reactor Plants Using the Consolidated Line Item Improvement Process,'' published in the **Federal Register** on February 18, 2011 (76 FR 9614), which included the model no significant hazards consideration and safety evaluation for TSTF–423, Revision 1.

Basis for proposed no significant hazards consideration determination: An analysis of the no significant hazards consideration was presented in the TSTF–423. The licensee has affirmed the applicability of the model no significant hazards consideration determination, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Required Actions are not an initiator of any accident previously evaluated. Therefore, the proposed changes do not affect the probability of any accident previously evaluated. NEDC–32988–A demonstrated that the proposed changes in the required end state do not significantly increase the consequences of any accidents previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements. The changes do not alter assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

NEDC–32988–A demonstrated that the changed end states represent a condition of equal or lower risk than the original end states.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, the TSTF–423 concludes that the proposed change presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

Attorney for licensee: Joseph A. Aluise, Associate General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: July 16, 2013.

Description of amendment request: The amendment would adopt Technical Specifications Task Force (TSTF) change traveler TSTF–535, Revision 0, ''Revise Shutdown Margin Definition to Address Advanced Fuel Designs.'' The Shutdown Margin (SDM) (i.e., the amount of reactivity by which the reactor is subcritical) is calculated under the conservative conditions that the reactor is Xenon free, the most reactive control rod is outside the reactor core, and the moderator temperature produces the maximum reactivity. For standard fuel designs, maximum reactivity occurs at a moderator temperature of 68 degrees Fahrenheit (°F), which is reflected in the temperature specified in the Technical Specifications (TSs). New, advanced Boiling Water Reactor (BWR) fuel designs can have a higher reactivity at moderator shutdown temperatures above 68 °F. Therefore, the proposed amendment, consistent with TSTF–535, Revision 0, seeks to modify the TSs to require the SDM to be calculated at whatever temperature produces the maximum reactivity (i.e., temperatures at or above 68 °F).

The notice of availability of this TS improvement ''Models for Plant-Specific Adoption of Technical Specifications Task Force Traveler TSTF–535, Revision 0, 'Revise Shutdown Margin Definition to Address Advanced Fuel Designs,' Using the Consolidated Line Item Improvement Process,'' was published in **Federal Register** on February 26, 2013 (78 FR 13100), which included a model no significant hazards consideration (NSHC) determination and safety evaluation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has affirmed the applicability of the model no significant hazards consideration determination included in TSTF–535, Revision 0, and provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the definition of SDM. SDM is not an initiator to any accident previously evaluated. Accordingly, the proposed change to the definition of SDM has no effect on the probability of any accident previously evaluated. SDM is an assumption in the analysis of some previously evaluated accidents and inadequate SDM could lead to an increase in consequences for those accidents. However, the proposed change revises the SDM definition to ensure that the correct SDM is determined for all fuel types at all times during the fuel cycle. As a result, the proposed change does not adversely affect the consequences of any accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the definition of SDM. The change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operations. The change does not alter assumptions made in the safety analysis regarding SDM.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the definition of SDM. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change ensures that the SDM assumed in determining safety limits, limiting safety system settings or limiting conditions for operation is correct for all BWR fuel types at all times during the fuel cycle.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

Florida Power and Light Company, Docket Nos. 50–250, and 50–251, Turkey Point Nuclear Generating Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: March 22, 2013.

Description of amendment request: The license amendment request proposes to revise the Technical Specifications (TS) to allow the use of Optimized ZIRLO™ fuel rod cladding material. The proposed change would revise TS 5.3.1 to add Optimized ZIRLO™ to the approved fuel rod cladding materials and TS 6.9.1.7 to add Westinghouse Electric Company LLC topical report WCAP–12610–P–A & CENPD–404–P–A, Addendum 1–A, ''Optimized ZIRLO™,'' to the analytical methods used to determine the core operating limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change would allow the use of Optimized ZIRLO™ clad nuclear fuel in the reactors. The NRC approved topical report WCAP–12610–P–A and CENPD–404–P–A, Addendum 1–A ''Optimized ZIRLO™,'' prepared by Westinghouse Electric Company LLC (Westinghouse), addresses Optimized ZIRLO™ and demonstrates that Optimized ZIRLO™ has essentially the same properties as currently licensed ZIRLO.® The fuel cladding itself is not an accident initiator and does not affect accident probability. Use of Optimized ZIRLO™ fuel cladding will continue to meet all 10 CFR 50.46 acceptance criteria and, therefore, will not increase the consequences of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Use of Optimized ZIRLO™ clad fuel will not result in changes in the operation or configuration of the facility. Topical Report WCAP–12610–PA and CENPD–404–P–A demonstrated that the material properties of Optimized ZIRLO™ are similar to those of standard ZIRLO.® Therefore, Optimized ZIRLO™ fuel rod cladding will perform similarly to those fabricated from standard ZIRLO,® thus precluding the possibility of the fuel becoming an accident initiator and causing a new or different type of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The proposed change will not involve a significant reduction in the margin of safety because it has been demonstrated that the material properties of the Optimized ZIRLO™ are not significantly different from those of standard ZIRLO.® Optimized ZIRLO™ is expected to perform similarly to standard ZIRLO® for all normal operating and accident scenarios, including both loss of coolant accident (LOCA) and non-LOCA scenarios. For LOCA scenarios, where the slight difference in Optimized ZIRLO™ material properties relative to standard ZIRLO™ could have some impact on the overall accident scenario, plant-specific LOCA analyses using Optimized ZIRLO properties demonstrates that the acceptance criteria of 10 CFR 50.46 has been satisfied.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James Petro, Managing Attorney—Nuclear, Florida Power & Light Company, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Acting Branch Chief: Douglas A. Broaddus.

NextEra Energy Seabrook, LLC., Docket No. 50–443, Seabrook Station, Unit 1, Rockingham County, New Hampshire

Date of amendment request: May 28, 2013.

Description of amendment request: The proposed amendment will modify the Seabrook Technical Specifications (TSs). Specifically, the proposed amendment will modify the TS by relocating specific surveillance frequencies to a licensee-controlled program with implementation of Nuclear Energy Institute 04–10, ''Risk-Informed Technical Specification Initiative 5B, Risk-Informed Method for Control of Surveillance Frequencies.'' The changes are consistent with NRC-approved Technical Specifications Task Force (TSTF) Standard Technical Specifications (STS) change TSTF–425, ''Relocate Surveillance Frequencies to Licensee Control—Risk Informed Technical Specifications Task Force (RITSTF) Initiative 5b,'' Revision 3, (ADAMS Accession No. ML090850642). The **Federal Register** notice published on July 6, 2009 (74 FR 31996), announced the availability of this TSTF improvement, and included a model no significant hazards consideration and safety evaluation.

Basis for proposed no significant hazards consideration determination: An analysis of the no significant hazards consideration was presented in the TSTF–425. The licensee has affirmed the applicability of the model no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change relocates the specified frequencies for periodic surveillance requirements to licensee control under a new Surveillance Frequency Control Program. Surveillance frequencies are not an initiator to an any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the technical specifications for which the surveillance frequencies are relocated are still required to be operable, meet the acceptance criteria for the surveillance requirements, and be capable of performing any mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed change. The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The design, operation, testing methods, and acceptance criteria for systems, structures, and components (SSCs), specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the final safety analysis report and bases to TS), since these are not affected by changes to the surveillance frequencies. Similarly, there is no impact to safety analysis acceptance criteria as described in the plant licensing basis. To evaluate a change in the relocated surveillance frequency, NextEra will perform a probabilistic risk evaluation using the guidance contained in NRC approved NEI 04–10, Rev. 1 in accordance with the TS SFCP. NEI 04–10, Rev. 1, methodology provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies consistent with Regulatory Guide 1.177.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. James Petro, Managing Attorney, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Acting Branch Chief: Veronica Rodriguez.

NextEra Energy Seabrook, LLC., Docket No. 50–443, Seabrook Station, Unit 1, Rockingham County, New Hampshire

Date of amendment request: June 25, 2013.

Description of amendment request: The proposed amendment will revise the Seabrook Technical Specifications. Specifically, the proposed amendment will allow the use of Optimized ZIRLO™ as fuel rod cladding.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, along with the NRC's edits in square brackets:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change would allow the use of Optimized ZIRLO™ clad nuclear fuel in the reactors. The NRC approved topical report WCAP–12610–P–A and CENPD–404–P–A, Addendum 1–A ''Optimized ZIRLO,™'' prepared by Westinghouse Electric Company LLC (Westinghouse), addresses Optimized ZIRLO™ and demonstrates that Optimized ZIRLO™ has essentially the same properties as currently licensed ZIRLO.® The fuel cladding itself is not an accident initiator and does not affect accident probability. Use of Optimized ZIRLO™ fuel cladding will continue to meet all [Title 10 of the *Code of Federal Regulations*] 10 CFR 50.46 acceptance criteria and, therefore, will not increase the consequences of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Use of Optimized ZIRLO™ clad fuel will not result in changes in the operation or configuration of the facility. Topical Report WCAP–12610–P–A and CENPD–404–P–A demonstrated that the material properties of Optimized ZIRLO™ are similar to those of standard ZIRLO.® Therefore, Optimized ZIRLO™ fuel rod cladding will perform similarly to those fabricated from standard ZIRLO,® thus precluding the possibility of the fuel cladding becoming an accident initiator and causing a new or different type of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not involve a significant reduction in the margin of safety because it has been demonstrated that the material properties of the Optimized ZIRLO™ are not significantly different from those of standard ZIRLO.® Optimized ZIRLO™ is expected to perform similarly to standard ZIRLO® for all normal operating and accident scenarios, including both loss of coolant accident (LOCA) and non-LOCA scenarios. For LOCA scenarios, where the slight difference in Optimized ZIRLO™ material properties relative to standard [ZIRLO®], ZIRLO™ could have some impact on the overall accident scenario, plant-specific LOCA analyses using Optimized ZIRLO™ properties will demonstrate that the acceptance criteria of 10 CFR 50.46 have been satisfied.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. James Petro, Managing Attorney, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Acting Branch Chief: Veronica Rodriguez.

Northern States Power Company—Minnesota, Docket Nos. 50–282, and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: February 2, 2013, as supplemented by letter dated June 25, 2013.

Description of amendment request: The proposed amendments would remove Technical Specification (TS) 3.5.3 ''[Emergency Core Cooling Systems (ECCS)]—Shutdown'' Limiting Condition for Operation (LCO) Note 1 to eliminate information to the plant operators that could cause non-conservative operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This license amendment request proposes to revise the Technical Specification for ECCS operability requirements in Mode 4 by removing the LCO Note which allows the RHR subsystem to be considered operable for ECCS when aligned for shutdown cooling. These changes will require one train of RHR to be aligned for ECCS operation throughout the mode and other specified conditions of applicability.

The proposed changes do not affect the ECCS and RHR subsystem design, the interfaces between the RHR subsystem and other plant systems' operating functions, or the reliability of the RHR subsystem. The proposed changes do not change or impact the initiators and assumptions of the analyzed accidents. Therefore, the ECCS and RHR subsystems will be capable of performing their accident mitigation functions, and the proposed removal of the LCO Note does not involve an increase in the probability of an accident.

The proposed removal of the LCO Note will require that one train of RHR is aligned for ECCS operation during the mode and other specified conditions of applicability which assures that one train of ECCS is operable to mitigate the consequences of a loss of coolant accident. Thus the proposed removal of the LCO Note does not involve a significant increase in the consequences of an accident.

Therefore, the proposed Technical Specification changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This license amendment request proposes to revise the Technical Specification for ECCS operability requirements in Mode 4 by removing the LCO Note which allows the RHR subsystem to be considered operable for ECCS when aligned for shutdown cooling. These changes will require one train of RHR to be aligned for ECCS operation throughout the mode and other specified conditions of applicability.

The proposed Technical Specification changes to remove the LCO Note involve changes to when system trains are operated, but they do not change any system functions or maintenance activities. The changes do not involve physical alteration of the plant, that is, no new or different type of equipment will be installed. The changes do not alter assumptions made in the safety analyses but ensure that one train of ECCS is operable to mitigate the consequences of a loss of coolant accident. These changes do not create new failure modes or mechanisms which are not identifiable during testing and no new accident precursors are generated.

Therefore, the proposed Technical Specification changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

This license amendment request proposes to revise the Technical Specification for ECCS operability requirements in Mode 4 by removing the LCO Note which allows the RHR subsystem to be considered operable for ECCS when aligned for shutdown cooling. These changes will require one train of RHR to be aligned for ECCS operation throughout the mode and other specified conditions of applicability.

This license amendment proposes Technical Specification changes which assure that the ECCS—Shutdown TS LCO requirements are met if a Mode 4 LOCA were to occur. With these changes, other TS requirements for shutdown cooling in Mode 4 will continue to be met. Based on review of plant operating experience, there is no [discernible] change in cooldown rates when utilizing a single train of RHR for shutdown cooling. Thus, no margin of safety is reduced as part of this change.

Therefore, the proposed Technical Specification changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401

NRC Branch Chief: Robert D. Carlson.

Northern States Power Company—Minnesota, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: May 23, 2013.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TSs) for Prairie Island Nuclear Generating Plant, Units 1 and 2, to add a methodology to TS 5.6.5 ''Core Operating Limits Report (COLR).''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This license amendment request proposes to revise the Technical Specifications to reference and allow use of WCAP–16045–P–A, ''Qualification of the Two-Dimensional Transport Code PARAGON'', and WCAP–16045–P–A, Addendum 1–A, ''Qualification of the NEXUS Nuclear Data Methodology'', for determining core operating limits.

The methodologies which this license amendment proposes for determination of core operating limits are improvements over the current methodologies in use at the Prairie Island Nuclear Generating Plant.

The NRC staff reviewed and approved these methodologies and concluded that these analysis codes are acceptable as a replacement for the current analysis code. Thus core operating limits determined using the proposed codes continue to assure that the reactor operates safely and, thus, the proposed changes do not involve an increase in the probability of an accident.

Operation of the reactor with core operating limits determined by use of the proposed analysis codes does not increase the reactor power level, does not increase the core fission product inventory, and does not change any transport assumptions. Therefore the proposed methodology and Technical Specification changes do not involve a significant increase in the consequences of an accident.

Therefore, the proposed methodology change and associated Technical Specification changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This license amendment request proposes to revise the Technical Specifications to reference and allow use of WCAP–16045–P–A, ''Qualification of the Two-Dimensional Transport Code PARAGON'', and WCAP–16045–P–A, Addendum 1–A, ''Qualification of the NEXUS Nuclear Data Methodology,'' for determining core operating limits.

The proposed changes provide revised methodology for determining core operating limits, but they do not change any system functions or maintenance activities. The changes do not involve physical alteration of the plant, that is, no new or different type of equipment will be installed. The changes do not alter assumptions made in the safety analyses but ensure that the core will operate within safe limits. These changes do not create new failure modes or mechanisms which are not identifiable during testing, and no new accident precursors are generated.

Therefore, the proposed methodology change and associated Technical Specification changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

This license amendment request proposes to revise the Technical Specifications to reference and allow use of WCAP–16045–P–A, ''Qualification of the Two-Dimensional Transport Code PARAGON'', and WCAP–16045–P–A, Addendum 1–A, ''Qualification of the NEXUS Nuclear Data Methodology,'' for determining core operating limits.

This license amendment proposes revised methodology for determining core operating limits. The proposed methodology is an improvement that allows more accurate modeling of core performance. The NRC has reviewed and approved this methodology for use in lieu of the current methodology, thus, the margin of safety is not reduced due to this change.

Therefore, the proposed methodology change and associated Technical Specification changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401

NRC Branch Chief: Robert D. Carlson.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: April 12, 2013.

Description of amendment request: The proposed amendment would modify Technical Specification (TS) 5.9.2. ''Annual Radiological Environmental Operating Report,'' to delete the reference to collocated dosimeters in relation to the NRC thermo luminescent dosimeters program. This change is consistent with NRC-approved Technical Specification Task Force (TSTF) change TSTF–348. In addition, it would correct a cross-reference error in TS 5.9.8, ''Post Accident Monitoring System (PAMS) Report.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequence of an accident previously evaluated?

Response: No.

The proposed changes do not require physical changes to plant systems, structures, or components. The proposed changes are administrative in nature and therefore, do not change the fundamental requirements of the Technical Specifications. Removal of the discussion of the NRC environmental monitoring program with the State reflects the cancellation of that program with the State. It does not alter any other environmental monitoring requirements. Therefore, the changes do not affect accident or transient initiation or consequences. As described above, the proposed changes are administrative in nature and do not impact the operation of any equipment needed for the mitigation of an accident or any known accident initiators.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes are administrative in nature and therefore, do not change the fundamental requirements of the Technical Specifications. The proposed changes would not require any new or different accidents to be postulated, since no changes are being made to the plant that would introduce any new accident causal mechanisms. This license amendment request does not impact any plant systems that are potential accident initiators; nor does it have any significantly adverse impact on any accident mitigating systems.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Since the proposed changes are administrative in nature, they do not change the fundamental requirements of the Technical Specifications. The proposed changes do not alter the permanent plant design, including instrument set points, nor does it change the assumptions contained in the safety analyses. Removal of the discussion of the NRC environmental monitoring program with the State reflects the cancellation of that program with the State. It does not alter any other environmental monitoring requirements.

Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Acting Branch Chief: Douglas A. Broaddus.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: February 12, 2013.

Brief description of amendment request: The proposed amendment would modify Cooper Nuclear Station

license condition 2.E to require incorporation of the commitments listed in Appendix A of NUREG–1944, ''Safety Evaluation Report Related to the License Renewal of Cooper Nuclear Station,'' in the updated safety analysis report (USAR) to be managed in accordance with 10 CFR 50.59.

Date of publication of individual notice in ***Federal Register***: July 5, 2013 (78 FR 40519).

Expiration date of individual notice: August 5, 2013 (public comments); September 3, 2013 (hearing requests).

Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov*.

Calvert Cliffs Nuclear Power Plant, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Units 1 and 2, Calvert County, Maryland

Date of application for amendments: July 2, 2012, as supplemented by letters dated March 6 and May 28, 2013.

Brief description of amendments: The amendments revise Technical Specification (TS) 5.5.16 ''Containment Leakage Rate Testing Program'' by increasing the peak calculated containment internal pressure (P_a) from 49.4 pounds per square inch gauge (psig) to 49.7 psig for the design basis loss-of-coolant accident. In support of the revised P_a, the amendments also revise TS 3.6.4 ''Containment Pressure'' by decreasing the upper bound internal containment pressure limit from 1.8 psig to 1.0 psig.

Date of issuance: July 31, 2013.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment Nos.: 303 and 281.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the License and TSs.

Date of initial notice in ***Federal Register***: September 4, 2012 (77 FR 53926). The supplements dated March 6 and May 28, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated July 31, 2013.

No significant hazards consideration comments received: No.

Dairyland Power Cooperative, Docket No. 50–409, La Crosse Boiling Water Reactor, Vernon County, Wisconsin

Date of application for amendment: December 10, 2012, and supplemented February 25, 2013.

Brief description of amendment: The amendment revises the La Crosse Boiling Water Reactor License and Technical Specifications, as a result of the completion of the transfer of the spent fuel to dry cask storage.

Date of issuance: July 31, 2013.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 72.

Facility Operating License No. DPR–7: This amendment revises the License and Technical Specifications.

Date of initial notice in ***Federal Register***: March 19, 2013 (78 FR 16879).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 31, 2013.

No significant hazards consideration comments received: No.

Duke Energy Carolinas, LLC, Docket Nos. 50–270, and 50–287, Oconee Nuclear Station, Units 2 and 3, Oconee County, South Carolina

Date of application of amendments: October 5, 2012.

Brief description of amendments: The amendments revised the Technical Specifications related to the integrated leak rate test of the reactor containment buildings.

Date of Issuance: August 5, 2013.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 383 and 382.

Renewed Facility Operating License Nos. DPR–47 and DPR–55: Amendments revised the license and the technical specifications.

Date of initial notice in ***Federal Register***: December 11, 2012, 77 FR 73688.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 5, 2013.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: November 9, 2012, as supplemented by letter dated on January 30, 2013.

Description of amendment: The amendment revised the Technical Specifications (TSs) to support the correction of a non-conservative TS allowable value in TS Table 3.3.6.1–1, ''Allowable Value for Primary Containment and Drywell Isolation Instrumentation,'' Function 3.c, ''Reactor Core Isolation Cooling (RCIC) Steam Supply Line Pressure—Low.'' This TS allowable value is changed

from greater than or equal to 53 pounds per square inch (psig) to greater than or equal to 57 psig.

Date of issuance: August 5, 2013.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment No: 194.

Facility Operating License No. NPF–29: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: February 5, 2013 (78 FR 8200). The supplemental letter dated January 30, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 2013.

No significant hazards consideration comments received: No.

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: December 21, 2012.

Brief description of amendment: The amendment adopts NRC-approved Technical Specification Task Force (TSTF)—522, ''Revise Ventilation System Surveillance Requirements to Operate For 10 Hours Per Month.'' The amendment revises the Surveillance Requirement (SR) which currently requires operating the Standby Gas Treatment (SGT) System, with the electrical heaters operating, for a continuous 10 hour period at a frequency specified in the Surveillance Frequency Control Program. This Surveillance Requirement (SR 3.6.4.3.1) is revised to require operation of the system for 15 continuous minutes without the heaters operating.

In addition, the requirements for testing the SGT System specified in the Ventilation Filter Testing Program (VFTP) in Section 5.5.7, are revised accordingly to remove the electric heater output test (Specification 5.5.7.e) and to increase the specified relative humidity (RH) for the charcoal testing from the current 70% to 95% RH in Specification 5.5.7.c.

Date of issuance: July 25, 2013.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 285.

Renewed Facility Operating License No. DPR–49: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: April 16, 2013 (78 FR 22571).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 25, 2013.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual notice of consideration of issuance of amendment, proposed no significant hazards consideration determination, and opportunity for a hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License or Combined License, as applicable, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC's Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access

to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. 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, and electronically on the Internet at the NRC's Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* 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 requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which 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 petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the 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 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. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

All documents filed in the NRC's 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 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59

p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the 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 agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, 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.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit 1, Washington County, Nebraska

Date of amendment request: July 21, 2013 (Agencywide Documents Access and Management System (ADAMS) Accession No.ML13203A136), as supplemented by letter dated July 24, 2013 ADAMS Accession No. ML13206A042).

Description of amendment request: The amendment revised the Updated Safety Analysis Report (USAR) for the design basis tornado and tornado missiles to include Regulatory Guide 1.76, Revision 1, ''Design-Basis Tornado and Tornado Missiles for Nuclear Power Plants,'' and Bechtel Power Corporation, Topical Report BC–TOP–9A, Revision 2, September 1974, ''Design of Structures for Missile Impact.'' The changes revise the current licensing basis pertaining to protection from tornadoes and tornado-generated missiles. RG 1.76, Revision 1 provides guidance for licensees to use in selecting the DBT and DBT-generated missiles that a nuclear power plant should be designed to withstand to prevent undue risk to public health and safety. BC–TOP–9A, Revision 2 provides a methodology for evaluating the impact of tornado missiles. The changes provide a means to analyze and document that the plant will be able to withstand, without loss of the capability to protect the public, the additional forces that might be imposed by a tornado.

Date of issuance: July 26, 2013.

Effective date: As of its issuance date and shall be implemented upon approval.

Amendment No.: 272.

Renewed Facility Operating License No. DPR–40: The amendment revised the facility operating license.

Public comments requested as to proposed no significant hazards consideration: Yes (*Omaha-World Herald,* located in Omaha, Nebraska, on July 24 and 25, 2013). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. One comment was received and evaluated.

The supplemental letter dated July 24, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the *Omaha-World Herald* on July 24 and 25, 2013.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination (including the comment received on the NSHC) are contained in a safety evaluation dated July 26, 2013 (ADAMS Accession No. ML13203A070).

Attorney for licensee: David A. Repka, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: Michael T. Markley.

Dated at Rockville, Maryland, this 12th day of August 2013.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–20154 Filed 8–19–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission, NRC–2013–0001.

DATES: Weeks of August 19, 26, September 2, 9, 16, 23, 2013.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of August 19, 2013

There are no meetings scheduled for the week of August 19, 2013.

Week of August 26, 2013—Tentative

Monday August 26, 2013

2:00 p.m. Discussion of Management and Personnel Issues (Closed—Ex. 2 and 6).

Tuesday, August 27, 2013

9:00 a.m. Briefing on NRC's Construction Activities (Public Meeting); (Contact: Michelle Hayes, 301–415–8375).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

3:00 p.m. Briefing on NRC International Activities (Closed—Ex. 1 & 9) (Contact: Karen Henderson, 301–415–0202).

Week of September 2, 2013—Tentative

There are no meetings scheduled for the week of September 2, 2013.

Week of September 9, 2013—Tentative

There are no meetings scheduled for the week of September 9, 2013.

Week of September 16, 2013—Tentative

There are no meetings scheduled for the week of September 16, 2013.

Week of September 23, 2013—Tentative

There are no meetings scheduled for the week of September 23, 2013.

* * * * *

*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.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or 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: August 15, 2013.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2013–20384 Filed 8–16–13; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70197; File No. SR–BATS–2013–044]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

August 14, 2013.

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 August 7, 2013, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') 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 Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[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] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant 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 modify pricing applicable to the Exchange's options platform (''BATS Options'') with respect to orders routed away by the Exchange and executed at a new options exchange—an affiliate of the International Securities Exchange, LLC (''ISE'') that will be called ''ISE Gemini.''[6] ISE Gemini commenced trading on August 5, 2013.

BATS Options currently charges certain flat rates for routing to other options exchanges that have been placed into groups based on the approximate cost of routing to such venues. The grouping of away options exchanges is based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for routing (*i.e.,* clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, ''Routing Costs''). The Exchange did not have sufficient information to know what Routing Costs the Exchange would incur in connection with routing to ISE Gemini prior to its launch. Accordingly, the Exchange originally imposed the same pricing for all executions at ISE Gemini as are charged by the Exchange for orders routed to and executed at the NASDAQ Options Market (''NOM'') and NYSE Arca, Inc. (''ARCA'') in non-Penny Pilot Securities,[7] which is the

[6] The Commission notes that the entity referred to herein as ''ISE Gemini'' is Topaz Exchange, LLC d/b/a ISE Gemini.

[7] The Exchange currently charges different fees and provides different rebates depending on whether an options class is an options class that qualifies as a Penny Pilot Security pursuant to Exchange Rule 21.5, Interpretation and Policy .01 or is a non-penny options class. Certain other options exchanges also have different pricing for Penny Pilot Securities and non-Penny Pilot Securities. Accordingly, the Exchange's routing fees

Continued

most expensive routing category based on Routing Costs.

Based on applicable Routing Costs, the Exchange currently charges $0.90 per contract for Customer [8] orders and $0.95 per contract for Professional,[9] Firm, and Market Maker [10] orders executed at NOM and ARCA in non-Penny Pilot Securities, and thus, since August 5, 2013, has charged these rates for orders routed to and executed at ISE Gemini in all securities. Based on the pricing released by ISE Gemini immediately prior to its launch, the Exchange believes that this pricing continues to be appropriate for non-Penny Pilot Securities executed on ISE Gemini. Accordingly, the Exchange proposes to continue to charge the same for executions at ISE Gemini as it does at NOM and ARCA with respect to non-Penny Pilot Securities. Thus, the Exchange proposes to continue to charge $0.90 per contract for Customer orders and $0.95 per contract for Professional, Firm, and Market Maker orders in non-Penny Pilot Securities executed at ISE Gemini. The Exchange also proposes to continue to charge $0.95 per contract for all executions of Directed ISOs routed to ISE Gemini in non-Penny Pilot Securities. However, as described below, the Exchange proposes to modify pricing for all executions, including executions of Directed ISOs, of orders routed by the Exchange to ISE Gemini in Penny Pilot Securities.

Based on the pricing released by ISE Gemini, the Exchange believes it most appropriate to charge the same pricing for orders in Penny Pilot Securities routed to and executed at ISE Gemini as it does for NOM and Arca in Penny Pilot Securities. The Exchange currently charges $0.52 per contract for Customer orders and $0.57 per contract for Professional, Firm, and Market Maker orders executed at NOM and ARCA in Penny Pilot Securities. In order to cover the cost of removing liquidity, including Routing Costs, in Penny Pilot Securities at ISE Gemini, the Exchange proposes to charge the same rates, specifically $0.52 per contract for Customer orders and $0.57 per contract for Professional, Firm, and Market Maker orders executed at ISE Gemini.

Also based on the pricing released by ISE Gemini, the Exchange believes it most appropriate charge $0.60 per contract for Directed ISOs in Penny Pilot Securities routed to and executed at ISE Gemini, which is the same pricing that the Exchange charges for certain other Directed ISOs executed at away destinations, as further described below.

The Exchange currently charges $0.60 per contract for Directed ISOs routed and executed at away destinations, with the exception of: (i) Directed ISOs in Mini Options, for which the Exchange charges $0.15 per contract; and (ii) in the following situations, for which the Exchange charges $0.95 per contract: (1) orders in non-Penny Pilot Securities executed at NOM and ARCA; (2) Professional, Firm and Market Maker orders executed at BX Options in non-Penny Pilot Securities; (3) Professional, Firm and Market Maker orders executed at C2; and (4) all orders executed at ISE Gemini. In order to approximate the Routing Costs for such orders, the Exchange proposes to charge the standard fee of $0.60 for Directed ISOs in Penny Pilot Securities routed to and executed at ISE Gemini instead of the $0.95 that it currently charges. As described above, the Exchange will continue to charge $0.95 per contract for Directed ISOs in non-Penny Pilot Securities routed to and executed at ISE Gemini.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[11] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[12] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

As explained above, the Exchange generally attempts to approximate the cost of routing to other options exchanges, including other applicable costs to the Exchange for routing. The Exchange believes that a pricing model based on approximate Routing Costs is a reasonable, fair and equitable approach to pricing. Specifically, the Exchange believes that its proposal to modify fees to ISE Gemini is fair, equitable and reasonable because the fees are generally an approximation of the cost to the Exchange for routing orders to such exchange. The Exchange believes that its flat fee structure for orders routed to various venues is a fair and equitable approach to pricing, as it provides certainty with respect to execution fees at groups of away options exchanges. Under its flat fee structure, taking all costs to the Exchange into account, the Exchange may operate at a slight gain or slight loss for orders routed to and executed at ISE Gemini. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing routing services to ISE Gemini. The Exchange also believes that the proposed fee structure for orders routed to and executed at this away options exchange is fair and equitable and not unreasonably discriminatory in that it applies equally to all Members.

As explained above, the Exchange has also proposed to decrease fees for Directed ISOs in Penny Pilot Securities to ISE Gemini. The Exchange believes that the proposed fee structure for Directed ISOs routed to and executed at ISE Gemini is fair, equitable and reasonable because the fees are an approximation of the cost to the Exchange for routing such orders and will allow the Exchange to recoup and cover the costs of providing routing services to ISE Gemini. The Exchange also believes that the proposed fee structure for Directed ISOs routed to and executed at ISE Gemini is fair and equitable and not unreasonably discriminatory in that it applies equally to all Members.

The Exchange reiterates that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels to be excessive or providers of routing services if they deem fee levels to be excessive. Finally, the Exchange notes that it constantly evaluates its routing fees, including profit and loss attributable to routing, as applicable, in connection with the operation of a flat fee routing service, and would consider future adjustments to the proposed pricing structure to the extent it was recouping a significant profit from routing to ISE Gemini.

also vary with respect to the fees for orders executed at such exchanges.

[8] As defined on the Exchange's fee schedule, a ''Customer'' order is any transaction identified by a Member for clearing in the Customer range at the Options Clearing Corporation (''OCC''), except for those designated as ''Professional''.

[9] The term ''Professional'' is defined in Exchange Rule 16.1 to mean any person or entity that (A) is not a broker or dealer in securities, and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[10] As defined on the Exchange's fee schedule, the terms ''Firm'' and ''Market Maker'' apply to any transaction identified by a member for clearing in the Firm or Market Maker range, respectively, at the Options Clearing Corporation (''OCC'').

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes will assist the Exchange in recouping costs for routing orders to another options exchange on behalf of its participants in a manner that is a better approximation of actual costs than is currently in place. The Exchange also notes that Members may choose to mark their orders as ineligible for routing to avoid incurring routing fees.[13] As stated above, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels to be excessive or providers of routing services if they deem fee levels to be excessive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments 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) of the Act[14] and paragraph (f) of Rule 19b–4 thereunder.[15] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–BATS–2013–044 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–BATS–2013–044. 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–BATS–2013–044 and should be submitted on or before September 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–20201 Filed 8–19–13; 8:45 am]

BILLING CODE 8011–01–P

[13] *See* BATS Rule 21.1(d)(8) (describing ''BATS Only'' orders for BATS Options) and BATS Rule 21.9(a)(1) (describing the BATS Options routing process, which requires orders to be designated as available for routing).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70192; File No. SR–BYX–2013–027]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

August 14, 2013.

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 August 1, 2013, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') 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 Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on August 2, 2013.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

[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] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant 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 modify its fee schedule applicable to use of the Exchange effective August 2, 2013, in order to modify pricing related to executions that occur on EDGA EXCHANGE, Inc. (''EDGA'') through either a BYX + EDGA Destination Specific Order [6] or through the Exchange's TRIM routing strategies.[7] EDGA implemented certain pricing changes effective August 1, 2013, including modification from a rebate of $0.0003 per share when removing liquidity to a rebate of $0.0002 per share when removing liquidity. To maintain a direct pass through of the applicable economics for executions at EDGA, the Exchange proposes to rebate $0.0002 per share for an order routed through its TRIM routing strategies and executed on EDGA, rather than the rebate of $0.0003 per share that it currently offers for such orders. Similarly, because EDGA is part of the Exchange's ''One Under/Better'' pricing program for Destination Specific Orders, the Exchange intends to rebate $0.0001 per share more than if a Member executed an order directly on EDGA. Accordingly, the Exchange proposes to rebate $0.0003 per share for an order routed as a Destination Specific Order to EDGA and executed on EDGA, which is $0.0001 per share more than EDGA rebates directly. The Exchange's ''One Under/Better'' pricing does not apply to securities priced below $1.00. In addition, the Exchange will maintain the pricing currently charged by the Exchange for all other Destination Specific Orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[8] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that the proposed changes to certain of the Exchange's non-standard routing fees and strategies are equitably allocated, fair and reasonable, and non-discriminatory in that they are equally applicable to all Members and are designed to mirror or provide an improvement over the rebate applicable to the execution if such routed orders were executed directly by the Member at EDGA Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution is extremely competitive, Members may readily opt to disfavor the Exchange's routing services if they believe that alternatives offer them better value. For orders routed through the Exchange and executed at EDGA Exchange, the proposed fee change is designed to equal or exceed the rebate that a Member would have received if such routed orders would have been executed directly by a Member at EDGA Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments 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) of the Act [10] and paragraph (f) of Rule 19b-4 thereunder.[11] 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–BYX–2013–027 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2013–027. 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–BYX–2013–027 and should be submitted on or before September 10, 2013.

[6] As defined in BYX Rule 11.9(c)(12).

[7] As defined in BYX Rule 11.13(a)(3)(G).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b-4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–20194 Filed 8–19–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70195; File No. SR–NYSEArca-2013–61]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change To List and Trade Units of the First Trust Gold Trust Pursuant to NYSE Arca Equities Rule 8.201

August 14, 2013.

I. Introduction

On June 11, 2013, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade units (''Units'') of the First Trust Gold Trust (''Trust'') pursuant to NYSE Arca Equities Rule 8.201. The proposed rule change was published for comment in the **Federal Register** on July 1, 2013.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Units under NYSE Arca Equities Rule 8.201,[4] which governs the listing and trading pursuant to unlisted trading privileges of Commodity-Based Trust Shares.[5] The Exchange has represented that the Units satisfy the requirements of NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.[6] The Exchange deems the Units to be equity securities and therefore subject to the Exchange's rules governing the trading of equity securities.[7]

FT Portfolios Canada Co. will be the trustee and manager of the Trust (''Manager''),[8] and The Bank of Nova Scotia Trust Company will be the custodian of the Trust's assets (''Trust Custodian''). Equity Financial Trust Company will process redemption orders and transfers for the Trust (''Transfer Agent''). CIBC Mellon Trust Company (''Valuation Agent'') will calculate the value of the net assets of the Trust on a daily basis and reconcile all purchases and redemptions of Units to determine the net asset value per Unit (''NAV'').

According to the Registration Statement,[9] the Trust was created to invest and hold substantially all of its assets in physical gold bullion.[10] The Exchange states that the Trust seeks to provide a secure, convenient, and exchange-traded investment alternative for investors interested in holding physical gold bullion.[11] Each outstanding Unit will represent an equal, fractional, undivided ownership interest in the Trust. Units will be redeemable monthly, directly from the Trust, for physical gold bullion or cash, as described in the Notice and Registration Statement.

Additional information regarding the Trust, including NAV calculation, operation of the Trust, restrictions, risks, expenses, and redemptions of Units, can be found in the Notice and/or Registration Statement.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade Units is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[13] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal to list and trade the Units on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act, which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Last sale, quotation information, trading volume, closing prices and NAV for the Units from the previous day will be available via the Consolidated Tape.[14] The Trust's Web site will provide an intraday indicative value (''IIV'') per share for the Units, which will be calculated by a third party financial provider and disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session.[15] The Web site also will include, on a per Unit basis, for the Trust, (1) The midpoint of the bid-ask price at the close of trading in relation to the NAV as of the time the NAV is calculated (''Bid/Ask Price''), and a calculation of the premium or discount of such price against such NAV; (2) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters; and (3) the Trust's prospectus, as well as the two most recent reports to stockholders.[16] The Trust's Web site

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69847 (June 25, 2013), 78 FR 39399 (July 1, 2013) (''Notice''). Terms not defined herein are defined in the Notice.

[4] The Trust expects that Units also will be listed and traded on the Toronto Stock Exchange (''TSX''). *See id.* at 39400.

[5] Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the trust. *See id.* at 39399.

[6] *See id.* at 39400.

[7] *See id.* at 39405.

[8] The Manager is a company subsisting under the laws of Nova Scotia. The Manager is responsible for the day-to-day activities and administration of the Trust. The Manager manages, or causes to be managed, the Trust pursuant to the declaration of trust. *See id.*

[9] *See* the draft registration statement for the Trust on Form F–1, filed with the Commission on March 19, 2013 (File No. 377–00130) (the ''Registration Statement''). According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940 nor a commodity pool for purposes of the Commodity Exchange Act.

[10] According to the Registration Statement, at least 90% of the net assets of the Trust will be invested in allocated kilogram bars of physical gold bullion with a fineness of 0.995 or higher that are manufactured by refiners recognized by the London Bullion Market Association for the production of good delivery bars (''Kilogram Bars''). The Trust is subject to various investment and operating restrictions (''Restrictions'') and will not invest in gold certificates or other financial instruments that represent gold or that may be exchanged for gold. The Trust will not speculate with regard to short-term changes in gold prices. *See* Notice, *supra* note 3, at 39400.

[11] *See id.*

[12] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Notice, *supra* note 3, 78 FR at 39404.

[15] *See id.* The Exchange states that IIV on a per Unit basis disseminated during the Core Trading Session should not be viewed as a real-time update of the NAV, which will be calculated once a day. *See id.*

[16] *See id.*

also will provide the last sale price of the Units as traded in the U.S. market.[17] Furthermore, the Commission further believes that the proposal to list and trade the Units is reasonably designed to promote fair disclosure of information that may be necessary to price Units appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Trust's Web site will post the daily NAV, a breakdown of the holdings of the Trust.[18] The Commission notes that the Exchange will obtain a representation from the issuer of the Units that the NAV will be calculated on each business day and will be made available to all market participants at the same time.[19] Moreover, investors may obtain gold pricing information from a variety of service providers and newspapers. For example, financial information service providers offer, on a 24-hour basis, gold pricing information based on the spot price of an ounce of gold from various financial information providers.[20] Real-time data for gold futures and options prices traded on the COMEX, an affiliate of the Chicago Mercantile Exchange, Inc., are also available by subscription.[21]

The Exchange will consider suspending trading in the Units pursuant to NYSE Arca Rule 8.201(e)(2) if, after the initial 12-month period following commencement of trading: (1) the value of gold is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, Trust, or Custodian, or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated commodity value; or (2) if the IIV is no longer made available on at least a 15-second delayed basis.[22] If the IIV is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[23] The Exchange will halt trading in the Units if the Manager, on behalf of the Trust, directs the Trust's Valuation Agent to suspend the calculation of the value of the net assets of the Trust and the NAV.[24]

In support of this proposal, the Exchange has made representations, including that:

(1) The Exchange has appropriate rules to facilitate transactions in the Units during all trading sessions.[25]

(2) The trading surveillance procedures administered by the Financial Industry Regulatory Authority on behalf of the Exchange are adequate to properly monitor Exchange trading of the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.[26]

(3) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders (''ETP Holders'') in an Information Bulletin of the special characteristics and risks associated with trading the Units. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Units; (b) 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 Units; (c) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; (d) the possibility that trading spreads and the resulting premium or discount on the Units may widen as a result of reduced liquidity of gold trading during the Core and Late Trading Sessions after the close of the major world gold markets; and (e) trading information.[27]

(4) A minimum of 100,000 Units will be outstanding at the commencement of trading on the Exchange.[28]

This order is based on the Exchange's representations.

For the forgoing reasons, the Commission believes the Exchange's proposal to list and trade the Units is consistent with the Exchange Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[29] that the proposed rule change (SR–NYSEArca–2013–61) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–20196 Filed 8–19–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70189; File No. SR–BATS–2013–041]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate Rules Related to CYCLE Routing

August 14, 2013.

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 August 1, 2013, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[17] *See id.*

[18] The Exchange will provide a link to the Trust on its Web site. *See id.*

[19] *See id.* Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it must halt trading on the NYSE Marketplace until such time as the NAV is available to all market participants.

[20] *See id.*

[21] The data is available by subscription from Reuters and Bloomberg. The New York Mercantile Exchange also provides delayed futures and options information on current and past trading session and market news free of charge on its Web site. EBS Market provides an electronic trading platform to institutions for the trading of spot gold, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. *See id.*

[22] *See* NYSE Arca Equities Rules 8.200(e)(2)(iv) and (v). More generally, NYSE Arca may halt trading in the Units on the Exchange because of market conditions or for reasons that, in the Exchange's view, make trading in the Units inadvisable, including: (1) The extent to which conditions in the underlying gold market have caused disruptions and/or lack of trading; (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; or (3) in the event that the TSX halts trading in the Units. *See id.* at 39405. Additionally, trading in the Units will be subject to trading halts caused by extraordinary market volatility pursuant to NYSE Arca's ''circuit breaker'' rule. *See* NYSE Arca Equities Rule 7.12.

[23] *See* Notice, *supra* note3, at 39405.

[24] *See id.*

[25] *See id.*

[26] *See id.*

[27] *See id.*

[28] *See id.*

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to eliminate Rules 11.13(a)(3)(A) and 21.9(a)(2)(A), which are the provisions that authorize the CYCLE Routing option, effective as of September 3, 2013.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant 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 is proposing to eliminate Rules 11.13(a)(3)(A) and 21.9(a)(2)(A), which are the provisions that authorize the CYCLE Routing option on the Exchange's equities platform (''BATS Equities'') and options platform (''BATS Options''). Few participants currently utilize the CYCLE Routing Option, and the Exchange is planning to decommission the functionality as of September 3, 2013. Therefore, the Exchange proposes this rule change to delete the language that authorizes this capability from its rules and hold the rule number in reserve.

2. *Statutory Basis*

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] Specifically, the proposal is consistent with Section 6(b)(5) of the Act,[6] which requires exchange rules to promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange believes the proposed rule changes fulfill these requirements because they eliminate language authorizing a functionality that the Exchange plans to decommission as of September 3, 2013. By removing reference to this soon-to-be retired functionality, the Exchange will avoid investor confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

BATS believes the proposal is consistent with Section 6(b)(8) of the Act[7] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will eliminate Rules authorizing a functionality that will be decommissioned by the Exchange as of September 3, 2013. Thus, reference to this functionality will no longer serve a legitimate purpose. Accordingly, the Exchange does not believe that the proposed rule change will have any effect on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

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.

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–BATS–2013–041 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–BATS–2013–041. 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–BATS–2013–041 and should be submitted on or before September 10, 2013.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(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)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and 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. The Exchange has satisfied this requirement.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–20193 Filed 8–19–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70200; File No. SR–Topaz–2013–01]

Self-Regulatory Organizations; Topaz Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish the Schedule of Fees

August 14, 2013.

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 August 5, 2013, the Topaz Exchange, LLC (the ''Exchange'' or ''Topaz'') 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 the Substance of the Proposed Rule Change

Topaz is proposing to establish a Schedule of Fees by adopting fees and rebates for all Regular Orders in standard options and Mini Options traded on Topaz. The proposed fees and rebates will apply to transactions that take and make liquidity in symbols traded on the Exchange. The text of the proposed rule change is available on the Exchange's Web site, 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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule filing is to establish a Schedule of Fees by adopting fees and rebates for Regular Orders [3] that make or take liquidity in standard options and Mini Options traded on Topaz.[4]

Fees and Rebates

The Exchange proposes to assess per contract transaction fees in all option classes traded on the Exchange to market participants that take liquidity from the Exchange's orderbook and provide rebates to those participants that make liquidity. The fees depend on the category of market participant submitting orders to the Exchange.

The proposed Schedule of Fees identifies the following categories of market participants: (i) Market Maker; [5] (ii) Non-Topaz Market Maker; [6] (iv) [sic] [7] Firm Proprietary [8]/Broker-Dealer; [9] (v) Professional Customer; [10] and (vi) Priority Customer.[11] The fees to be assessed for Regular Orders that take liquidity in standard options that are in the Penny Pilot [12] (including SPY) are: (i) $0.48 per contract for Market Maker, Non-Topaz Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders; and (ii) $0.45 per contract for Priority Customer orders. The transaction charges to be assessed for Regular Orders that take liquidity in Mini Options that are in the Penny Pilot (including SPY) are: (i) $0.048 per contract for Market Maker, Non-Topaz Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders; and (ii) $0.045 per contract for Priority Customer orders.

The transaction charges to be assessed for Regular Orders that take liquidity in standard options that are not in the Penny Pilot are: (i) $0.84 per contract for Market Maker orders; (ii) $0.87 per contract for Non-Topaz Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders; and (ii) [sic] $0.82 per contract for Priority Customer orders. The transaction charges to be assessed for Regular Orders that take liquidity in Mini Options that are not in the Penny Pilot are: (i) $0.084 per contract for Market Maker orders; (ii) $0.087 per contract for Non-Topaz Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders; and (ii) [sic] $0.082 per contract for Priority Customer orders.

In order to provide an incentive for market participants to provide liquidity in option classes traded on the Exchange, Topaz proposes to adopt per contract rebates. The per contract rebate for Regular Orders that make liquidity in standard options that are in the Penny Pilot are: (i) $0.37 per contract (for SPY, this rebate is $0.39 per contract) for Market Maker orders; (ii) $0.25 per contract for Non-Topaz

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Regular Order is an order that consists of only a single option series and is not submitted with a stock leg.

[4] The fees proposed herein are similar to the maker/taker fees currently assessed by NASDAQ Options Market (''NOM''). NOM currently charges a fee for adding liquidity to the following class of market participants on that exchange: (i) Firm, (ii) Broker-Dealer, and (iii) Non-NOM Market Maker. NOM also charges a fee for removing liquidity to the following class of market participants: (i) Customer, (ii) Professional, (iii) Firm, (iv) Non-NOM Market Maker, (v) NOM Market Maker and (vi) Broker-Dealer. NOM also provides a rebate for adding liquidity to the following class of market participants: (i) Customer, (ii) Professional, and (iii) NOM Market Maker. *See* NOM Price List, Chapter XV, Options Pricing, at *http://www.nasdaqtrader.com/Micro.aspx?id=optionsPricing.*

[5] The term Market Makers refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. Market Maker orders sent to the Exchange by an Electronic Access Member are assessed fees at the same level as Market Maker orders. *See* footnote 2, Schedule of Fees, Section I and II.

[6] A Non-Topaz Market Maker, or Far Away Market Maker (''FARMM''), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended (''Exchange Act''), registered in the same options class on another options exchange.

[7] The Commission notes that three ordered lists in the Exchange's filing appear to have been misnumbered.

[8] A Firm Proprietary order is an order submitted by a member for its own proprietary account.

[9] A Broker-Dealer order is an order submitted by a member for a non-member broker-dealer account.

[10] A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

[11] A Priority Customer is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[12] Under the Penny Pilot program, the minimum price variation for all participating options classes, except for the Nasdaq-100 Index Tracking Stock (''QQQ''), the SPDR S&P 500 Exchange Traded Fund (''SPY'') and the iShares Russell 2000 Index Fund (''IWM''), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. The proposed fees and rebates for Penny Pilot symbols (including SPY) apply to all classes in the Penny Pilot, *i.e.,* to series that are quoted at less than $3 that have a minimum price variation of $0.01 and to series that are quoted at $3 or more that have an minimum price variation of $0.05. QQQ, SPY and IWM are quoted in $0.01 increments for all options series.

Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders; and (iii) $0.48 per contract for Priority Customer orders. The per contract rebate for Regular Orders that make liquidity in Mini Options that are in the Penny Pilot are: (i) $0.037 per contract (for SPY, this rebate is $0.039 per contract) for Market Maker orders; (ii) $0.025 per contract for Non-Topaz Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders; and (iii) $0.048 per contract for Priority Customer orders.

The Exchange proposes to adopt per contract rebates for Regular Orders that make liquidity in standard options that are not in the Penny Pilot of: (i) $0.40 per contract for Market Maker orders; (ii) $0.10 per contract for Non-Topaz Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders; and (iii) $0.82 per contract for Priority Customer orders. The Exchange also proposes to adopt per contract rebate for Regular Orders that make liquidity in Mini Options that are not in the Penny Pilot of: (i) $0.040 per contract for Market Maker orders; (ii) $0.010 per contract for Non-Topaz Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders; and (iii) $0.082 per contract for Priority Customer orders.

The maker and taker fees and rebates noted above also apply to orders that are exposed at the National Best Bid or Offer (NBBO) by the Exchange (''Flash Order'').[13] When Topaz is not at the NBBO, certain orders are exposed to members to give them an opportunity to match the NBBO before those orders are sent for execution pursuant to intermarket linkage rules. For all Flash Orders, the Exchange will charge the applicable taker fee and for responses that trade against a Flash Order, the Exchange will provide the applicable maker rebate.

The Exchange proposes to adopt fees of $0.20 per contract and $0.020 per contract for Regular Crossing Orders in standard options and Mini Options, respectively, in all symbols traded on the Exchange for all market participants, except Priority Customers. The fee for Regular Crossing Orders in standard options and Mini Options for Priority Customer orders will be $0.00 per contract. A Crossing Order is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism or submitted as a Qualified Contingent Cross order. Orders executed in the Block Order Mechanism are also considered Crossing Orders.

The Exchange proposes to adopt fees for Responses to Crossing Orders. A Response to Crossing Order is any contra-side interest (*i.e.,* orders and quotes) submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or Price Improvement Mechanism. For Regular Orders in standard options that are in the Penny Pilot (including SPY), the Exchange proposes to adopt a fee of (i) $0.48 per contract for Market Maker, Non-Topaz Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders; and (ii) $0.45 per contract for Priority Customer orders. For Regular Orders in standard options that are not in the Penny Pilot, the Exchange proposes to adopt a fee of (i) $0.84 per contract for Market Maker orders; (ii) $0.87 per contract for Non-Topaz Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders; and (iii) $0.82 per contract for Priority Customer orders. For Regular Orders in Mini Options that are in the Penny Pilot (including SPY), the Exchange proposes to adopt a fee of $0.048 per contract for Market Maker, Non-Topaz Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders; and (ii) $0.045 per contract for Priority Customer orders. For Regular Orders in Mini Options that are not in the Penny Pilot, the Exchange proposes to adopt a fee of (i) $0.084 per contract for Market Maker orders; (ii) $0.087 per contract for Non-Topaz Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders; and (iii) $0.082 per contract for Priority Customer orders.

The Exchange believes the proposed fees for Crossing Orders and Responses to Crossing Orders are competitive with fees charges by other options exchanges that have functionality for crossing orders. For example, a crossing order at the BOX Options Exchange (''BOX'') executed through its PIP is subject to a transaction fee as high as $0.65 per contract for Penny Pilot symbols and $1.10 per contract for non-Penny Pilot symbols, as follows: the customer side of the order being auctioned is not charged a fee and receives a 'Credit for Removing Liquidity' of $0.30 per contract in Penny Pilot symbols and $0.75 per contract in non-Penny Pilot symbols. The improvement side of the order (on behalf of the BOX member seeking to internalize the customer order) would be charged a fee of as much as $0.35 per contract or as little as $0.10 per contract based on that members' ADV at BOX—keeping in mind that the 'Credit for Removing Liquidity' mentioned above is credited to that executing broker, either completely negating the total fee paid or creating a credit for that member firm.

For responding to PIP and participating or improving the customer side of the order, BOX participants are charged the 'Fee for Adding Liquidity' of $0.30 per contract in Penny Pilot symbols and $0.75 per contract in non-Penny Pilot symbols. This fee is in addition to regular transaction fees charged to BOX members, which range between $0.10 per contract and $0.35 per contract. As a result, the total fee charged for responding to PIP orders on BOX ranges between $0.40 and $0.65 per contract for Penny Pilot symbols and $0.85 and $1.10 for non-Penny Pilot symbols. The fees proposed by Topaz for Responses to Crossing Orders are well below those charged for similar orders on BOX.[14]

Further, the Chicago Board Options Exchange (''CBOE''), for transactions executed in its Automated Improvement Mechanism (''AIM''), does not charge any fees on facilitation orders, where the initiating firm is seeking to internalize a customer order. Other transactions executed in AIM are charged a fee as high as $0.05 per contract. At CBOE, firms internalizing customer orders are also able to generate payment for order flow (''PFOF'') fees of $0.25 and $0.65 per contract for Penny Pilot and non-Penny Pilot symbols, respectively, when market makers responding to auctions interact with customer orders that are part of the AIM auction. These market makers are also eligible to collect rebates under CBOE's VIP program based on that member's average daily volume.

The fees for responding to AIM auctions at CBOE depend on the category of the responder and range dramatically. For broker/dealers, these fees are $0.45 and $0.60 per contract in Penny Pilot and non-Penny Pilot symbols, respectively, and for firm proprietary orders, these fees are $0.25 per contract. Fees for market makers on CBOE vary as they depend on the member's average daily volume and can range between $0.03 and $0.25 per contract in addition to being subject to a PFOF fee of $0.25 and $0.65 per contract for Penny Pilot and non-Penny Pilot symbols, respectively. Thus, market maker fees on CBOE range

[13] *See* Topaz Rule 1901, Supplementary Material .02.

[14] These fees apply to Improvement Orders on BOX. Primary Improvement Orders are not subject to any fees in addition to their ADV-based fees therefore the differential at BOX for Primary Improvement Orders is even greater.

between $0.28 and $0.50 per contract in Penny Pilot symbols and between $0.68 and $0.90 per contract in non-Penny Pilot symbols. As a result, the fees paid by members initiating the crossing auctions are significantly lower at CBOE than the fees paid by members responding, resulting in a differential ranging from as little as $0.20 (*i.e.,* when a initiating firm pays $0.05 per contract and a responding member pays $0.25 per contract) to as much as $0.50 per contract (*i.e.,* when an initiating firm pays no fee and a market maker responding pays $0.25 per contract, in addition to a payment for order flow fee of $0.25 per contract in a Penny Pilot symbol). The Exchange notes that the differential in the fees is even higher in Non-Penny Pilot symbols.

The Exchange believes that when taken as a whole, *i.e.,* the low fee charged to an internalizing member at CBOE, even without the potential for a credit provided to that member through CBOE's VIP program and the PFOF fee collected from market makers, the differential between fees charged by CBOE for crossing orders and for responses to crossing orders is comparable to the fee differential proposed by Topaz, and in some cases, exceeds the fee differential proposed by Topaz.

Route-Out Fees

The Exchange proposes to adopt a fee of $0.50 per contract and $0.55 per contract for executions of Priority Customer and Professional Customer orders, respectively, for standard options in symbols that are in the Penny Pilot (including SPY) that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan. For Mini Options in these symbols, the Exchange proposes to adopt a fee of $0.050 per contract for Priority Customer orders and $0.055 per contract for Professional Customer orders.

The Exchange proposes to adopt a fee of $0.90 per contract and $0.95 per contract for executions of Priority Customer and Professional Customer orders, respectively, for standard options in symbols that are not in the Penny Pilot that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan. For Mini Options in these symbols, the Exchange proposes to adopt a fee of $0.090 per contract for Priority Customer orders and $0.095 per contract for Professional Customer orders.

The route-out fee offsets costs incurred by the Exchange in connection with using unaffiliated broker-dealers to access other exchanges for linkage executions and is therefore appropriate because market professionals, in this case, Professional Customers, that are submitting these orders can route them directly to away exchanges, if desired, and should not be able to forgo an away market fee by directing their orders to the Exchange. The Exchange believes that it is appropriate to assess lower route-out fees to Priority Customer orders than to Professional Customer orders because Priority Customers have historically been assessed lower fees than other market participants. Further, Professional Customers are market professionals and engage in trading activity similar to that conducted by broker-dealers. While the Exchange does not have any obligation to route-out broker/dealer orders, it does have an obligation to route-out Professional Customer orders and believes it is appropriate to charge these orders a higher fee because these orders are submitted by market professionals that have the ability to send their orders directly to the exchange displaying the best quote but choose not to do so. The Exchange therefore believes it is appropriate to charge these orders the proposed fee in order to recoup costs associated with routing out these orders.

Options Regulatory Fee

The Exchange proposes to adopt an Options Regulatory Fee (''ORF'') of $0.0010 per contract for both standard options and Mini Options in order to recoup its regulatory expenses while also ensuring that the ORF will not exceed costs. The per-contract ORF will be assessed by the Exchange to each Exchange member for all options transactions executed and cleared, or simply cleared, by the member, that are cleared by The Options Clearing Corporation (''OCC'') in the ''customer'' range, regardless of the exchange on which the transaction occurs. The ORF will be collected indirectly from members through their clearing firms by OCC on behalf of the Exchange.

The ORF also will be charged for transactions that are not executed by a member but are ultimately cleared by a member. In the case where a non-member executes a transaction and a member clears the transaction, the ORF will be assessed to the member who clears the transaction. In the case where a member executes a transaction and another member clears the transaction, the ORF will be assessed to the member who clears the transaction. As a practical matter, it is not feasible or reasonable for the Exchange (or any SRO) to identify each executing member that submits an order on a trade-by-trade basis. There are countless executing market participants, and each day such participants can and often do drop their connection to one market center and establish themselves as participants on another. It is virtually impossible for any exchange to identify, and thus assess fees such as an ORF on, each executing participant on a given trading day.

Clearing members, however, are distinguished from executing participants because they remain identified to the Exchange regardless of the identity of the initiating executing participant, their location, and the market center on which they execute transactions. Therefore, the Exchange believes it is more efficient for the operation of the Exchange and for the marketplace as a whole to assess the ORF to clearing members.

The Exchange believes it is appropriate to charge the ORF only to transactions that clear as customer at the OCC.

The Exchange believes that its broad regulatory responsibilities with respect to a member's activities supports applying the ORF to transactions cleared but not executed by a member. The Exchange's regulatory responsibilities are the same regardless of whether a member executes a transaction or clears a transaction executed on its behalf. The Exchange regularly reviews all such activities, including performing surveillance for position limit violations, manipulation, front-running, contrary exercise advice violations and insider trading.[15] These activities span across multiple exchanges.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of members' customer options business, including performing routine surveillances and investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue

[15] The Exchange also participates in The Options Regulatory Surveillance Authority (''ORSA'') national market system plan and in doing so shares information and coordinates with other exchanges designed to detect the unlawful use of undisclosed material information in the trading of securities options. ORSA is a national market system comprised of several self-regulatory organizations whose functions and objectives include the joint development, administration, operation and maintenance of systems and facilities utilized in the regulation, surveillance, investigation and detection of the unlawful use of undisclosed material information in the trading of securities options. The Exchange compensates ORSA for the Exchange's portion of the cost to perform insider trading surveillance on behalf of the Exchange. The ORF will cover the costs associated with the Exchange's arrangement with ORSA.

generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange notes that its regulatory responsibilities with respect to member compliance with options sales practice rules have been allocated to the Financial Industry Regulatory Authority (''FINRA'') under a 17d–2 Agreement. The ORF is not designed to cover the cost of options sales practice regulation.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange expects to monitor Topaz regulatory costs and revenues at a minimum on an annual basis. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange will notify members of adjustments to the ORF via regulatory circular.

The Exchange believes it is reasonable and appropriate for the Exchange to charge the ORF for options transactions regardless of the exchange on which the transactions occur. The Exchange has a statutory obligation to enforce compliance by members and their associated persons under the Act and the rules of the Exchange and to surveil for other manipulative conduct by market participants (including non-members) trading on the Exchange. The Exchange cannot effectively surveil for such conduct without looking at and evaluating activity across all options markets. Many of the Exchange's market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, front-running and contrary exercise advice violations/expiring exercise declarations. Also, the Exchange and the other options exchanges are required to populate a consolidated options audit trail (''COATS'') [16] system in order to surveil a member's activities across markets.

In addition to its own surveillance programs, the Exchange works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (''ISG''),[17] the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. The Exchange's participation in ISG helps it to satisfy the requirement that it has coordinated surveillance with markets on which security futures are traded and markets on which any security underlying security futures are traded to detect manipulation and insider trading.[18]

The Exchange believes that charging the ORF across markets will avoid having members direct their trades to other markets in order to avoid the fee and to thereby avoid paying for their fair share for regulation. If the ORF did not apply to activity across markets then a member would send their orders to the least cost, least regulated exchange. Other exchanges do impose a similar fee on their member's activity, including the activity of those members on the Exchange.[19]

The Exchange notes that there is established precedent for an SRO charging a fee across markets, namely, FINRAs Trading Activity Fee [20] and the ORF currently charged by a number of other options exchanges. While the Exchange does not have all the same regulatory responsibilities as FINRA, the Exchange believes that, like other exchanges that have adopted an ORF, its broad regulatory responsibilities with respect to a member's activities, irrespective of where their transactions take place, supports a regulatory fee applicable to transactions on other markets. Unlike FINRA's Trading Activity Fee, the ORF would apply only to a member's customer options transactions.

FINRA Web CRD Fees

The Exchange proposes to adopt regulatory fees related to Web CRD, which are collected by the Financial Industry Regulatory Authority (''FINRA'') (''FINRA Web CRD Fees'').[21] The proposed fees are collected and retained by FINRA via Web CRD for the registration of employees of Topaz members that are not FINRA members (''Non-FINRA members''). The Exchange is merely listing these fees on its Schedule of Fees. The Exchange does not collect or retain these fees.

The FINRA Web CRD Fees listed on Topaz Schedule of Fees consists of General Registration Fees of $100 (for each initial Form U4 filed for the registration of a representative or principal), $110 (for the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment or certification of one of more disclosure events or proceedings), and $45 (annual system processing fee assessed only during renewals). The FINRA Web CRD Fees also consist of Fingerprint Processing Fees for the initial, second and third submissions. There is a separate fee for electronic submissions and paper submissions. The initial electronic and paper submission fees are $29.50 and $44.50, respectively. The second electronic and paper submission fees are $15.00 and $30.00, respectively. The third electronic and paper submission fees are $29.50 and $44.50, respectively. Finally, there is a $30 processing fee for fingerprint results submitted by self-regulatory organizations other than FINRA. The FINRA Web CRD Fees are user-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA member. Accordingly, the proposed fees mirror those currently assessed by FINRA.[22]

The Exchange does not propose to adopt any other fees at this time. The Exchange expects to adopt additional fees, *i.e.,* membership fees, access fees, market data fees, etc., at a later date and will submit a fee change filing with the Commission prior to any such fees becoming effective.

2. Statutory Basis

The Exchange believes that its proposal to adopt a Schedule of Fees is consistent with Section 6(b) of the Securities and Exchange Act of 1934 (the ''Exchange Act'') [23] in general, and

[16] COATS effectively enhances intermarket options surveillance by enabling the options exchanges to reconstruct the market promptly to effectively surveil certain rules.

[17] ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by co-operatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

[18] *See* Section 6(h)(3)(I) of the Act.

[19] Similar regulatory fees have been instituted by Nasdaq OMX PHLX (*See* Securities Exchange Act Release No. 61133 (December 9, 2009), 74 FR 66715 (December 16, 2009) (SR–Phlx–2009–100)); and Miami International Securities Exchange (*See* Securities Exchange Act Release No. 68711 (January 23, 2013), 78 FR 6155 (January 29, 2013) (SR–MIAX–2013–01)).

[20] *See* Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003).

[21] FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry. FINRA uses Web CRD to maintain the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

[22] *See* Securities Exchange Act Release No. 67247 (June 25, 2012), 77 FR 38866 (June 29, 2012) (SR–FINRA–2012–030) (the ''FINRA Fee Filing'').

[23] 15 U.S.C. 78f(b).

furthers the objectives of Section 6(b)(4) of the Exchange Act [24] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange Members and other persons using its facilities.

The Exchange believes the fees proposed for transactions on Topaz are reasonable. Topaz will operate within a highly competitive market in which market participants can readily send order flow to any of eleven other competing venues if they deem fees at a particular venue to be excessive. The proposed fee structure is intended to attract order flow to Topaz by offering market participants incentives to submit their orders to Topaz.

The Exchange has determined to charge fees and provide rebates for Regular Orders in Mini Options at a rate that is 1/10th the rate of fees and rebates the Exchange currently provides for trading in standard options. The Exchange believes it is reasonable and equitable and not unfairly discriminatory to assess lower fees and rebates to provide market participants an incentive to trade Mini Options on the Exchange. The Exchange believes the proposed fees and rebates are reasonable and equitable in light of the fact that Mini Options have a smaller exercise and assignment value, specifically 1/10th that of a standard option contract, and, as such, levying fees that are 1/10th of what market participants pay today.

The Exchange believes that its proposal to assess per contract taker fee for Market Maker, Non-Topaz Market Maker, Firm Proprietary/Broker-Dealer, Professional Customer and Priority Customer orders is reasonable and equitably allocated because the proposed fees are within the range of fees assessed by other exchanges employing similar pricing schemes. For example, NOM currently charges a taker fee as high as $0.48 per contract in symbols that are in the Penny Pilot and as much as $0.89 per contract in symbols that are not in the Penny Pilot.[25] The Exchange believes the proposed taker fees are not unfairly discriminatory because they would apply uniformly to all market participants.

The Exchange believes proposed fee for Crossing Orders is reasonable and equitably allocated because the proposed fees are also within the range of fees assessed by other exchanges. For example, the International Securities Exchange (''ISE'') currently charges an identical fee for Crossing Orders. The Exchange believes the proposed fee for Crossing Orders is not unfairly discriminatory because they would uniformly apply to all market participants, except Priority Customers, who historically have paid lower fees than other market participants as an incentive to attract that order flow to an exchange.

The Exchange further believes it is reasonable and equitable to charge the proposed fees for Responses to Crossing Orders because an execution resulting from a Response to a Crossing Order is akin to an execution and therefore its proposal to establish execution fees and fees for Responses to Crossing Orders that are identical is reasonable and equitable. The Exchange further believes that while the differential between the fee charged for Crossing Orders and the fee for Responses to Crossing Orders is significant, the differential on Topaz is less than the differential that currently exists on other exchanges that offer a similar functionality, and therefore, the Exchange believes the proposed fees are reasonable and equitably allocated because they are within the range of fees assessed by other exchanges employing similar pricing schemes and differ from each other far less than the fees at other exchanges. As noted above, the differential between the fee charged to participants that internalize customer orders and the response fee charged on BOX and CBOE is much greater than the differential proposed by Topaz. The Exchange is not introducing a novel pricing scheme for Crossing Orders and for Responses to Crossing Orders. This functionality is currently available on a number of exchanges, all of whom have a pricing differential that promotes internalizing customer orders. The differential proposed by Topaz is simply smaller than that which currently exists, notably at CBOE and BOX. The Exchange believes the fees for Responses to Crossing Orders are not unfairly discriminatory because they would uniformly apply to all market participants.

The Exchange believes that it is reasonable and equitable to provide rebates because paying a rebate will attract order flow to the Exchange and create liquidity in the symbols that are subject to the rebate, which the Exchange believes ultimately will benefit all market participants who trade on Topaz. The Exchange believes that the proposed rebates are competitive with rebates provided by other exchanges and are therefore reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange.

The Exchange believes that the price differentiation between the various market participants is justified. With respect to fees for Market Maker orders, the Exchange believes that the price differentiation between the various market participants is appropriate and not unfairly discriminatory because Market Makers have different requirements and obligations to the Exchange that the other market participants do not (such as quoting requirements and paying membership-related non-transaction fees). The Exchange believes that it is equitable and not unfairly discriminatory to assess a higher fee to market participants that do not have such requirements and obligations that Exchange Market Makers do. The Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other options exchanges.

The Exchange believes charging lower fees and providing higher rebates to Priority Customer orders attracts that order flow to the Exchange and thereby creates liquidity to the benefit of all market participants who trade on the Exchange. Further, the Exchange believes that it is equitable and not unfairly discriminatory to assess lower fees to Priority Customer orders than to Professional Customer orders. A Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). This limitation does not apply to participants on the Exchange whose behavior is substantially similar to that of market professionals, including Professional Customers, non-Topaz Market Makers, and Firm Proprietary/Broker-Dealers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers. Further, Professional Customers engage in trading activity similar to that conducted by market makers and proprietary traders. For example, Professional Customers continue to join bids and offers on the Exchange and thus compete for incoming order flow whereas Priority Customers do not engage in such activity.

The Exchange believes the proposed route-out fees are reasonable and equitable as they provides the Exchange the ability to recover costs associated with using unaffiliated broker-dealers to route Priority Customer and Professional Customer orders to other exchanges for linkage executions. The

[24] 15 U.S.C. 78f(b)(4).

[25] *See supra* note 4.

Exchange also believes that the proposed fees are not unfairly discriminatory because these fees would be uniformly applied to all Priority Customer and Professional Customer orders. As fees to access liquidity for Priority and Professional Customer orders have risen at other exchanges, it has become necessary for the Exchange to adopt routing fees in order to recoup the costs associated with routing orders. The Exchange notes that a number of other exchanges currently charge a variety of routing related fees associated with customer and non-customer orders that are subject to linkage handling. The Exchange also notes that the fees proposed herein are within the range of fees charged by some of the Exchange's competitors.[26]

The Exchange believes the ORF is equitable and not unfairly discriminatory because it is objectively allocated to members in that it is charged to all members on all their transactions that clear as customer at the OCC. Moreover, the Exchange believes the ORF ensures fairness by assessing fees to those members that are directly based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* member proprietary transactions) of its regulatory program.

The ORF is designed to recover a material portion of the costs of supervising and regulating members' customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange will monitor, on at least an annual basis the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange will notify Members of adjustments to the ORF via regulatory circular.

The Exchange has designed the ORF to generate revenues that, when combined with all of the Exchange's other regulatory fees, will be less than or equal to the Exchange's regulatory costs, which is consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business side. In this regard, the Exchange believes that the initial level of the fee is reasonable.

The Exchange believes that its proposal to adopt the FINRA Web CRD Fees is reasonable because the proposed fees are identical to those adopted by FINRA for use of Web CRD for disclosure and the registration of FINRA members and their associated persons. In the FINRA Fee Filing, FINRA noted that it believed that its fees are reasonable based on the increased costs associated with operating and maintaining Web CRD, and listed a number of enhancements made to Web CRD in support of its fee change. These costs are borne by FINRA when a Non-FINRA member uses Web CRD. FINRA further noted its belief that the fees are reasonable because they help to ensure the integrity of the information in Web CRD, which is very important because the Commission, FINRA, other self-regulatory organizations and state securities regulators use Web CRD to make licensing and registration decisions, among other things. The Exchange notes that the proposed rule change is reasonable because the amount of the fees are those provided by FINRA, and the Exchange does not collect or retain these fees. The proposed rule change is also equitable and not unfairly discriminatory because the Exchange will not be collecting or retaining these fees, therefore will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

The Exchange notes that the proposed rule filing is intended to establish Topaz as an attractive venue for market participants to direct their order flow as the proposed fees and rebates are competitive with those established by other exchanges for similar trading strategies. The Exchange will be operating in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fees at a particular exchange to be too high, or in the case of rebates, not high enough. For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Exchange notes that the difference between the fees for Crossing Orders and the fees for Responses to Crossing Orders may appear discriminatory and an undue burden on competition. The Exchange, however, believes the crossing mechanisms on Topaz provide incentives for market participants to submit customer order flow to the Exchange and thus, creates a greater opportunity for customers to receive better executions. The crossing mechanisms on Topaz provide an opportunity for market participants to compete for customer orders, and have no limitations regarding the number of and type of market participant that can participate and compete for such orders. Topaz notes that its market model and fees are generally intended to attract a specific segment of the options industry and the Exchange is competing with exchanges that currently attract that segment. The Exchange further notes that the proposed fees are more transparent than PFOF arrangements and are generally less than fees that include PFOF.

Unilateral action by Topaz in establishing fees for services provided to its Members and others using its facilities will not have any adverse impact on competition. As a new entrant in the already highly competitive environment for equity options trading, Topaz does not have the market power necessary to set prices for services that are inequitably allocated, unreasonable or unfairly discriminatory in violation of the Act. Topaz's proposed fees and rebates, as described herein, are comparable to fees charged and rebates provided by other options exchanges for the same or similar services. To the extent the proposed fees and rebates prove unattractive to attract order flow away from its competitors, Topaz will necessarily have to adjust level of fees and rebates.

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.

[26] *See* NASDAQ OMX PHLX Fee Schedule, Section V, Routing Fees; and Chicago Board Options Exchange Fees Schedule, Linkage Fees.

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 [27] and subparagraph (f)(2) of Rule 19b–4 thereunder,[28] because it establishes a due, fee, or other charge imposed by Topaz.

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 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–Topaz–2013–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Topaz–2013–01. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Topaz–2013–01, and should be submitted on or before September 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–20217 Filed 8–19–13; 8:45 am]

BILLING CODE 8011–01–P

[27] 15 U.S.C. 78s(b)(3)(A)(ii).

[28] 17 CFR 240.19b–4(f)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70201; File No. SR–ICEEU–2013–11]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Related to Enhanced Margin and Guaranty Fund Methodology

August 14, 2013.

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 August 14, 2013, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed changes as described in Items I, II, and III below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe proposes to adopt changes to the enhanced margin and guaranty fund methodology (the ''Decomp Model'') [3] of ICE Clear Europe Limited (''ICE Clear Europe'') for cleared credit default swaps (''CDS') that address specific wrong way risk from cleared index CDS positions and the liquidation period used in determining the initial margin requirement for customer CDS positions.

ICE Clear Europe has developed its Decomp Model, as previously approved by the Commission, to permit appropriate portfolio margining between related index and single-name CDS positions by recognizing that index CDS instruments are for risk management purposes essentially a composition of specific single-name CDS.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for proposing changes to the Decomp Model. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In anticipation of the launch of customer clearing in CDS, and in furtherance of the ongoing European regulatory reform program designed to improve the safety and soundness of the European derivatives markets, ICE Clear Europe proposes to adopt certain enhancements to the Decomp Model to address so-called specific wrong-way risk (''Specific Wrong-Way Risk''), which is additional risk arising from the fact that certain index CDS contracts include as reference entities Clearing Members or affiliates of Clearing Members (''self-referencing CDS''). Although ICE Clear Europe does not permit a Clearing Member to enter into or maintain a single-name CDS referencing itself or an affiliate, a self-referencing CDS position may arise through an index CDS where the Clearing Member or an affiliate is a component of the index.

Under the enhancements to the Decomp Model, ICE Clear Europe will require an additional contribution to the CDS Guaranty Fund from those Clearing Members that present Specific Wrong-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission has previously approved the Decomp Model. *See* Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Enhanced Margin Methodology, Exchange Act Release No. 34–68955 (Feb. 20, 2013), 78 Fed. Reg. 13130 (Feb. 26, 2013) (SR–ICEEU–2012–11).

Way Risk, up to a defined threshold. The additional Guaranty Fund contribution amount is based on the highest uncollateralized loss-given-default exposure among any of such self-referencing CDS positions of Clearing Members. In addition, each such Clearing Member will be required to provide additional initial margin to collateralize any Specific Wrong-Way Risk presented by its positions in excess of such threshold.

The proposed amendments would also enhance the CDS Guaranty Fund calculation methodology to cover the uncollateralized losses that would result from up to five single names—two Clearing Members and three other single names—that would cause the greatest losses when entering a state of default. Consequently, the amount of uncollateralized loss may increase in cases when the Clearing Members chosen to size the Guaranty Fund are reference entities in index CDS contracts.

ICE Clear Europe also proposes to change the liquidation period for calculation of initial margin for customer CDS positions. Currently, the Decomp Model provides portfolio risk coverage against at least 5-day market realizations. ICE Clear Europe intends to facilitate porting of client positions for a period of 2 days following the default of a Clearing Member. In order to account for situations when it may not be possible to port after the initial porting period, resulting in liquidation, the risk horizon for liquidation of customer CDS portfolios would be extended to 7 days. The increased liquidation period used in determining the initial margin requirement for customer CDS positions will only apply to the spread response, basis and interest rate risk components.

The ICE Clear Europe CDS Risk Policy, the CDS Risk Model Description methodology document, CDS Back-Testing Framework and CDS Default Management Framework have been updated to account for the above mentioned enhancements.

ICE Clear Europe believes that the changes will facilitate the prompt and accurate settlement and risk management of security-based swaps and contribute to the safeguarding of securities and funds associated with security-based swap transactions. ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition.

ICE Clear Europe believes that the amendments are consistent with the requirements of Section 17A [4] of the Act and regulations thereunder applicable to it, including the standards under Rule 17Ad–22.[5] In particular, the amendments will enhance the clearinghouse's margin methodology by more accurately addressing Specific Wrong Way Risk presented by index CDS positions of Clearing Members. They will also enhance the Guaranty Fund calculation methodology, and adjust the liquidation period for customer positions used in calculating initial margin for CDS. In ICE Clear Europe's view, the amendments will therefore promote the prompt and accurate clearance and settlement of securities transactions, the safeguarding of securities and funds in the custody or control of ICE Clear Europe and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[6] Furthermore, the revisions will enhance ICE Clear Europe's financial resources, consistent with the requirements of Rule 17Ad–22(b),[7] by requiring additional initial margin and CDS Guaranty Fund contributions to address Specific Wrong Way Risk. They will also promote the efficient use of margin for the clearinghouse and its clearing members and their customers, by enabling the clearinghouse to provide appropriate portfolio margining treatment between single-name and index CDS positions. The other amendments will similarly enhance ICE Clear Europe's financial resources, but adjusting the CDS Guaranty Fund contribution methodology and increasing the liquidation horizon for customer positions.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any material impact, or impose a material burden, on competition, and further believes that any such impact is necessary and appropriate in furtherance of the Act. The proposed amendments are intended to enhance the margin and Guaranty Fund methodology for CDS to address certain risks, including Specific Wrong Way Risk presented by Clearing Members, as discussed above, and to adjust the liquidation horizon to a level that ICE Clear Europe believes appropriate for default management purposes. Although the amendments may result in an increase in margin and/or Guaranty Fund levels applicable to Clearing Members and their customers as a result of these risks, ICE Clear Europe believes that these changes will properly align margin and Guaranty Fund levels to the risks presented by Clearing Members and their customers. As a result, ICE Clear Europe is of the view that these changes are necessary and appropriate in furtherance of the Act and the Commission's regulations thereunder, including the financial resources and risk management requirements of Rule 17Ad–22.[8] Furthermore, ICE Clear Europe does not believe that the proposed changes, and any such resulting increase in margin or Guaranty Fund requirements, would significantly affect the ability of Clearing Members or other market participants to continue to clear CDS, consistent with the risk management requirements of the clearing house, or otherwise limit market participants' choices for selecting clearing services. For the foregoing reasons, the proposed changes do not, in ICE Clear Europe's view, impose any unnecessary or inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, CDS Clearing Members or Others

ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe. As noted above, ICE Clear Europe has consulted extensively with CDS Clearing Members and others in developing changes to the Decomp Model.

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 up to 90 days (i) as the Commission may designate 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.

[4] 15 U.S.C. 78q–1.

[5] 17 CFR 240.17Ad–22.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 240.17Ad–22(b).

[8] 17 CFR 240.17Ad–22.

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–ICEEU–2013–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2013–11. 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 such filings also will be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's Web site at *https://www.theice.com/publicdocs/regulatory_filings/ICEU_SEC_081313.pdf.*

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–ICEEU–2013–11 and should be submitted on or before September 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–20218 Filed 8–19–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70199; File No. SR–BATS–2013–036]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving a Proposed Rule Change To Introduce a Connectivity Option Through Points of Presence

August 14, 2013.

I. Introduction

On June 19, 2013, BATS Exchange, Inc. (''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to introduce a connectivity option through Points of Presence (PoPs). The proposed rule change was published for comment in the **Federal Register** on July 3, 2013.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange currently maintains a presence in two third-party data centers: (i) the primary data center where the Exchange's business is primarily conducted on a daily basis, and (ii) a secondary data center, which is predominantly maintained for business continuity purposes. Exchange participants, including participants trading on the Exchange and market data recipients, are required to connect directly to the Exchange at the primary or secondary data centers where the Exchange currently maintains servers. If an Exchange participant does not have a presence within these data centers, then the participant is required to obtain connectivity from the participant's location, or data center, to the data centers where the Exchange's servers are located. The Exchange is proposing to provide market participants with the ability to access the Exchange's network via physical ports at data center entry points, or PoPs, at data centers other than the Exchange's primary or secondary data center (''Remote Data Centers'').

PoP ports will be located at Remote Data Centers in order to provide participants connectivity to the Exchange. In the Notice, the Exchange represented that connectivity established via PoP ports will allow market participants to perform all of the operations that they would typically perform when connecting directly to the Exchange, including order entry and receipt of market data. Participants would establish a physical connection to a PoP port in the Remote Data Center, from which the Exchange would provide the requisite connectivity to allow participants to access the Exchange's servers.[4]

Participants that do not maintain a presence in either of the Exchange's data centers must currently establish connectivity to such data centers themselves through third party telecommunications providers. By making PoP entry points available, the Exchange is reducing or eliminating the need for participants to contract themselves for third party connectivity located in the same data center as such PoP ports. The Exchange believes that some participants may choose to connect to the Exchange at a PoP location to the extent that the Exchange's service offering makes connecting to the Exchange in this manner more easily established or more cost effective. In the Notice, the Exchange suggested that the PoPs may be most attractive to smaller market participants that otherwise may not connect to the Exchange.

The Exchange proposes to provide the option to connect to the Exchange via PoPs to any member or non-member that has been approved to connect to the Exchange. Any member or non-member opting not to access the Exchange at a PoP location would still be able to access the Exchange in the existing data centers as they do currently.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[5] and the rules and regulations thereunder applicable to a national securities exchange. Additionally, in approving this proposed rule change, the Commission

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 69877 (June 27, 2013), 78 FR 40241 (''Notice'').

[4] The Exchange would contract with a third party telecommunications provider to supply connectivity to the Exchange to its participants.

[5] 15 U.S.C. 78f.

has considered the proposed rule's impact on efficiency, competition, and capital formation.[6] The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange notes that competition for customers and order flow amongst exchanges and other non-exchange market participants is considerable and that the Exchange is offering this new connectivity option to keep pace with changes in the industry and evolving customer needs. The Exchange further states that the offering is entirely optional and is geared towards attracting new customers, as well as retaining existing customers. Additionally, the Exchange has represented that it will make PoPs equally available to any Exchange member or non-member that has been approved to connect to the Exchange.[8] Finally, the Exchange does not believe that demand will exceed the capacity planned for PoP access. However, in the event that demand does exceed the capacity planned for PoP access, the Exchange represented that it would expand its infrastructure as necessary in order to meet demand.[9] For the reasons noted above, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–BATS–2013–036) be, and it hereby is, approved.

[6] *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* Notice, supra note 3, at 40242. The Exchange notes that this would include any Member, non-member service bureau that acts as a conduit for orders entered by Exchange Members, Sponsored Participant, or market data recipient. *Id.*

[9] *Id.*

[10] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–20203 Filed 8–19–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70193; File No. SR–NYSE–2013–56]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Changes to the Price List

August 14, 2013.

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 July 31, 2013, New York Stock Exchange LLC (the ''Exchange'' or ''NYSE'') 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to (i) add a new credit for agency cross trades, (ii) revise the fees for executions at the close, (iii) revise the fees for market at-the-close (''MOC'') and limit at-the-close (''LOC'') orders, (iv) revise the fees for Floor broker Discretionary e-Quotes (''d-Quotes''), and (v) revise the fees for certain other Floor broker transactions. The Exchange proposes to implement the fee changes effective August 1, 2013. 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 amend its Price List to (i) add a new credit for agency cross trades, (ii) revise the fees for executions at the close, (iii) revise the fees for MOC and LOC orders, (iv) revise the fees for d-Quotes, and (v) revise the fees for certain other Floor broker transactions. The proposed transaction fee changes described below apply to transactions in stocks with a per share stock price of $1.00 or more. The Exchange proposes to implement the fee changes effective August 1, 2013.

Agency Cross Trades

Currently, the Exchange does not charge member organizations a fee for agency cross trades (*i.e.,* a trade where a member organization has customer orders to buy and sell an equivalent amount of the same security). The Exchange proposes to offer a per share credit per transaction of $0.0003, which will be credited to both sides of the transaction.

Executions at the Close

Currently, the Exchange does not charge member organizations a fee for (i) executions at the close (except MOC and LOC orders) or (ii) Floor broker executions swept into the close. The Exchange proposes that if a member organization executes an average daily trading volume (''ADV'') on the Exchange during the billing month of at least 1,000,000 shares in (i) executions at the close (except MOC and LOC orders), and/or (ii) Floor broker executions swept into the close, then the Exchange will charge such member organization $0.0001 per share per transaction (charged to both sides).[3] Such executions will continue to be free of charge if the member organization

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For example, a fee would be charged if a member organization executed an ADV on the Exchange during the billing month of (1) 1,000,000 shares in executions at the close (excluding MOC and LOC orders), but had no Floor broker executions swept into the close; (2) 1,000,000 shares in Floor broker executions swept into the close, but had no other closing executions; or (3) 500,000 shares in executions at the close (excluding MOC and LOC orders) and 500,000 shares in Floor broker executions swept into the close.

executes an ADV on the Exchange during the billing month of fewer than 1,000,000 shares.

MOC and LOC Orders

Currently, the Exchange charges $0.00095 per share per transaction (charged to both sides) for all MOC and LOC orders unless a member organization meets a specified consolidated ADV in NYSE-listed securities during the billing month (''NYSE CADV''). Specifically, if a member organization executes an ADV of MOC and LOC activity on the Exchange in that month of at least 0.375% of NYSE CADV, then the Exchange charges $0.00055 per share per transaction (charged to both sides) for all MOC and LOC orders. The Exchange proposes to add an additional fee tier for MOC and LOC orders. The Exchange proposes to charge $0.00050 per share per transaction (charged to both sides) for all MOC and LOC orders from any member organization executing an ADV of MOC and LOC activity on the Exchange in the billing month of at least 0.575% of NYSE CADV.

Floor Broker d-Quotes

Currently, the Exchange charges $0.0005 per share per transaction for Floor broker d-Quotes that remove liquidity. The Exchange proposes to add an additional pricing tier for Floor broker d-Quotes. Specifically, the Exchange proposes to charge $0.0010 per share per transaction for all Floor broker d-Quotes that remove liquidity from any member organization executing an ADV of at least 500,000 shares in d-Quotes that remove liquidity from the Exchange in that month.

Other Floor Broker Transactions

Currently, Floor broker transactions (*i.e.* when taking liquidity from the Exchange) that are not otherwise specified in the Price List are charged $0.0024 per share per transaction. The Exchange proposes to lower this fee to $0.0022 per share per transaction. For Floor brokers that execute an ADV in such Floor broker transactions that is at least 10% more than their May 2013 ADV for such Floor broker transactions, the Floor broker transaction charge will be $0.0020 per share per transaction.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[5] 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 credit for agency cross trades is reasonable because such trades are typically large block orders, and providing a credit will encourage their submission to a public exchange, thereby promoting price discovery and transparency. The Exchange believes that the proposed credit is equitable and not unfairly discriminatory because all member organizations that engage in agency trading will be eligible to receive the credit, and all market participants will benefit from the price discovery and transparency provided for large block orders.

The Exchange believes that offering a new, lower fee tier for member organizations that execute a higher NYSE CADV of MOC and LOC orders is reasonable because it will incent member organizations to provide higher volumes of MOC and LOC orders, and higher volumes of MOC and LOC orders will contribute to the quality of the Exchange's closing auction and provide market participants 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 benefit all market participants.

The Exchange believes that it is reasonable to charge a fee of $0.0001 for executions at the close (other than MOC and LOC orders) and Floor broker executions swept into the close if a member organization executes an ADV of at least 1,000,000 such executions on a combined basis. The Exchange's closing auction is a recognized industry benchmark,[6] and member organizations receive a substantial benefit from the Exchange in obtaining an ADV of 1,000,000 or more such executions at the Exchange's closing price on a daily basis. In that respect, this fee increase is designed in part to offset the reduction in the Exchange's revenues from the fee reduction described in the preceding paragraph. The Exchange also believes that the proposed fee is equitable and not unfairly discriminatory. While member organizations that reach the threshold of an ADV of at least 1,000,000 combined executions are generally larger member organizations that are deriving a substantial benefit from this high volume of executions, the Exchange must nonetheless encourage liquidity from multiple sources. Allowing member organizations with lower execution volumes to continue to obtain executions at the close at no charge will encourage them to continue to send orders to the Exchange for the closing auction. The Exchange believes that the threshold it has selected will continue to incent order flow from multiple sources and help maintain the quality of the Exchange's closing auctions, which benefits all market participants.

The Exchange believes that the proposed d-Quote rate of $0.0010 per share for Floor brokers executing an ADV of at least 500,000 d-Quotes that remove liquidity from the Exchange is reasonable because a substantial benefit is derived from obtaining executions for such a high volume of d-Quotes. The Exchange believes that the proposed tier is equitable and not unfairly discriminatory. While Floor brokers that reach the threshold of an ADV of at least 500,000 combined executions are generally larger member organizations that are deriving a substantial benefit from this high volume of executions, the Exchange must nonetheless encourage liquidity from multiple sources. Allowing Floor brokers with lower execution volumes to continue to use d-Quotes to remove liquidity at the lower fee of $0.0005 will continue to incent order flow from multiple sources and help maintain the quality of order execution on the Exchange, which benefits all market participants. The Exchange further believes it is reasonable to continue to maintain d-Quote take rates that are lower than the take rate that applies to Floor broker transactions not otherwise specified on the Price List (*i.e.,* the proposed $.0022 and $0.0020 per share rates) because d-Quotes in particular encourage additional liquidity during the trading day and incent Floor brokers to provide additional intra-quote price improved trading, which contribute to the overall quality of the Exchange's market.

The Exchange believes that it is reasonable to lower the fees for Floor

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

broker transactions that take liquidity but are not otherwise specified in the Price List in light of the two proposed increases in other Floor broker fees. The Exchange also believes it is equitable and not unfairly discriminatory to continue to charge Floor brokers that take liquidity lower fees ($0.0022 or $0.0020 per share) than non-Floor brokers that take liquidity (which pay $0.0025 per share) because Floor brokers have slower access to the Exchange (via handheld technology) than non-Floor brokers and are prohibited from routing directly to other market centers from handheld devices, which prevents them from accessing any associated pricing opportunities that might exist at those away markets.

The Exchange believes that the lower Floor broker take liquidity fee of $0.0020 for take liquidity over the proposed 10% threshold 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 that it is reasonable to use May 2013 as the threshold date because that is the last month without exceptional market activity, such as an index rebalancing. Moreover, customer orders that take liquidity encourage liquidity providers to post in the expectation of having their own orders filled. Accordingly, the Exchange believes that it is equitable and not unfairly discriminatory to use pricing incentives, such as a reduced fee for taking liquidity, to encourage Floor brokers to increase their participation in the market by submitting their customers' liquidity taking orders to the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces in setting its fees and credits, as described below in the Exchange's statement regarding the burden on competition. For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[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.

Specifically, the Exchange believes the proposed credit for agency cross trades will provide an alternative to reporting them to FINRA's trade reporting facility and allow the Exchange to more effectively compete for market share. The proposed new fee for executions at the close and Floor broker executions swept into the close will only apply to member organizations that obtain high volumes of executions at the close on a daily basis; to date, such executions have been free, and the Exchange does not believe competition will be burdened by instituting a small fee for members that are obtaining a substantial benefit from these executions. Similarly, the Exchange does not believe that Floor brokers that are removing higher volumes of liquidity via d-Quotes from the Exchange would be burdened by paying a higher fee for such executions. The increases in these Floor broker fees in turn will be offset by the fee reductions for all other Floor broker transactions that take liquidity that are not otherwise specified in the Price List. The additional pricing tier for MOC and LOC orders reflect the need for the Exchange to adjust financial incentives to attract order flow.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[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–2013–56 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2013–56. 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

[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).

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–NYSE–2013–56 and should be submitted on or before September 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–20191 Filed 8–19–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70198; File No. SR–DTC–2013–09]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate Special Procedures for Securities Offered Pursuant to Regulation S, Category 3, Under the Securities Act of 1933

August 14, 2013.

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 July 31, 2013, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by DTC. DTC filed the rule change pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(f)(4)[4] thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to eliminate special procedures of DTC for securities offered pursuant to Regulation S[5] (''Reg S''), Category 3, under the Securities Act of 1933 (''Securities Act'').[6]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(i) DTC's Policy Statement on the Eligibility of Foreign Securities (the ''Policy'') sets forth the criteria and procedures for making the securities of foreign issuers (''Foreign Securities'') eligible for deposit and book-entry transfer through the facilities of DTC.[7] Foreign Securities eligible for book-entry services include those offered and sold without registration under the Securities Act[8]pursuant to Regulation S (''Reg S Securities'').[9] This includes Category 1 securities, Category 2 securities, and Category 3 securities as defined therein (''Category 1, 2, and 3 Securities'', respectively).[10] Category 3 of the primary offering safe harbor of Regulation S includes the equity securities of non-reporting foreign issuers with substantial U.S. market interest in the subject securities. In addition to an offshore transaction requirement and prohibition on directed selling efforts, further requirements might have to be met to qualify for the first safe harbor. The applicable requirements depend on the extent to which there is a nexus with the United States, with more stringent requirements applying the greater the need is for protection of U.S. investors. The spectrum ranges from Category 1, where the likelihood of the securities flowing back into the United States is least, to Category 3, where that likelihood is greatest.[11] This rule filing relates to a change in procedures for Category 3 Securities.

Historically, at the request of issuers in consideration of their own requirements for compliance with applicable law, Category 3 Securities held at DTC have been more tightly controlled than the other Categories. DTC accordingly required additional documentation from issuers for chills on deliveries of Category 3 Securities among Participants for a limited period in connection with the underwriting distribution of those securities. For the reasons described below, DTC hereby proposes to eliminate these additional requirements and the related chills.

Pursuant to the Policy noted above, Issuers and Participants are responsible to comply with the Securities Act and the rules and regulations of the Commission thereunder in any transaction in Foreign Securities through the facilities of DTC. Additionally, prior to securities being made eligible at DTC, issuers are required to deliver a Letter of Representations (''LOR'') to DTC which reflects the issuer's agreement to comply with the requirements set forth in DTC's Operational Arrangements (the ''OA'') with respect to securities it has issued that are held at DTC.[12] With respect to Reg S Securities, the LOR also includes a ''Reg S Rider'' with representations of the Issuer that, at the time of initial issuance, the securities were subject to applicable transfer restrictions but were eligible for transfer under Regulation

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] 17 CFR 230.901–230.905 and Preliminary Notes.

[6] 15 U.S.C. 77a *et seq.*

[7] For additional information please see the Policy as set forth in the DTC Rules. *See also* SEC Release No. 34–56277 (August 17, 2007), 72 FR 48709 (August 24, 2007) [File No. DR–DTC–2007–04] for the rule filing implementing the Policy.

[8] 15 U.S.C. 77a *et seq.*

[9] Regulation S provides an exemption from the Section 5 registration requirements of the Securities Act of 1933, as amended, for offerings made outside the United States by both U.S. and foreign issuers. A securities offering, whether private or public, made by an issuer outside of the United States in reliance on safe harbors provided under Regulation S need not be registered under the Securities Act. *See* 17 CFR 230.901–230.905 and Preliminary Notes.

[10] Category 1 of the primary offering safe harbor of Reg S includes the securities of foreign issuers for which there is no substantial U.S. market, securities being offered by foreign (or domestic) issuers in overseas directed offerings, securities of foreign governments and securities being offered by foreign issuers pursuant to employee benefit plans. Category 2 of the primary offering safe harbor of Reg S includes the equity securities of reporting foreign issuers, the debt securities of foreign (or domestic) reporting issuers, and the debt securities of nonreporting foreign issuers even if there is substantial U.S. market interest in the securities.

[11] *See* 17 CFR 230.903.

[12] The Operational Arrangements set forth the criteria for eligibility of securities for DTC services. See *www.dtcc.com* for a copy of the OA.

S.[13] In addition to the above, the Reg S Rider includes a further rider for Category 3 Securities (the ''Category 3 Rider''). The Category 3 Rider reflects the issuer's acknowledgement that the subject securities will be subject to a ''Deliver Order Chill'' [14] until DTC receives a notice from the issuer or agent that the chill should be removed (except that the chill may be temporarily lifted for certain transfers relating to depositary banks of certain non-U.S. clearing entities).[15]

The Category 3 Rider is a redundant statement of issuer's obligations under the applicable securities laws and DTC's Rules & Procedures and is generally no longer used efficiently or effectively by Issuers. Further, DTC is not responsible for issuer and Participant compliance with Reg S and is unable to determine whether the Category 3 chill is properly imposed or lifted. Also, the existence of a chill relating to the Category 3 Rider may preclude timely deliveries among Participants. For these reasons, DTC proposes to delete the Category 3 Rider to the Reg S LOR and to eliminate Category 3 Deliver Order Chills. As a conforming change to the OA, DTC will delete any reference to the Category 3 Reg S Rider.

(ii) The proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) [16] of the Securities Exchange Act of 1934, as amended (the ''Act''), and the rules and regulations thereunder applicable to DTC as it is designed to promote the prompt and accurate clearance and settlement of securities transactions. The rule filing will harmonize DTC's processes across Categories of Reg S Securities, reduce costs and operational burden associated with the imposition and lifting of Deliver Order Chills by DTC, and promote efficiency with respect to deliveries of affected securities, as applicable.

[13] Pursuant to its Rules & Procedures (including the OA), DTC does not in any way undertake, or have any responsibility, to monitor or ascertain the compliance of any transactions in the securities with any of the provisions of: (i) Rule 144A; (ii) of other exemptions from registration under the Securities Act or any other state or federal securities laws; or (iii) of offering documents. The Reg S Rider provides for the issuer's acknowledgement of DTC's role in this regard.

[14] A chill imposed by DTC automatically prevents processing of certain transactions among Participants.

[15] Specifically, the chill does not encompass deliveries via DTC's Deposit/Withdrawal at Custodian (DWAC) system in Participant accounts maintained by banks that act as depositaries for Clearstream S.A. and Euroclear.

[16] 15 U.S.C. 78q-1(b)(3)(F).

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact, or impose any burden, on competition since it relates solely to the elimination of a redundant procedure, which may create a processing burden for DTC, Participants, and issuers.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change will become effective pursuant to Section 19(b)(3)(A) [17] of the Act and paragraph (f)(4) of Rule 19b–4 [18] thereunder on a date to be announced by DTC via Important Notice. 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–DTC–2013–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2013–09. 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 filings also will be available for inspection and copying at the principal office of DTC. 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–DTC–2013–09 and should be submitted on or before September 10, 2013.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–20202 Filed 8–19–13; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(4).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70191; File No. SR–BYX–2013–026]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate Rule Related to CYCLE Routing

August 14, 2013.

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 August 1, 2013, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to eliminate Rule 11.13(a)(3)(A), which is the provision authorizing the CYCLE Routing option, effective as of September 3, 2013.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant 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 is proposing to eliminate Rule 11.13(a)(3)(A), which is the provision that authorizes the CYCLE Routing option. Few participants currently utilize the CYCLE Routing Option, and the Exchange is planning to decommission the functionality as of September 3, 2013. Therefore, the Exchange proposes this rule change to delete the language that authorizes this capability from its rules and hold the rule number in reserve.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] Specifically, the proposal is consistent with Section 6(b)(5) of the Act,[6] which requires exchange rules to promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange believes the proposed rule change fulfills these requirements because it eliminates language authorizing a functionality that the Exchange plans to decommission as of September 3, 2013. By removing reference to this soon-to-be retired functionality, the Exchange will avoid investor confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

BATS [sic] believes the proposal is consistent with Section 6(b)(8) of the Act[7] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will eliminate a Rule authorizing a functionality that will be decommissioned by the Exchange as of September 3, 2013. Thus, reference to this functionality will no longer serve a legitimate purpose. Accordingly, the Exchange does not believe that the proposed rule change will have any effect on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

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.

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–BYX–2013–026 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2013–026. 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

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(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)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and 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. The Exchange has satisfied this requirement.

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–BYX–2013–026 and should be submitted on or before September 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–20204 Filed 8–19–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70196; File No. SR–BATS–2013–043]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

August 14, 2013.

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 August 2, 2013, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') 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 Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members [5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on August 5, 2013.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant 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 modify pricing applicable to the Exchange's options platform (''BATS Options'') with respect to orders routed away by the Exchange and executed at a new options exchange—an affiliate of the International Securities Exchange, LLC (''ISE'') that will be called ''ISE Gemini.'' [6] ISE Gemini will commence trading on August 5, 2013.

BATS Options currently charges certain flat rates for routing to other options exchanges that have been placed into groups based on the approximate cost of routing to such venues. The grouping of away options exchanges is based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for routing (*i.e.,* clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, ''Routing Costs''). As explained below, the Exchange does not yet know what Routing Costs it will incur in connection with routing to ISE Gemini. Accordingly, the Exchange proposes to impose the same pricing for executions at ISE Gemini as are currently charged by the Exchange for orders routed to and executed at the NASDAQ Options Market (''NOM'') and NYSE Arca, Inc. (''ARCA'') in non-Penny Pilot Securities,[7] which is the most expensive routing category based on Routing Costs.

Based on applicable Routing Costs, the Exchange currently charges $0.90 per contract for Customer [8] orders and $0.95 per contract for Professional,[9] Firm, and Market Maker [10] orders executed at NOM and ARCA in non-Penny Pilot Securities. Although ISE Gemini has announced its launch as effective August 5, 2013, ISE Gemini has not released information regarding the prices it will charge for executions. Accordingly, because the Exchange is unable to determine its Routing Costs and does not wish to subsidize executions of orders routed to ISE Gemini, the Exchange proposes to initially place ISE Gemini (all securities) in the same category as NOM and ARCA with respect to non-Penny Pilot Securities. Thus, the Exchange proposes to charge $0.90 per contract for Customer orders and $0.95 per contract for Professional, Firm, and Market Maker orders executed at ISE Gemini.

In order to cover the cost of removing liquidity, including Routing Costs, in non-Penny Pilot Securities at NOM and ARCA, and for Professional Firm and Market Maker Orders executed at BX Options and C2, the Exchange currently charges a flat fee of $0.95 per contract for all executions of Directed ISOs routed to such options exchanges in such securities. The Exchange proposes to charge this same rate, $0.95 per contract, for all executions of Directed ISOs routed to ISE Gemini. This is the same fee as the Exchange proposes to charge for executions of Professional,

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[6] The Commission notes that the entity referred to herein as ''ISE Gemini'' is Topaz Exchange, LLC d/b/a ISE Gemini.

[7] The Exchange currently charges different fees and provides different rebates depending on whether an options class is an options class that qualifies as a Penny Pilot Security pursuant to Exchange Rule 21.5, Interpretation and Policy .01 or is a non-penny options class. Certain other options exchanges also have different pricing for Penny Pilot Securities and non-Penny Pilot Securities. Accordingly, the Exchange's routing fees also vary with respect to the fees for orders executed at such exchanges.

[8] As defined on the Exchange's fee schedule, a ''Customer'' order is any transaction identified by a Member for clearing in the Customer range at the Options Clearing Corporation (''OCC''), except for those designated as ''Professional''.

[9] The term ''Professional'' is defined in Exchange Rule 16.1 to mean any person or entity that (A) is not a broker or dealer in securities, and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[10] As defined on the Exchange's fee schedule, the terms ''Firm'' and ''Market Maker'' apply to any transaction identified by a member for clearing in the Firm or Market Maker range, respectively, at the Options Clearing Corporation (''OCC'').

Firm and Market Maker orders routed to ISE Gemini generally. The fee of $0.95 per contract is slightly more than the Exchange's proposed fee of $0.90 per contract for Customer orders executed at ISE Gemini.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[11] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[12] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

As explained above, the Exchange generally attempts to approximate the cost of routing to other options exchanges, including other applicable costs to the Exchange for routing. The Exchange believes that a pricing model based on approximate Routing Costs is a reasonable, fair and equitable approach to pricing. In this context, the Exchange believes that its proposal to adopt fees for routing to a new options exchange that has not disclosed its fees to market participants is fair, equitable and reasonable because it will allow the Exchange to commence routing to such exchange without incurring losses from such routing. The Exchange believes that its flat fee structure for orders routed to various venues is a fair and equitable approach to pricing, as it provides certainty with respect to execution fees at groups of away options exchanges. Under its flat fee structure, taking all costs to the Exchange into account once fees at ISE Gemini are publically available, the Exchange may operate at a gain or loss for orders routed to and executed at ISE Gemini. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing routing services to such exchanges. The Exchange also believes that the proposed fee structure for orders routed to and executed at this away options exchange is fair and equitable and not unreasonably discriminatory in that it applies equally to all Members. Although the Routing Costs to the Exchange for routing orders routed to ISE Gemini will likely be less than $0.90 or $0.95 per contract, the Exchange believes it is a reasonable fee in that it will allow the Exchange to maintain a relatively simple routing fee structure while it assesses the actual Routing Costs that it incurs for routing to ISE Gemini.

As explained above, the Exchange has also proposed to impose fees for Directed ISOs to ISE Gemini at the same rate as its standard removal fee for Professional, Firm and Market Maker orders executed at ISE Gemini. The Exchange believes that this proposed fee is fair, equitable and reasonable because the fee will allow the Exchange to recoup and cover the costs of providing routing services to ISE Gemini. The Exchange also believes that the proposed fee structure for Directed ISOs routed to and executed at ISE Gemini is fair and equitable and not unreasonably discriminatory in that it applies equally to all Members.

The Exchange reiterates that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels to be excessive or providers of routing services if they deem fee levels to be excessive. Finally, the Exchange notes that it constantly evaluates its routing fees, including profit and loss attributable to routing, as applicable, in connection with the operation of a flat fee routing service, and would consider future adjustments to the proposed pricing structure to the extent it was recouping a significant profit from routing to ISE Gemini.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes will assist the Exchange in recouping costs for routing orders to other options exchanges on behalf of its participants. The Exchange also notes that Members may choose to mark their orders as ineligible for routing to avoid incurring routing fees.[13] As stated above, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels to be excessive or providers of routing services if they deem fee levels to be excessive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments 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) of the Act [14] and paragraph (f) of Rule 19b–4 thereunder.[15] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–BATS–2013–043 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–BATS–2013–043. 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

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

[13] *See* BATS Rule 21.1(d)(8) (describing ''BATS Only'' orders for BATS Options) and BATS Rule 21.9(a)(1) (describing the BATS Options routing process, which requires orders to be designated as available for routing).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f).

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–BATS–2013–043 and should be submitted on or before September 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–20200 Filed 8–19–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70194; File No. SR–C2–2013–030]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

August 14, 2013.

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 August 1, 2013, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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 Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule.[3] More specifically, the Exchange is proposing to make changes to the section ''Regulatory Fees.'' Currently under the Exchange's Regulatory Fees, the Exchange charges a $100 session fee to registered persons at the Exchange for a continuing education (''CE'') requirement that is outlined in Exchange Rule 9.3A.[4] The Exchange is now proposing to add a $60 session fee for those individuals that only have the Proprietary Trader (''Series 56'') registration.

Exchange Rule 3.4 requires Permit Holders that are individuals (''PHIs'') and associated persons of Permit Holders to take a qualification examination to register with the Exchange.[5] In addition, Exchange Rule 3.4.03 requires each person in an associated person status to satisfy the CE requirements set forth in Rule 9.3A. Exchange Rule 9.3A requires all PHIs to complete the Regulatory Element of the CE program beginning with the occurrence of ''their second registration anniversary date and every three years thereafter or as otherwise prescribed by the Exchange.'' [6] Recently, the Exchange amended Rule 9.3A to enumerate the different CE programs offered by the Exchange including the S501 Series 56 Proprietary Trader Continuing Education Program (''S501'').[7] The Exchange is now proposing to outline the necessary fees associated with the Regulatory Element of the S501.

The Exchange has determined that these changes are necessary to administer the Series 56 CE program. Specifically, the $60 session fee will be used to fund the CE program administered to PHIs that have a Series 56 registration [8] and are required to complete the S501. The $60 session fee is less than the $100 session fee (currently in the Exchange's fee schedule) for the S101 General Program for Series 7 registered persons (''S101'') as the Series 7 examination is a more comprehensive examination, and, thus, the CE is more comprehensive as well. Thus, the Exchange believes the $60 fee is reasonable and proportional fee based upon the programming of the CE. In addition, the $60 fee will only be used for the administration of the CE versus

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 2.21 [sic], which states, ''fee [sic] payable by Participants shall be fixed form [sic] time to time by the Exchange.''

[4] *See* Exchange Rules Chapter 9 which states, ''The rules contained in CBOE Chapter IX, as such rules may be in effect from time to time, shall apply to C2 and are hereby incorporated into this Chapter.'' *See also,* Securities Exchange Act Release No. 61152 (December 10, 2009), 74 FR 66699, 66709–10 (December 16, 2009) (In the Matter of the Application of C2 Options Exchange, Incorporated for Registration as a National Securities Exchange Findings, Opinion, and Order of the Commission (File No. 10–191). In the Order, the Commission granted C2's request for exemption, pursuant to Section 36 of the Securities Exchange Act of 1934 (the ''Act''), from the rule filing requirements of Section 19(b) of the Act with respect to the rules that C2 proposed to incorporate by reference. The exemption was conditioned upon C2 providing written notice to its members whenever CBOE proposes to change a rule that C2 has incorporated by reference. In the Order, the Commission stated its belief that ''this exemption is appropriate in the public interest and consistent with the protection of investors because it will promote more efficient use of Commission and SRO resources by avoiding duplicative rule flings based on simultaneous changes to identical rules sought by more than one SRO.'' C2 satisfied this requirement with respect to the recently amended 9.3A by posting a copy of the CBOE rule filing (SR–CBOE–2013–076) on C2's rule filing Web site at the same time the CBOE rule filing was posted to the CBOE rule filing Web site. The C2 rule filing Web site is located at: *http://www.c2exchange.com/Legal/RuleFilings.aspx.* By posting CBOE rule filings to C2's rule filing Web site that amend C2's rule by reference, the Exchange provides its members with notice of the proposed rule change so that they have an opportunity to comment on it.

[5] *See* Exchange Rule 3.4(a)(1).

[6] *See* Exchange Rule 9.3A(a).

[7] See Securities Exchange Act Release No. 34–70027 (July 23, 2013) (SR–CBOE–2013–076) (immediately effective rule change to specify the different CE requirements for registered persons based upon their registration with the Exchange).

[8] Both individuals that have successfully passed the Series 56 examination and individuals that have had the examination waived by the Exchange are required to take the S501.

the S101 which utilizes the $100 fee for both development and administration. The costs associated with the development costs of the S501 are included in the examination fee.

Because the S501 CE element is separate and different from the CE already administered, the proposed change would put PHIs and associated persons of Permit Holders on notice of the associated fees. The proposed fee would allow the Exchange to fund the S501 which is more tailored to the Series 56 registration. Also, the Exchange believes other exchanges will be assessing the same fee for this CE program. The proposed changes are to take effect on August 19, 2013.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [10] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation [sic] transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [11] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change is equitable and not unfairly discriminatory as it is allocated to all individuals with a Series 56 registration which is required under Exchange Rule 3.4(a)(1). In addition, the fee is reasonable as it [sic] lower than the previously assessed CE fee because the S501 is more limited than the S101, and the fee is only intended to recoup the costs of the administration of the program. Also, the Exchange believes other exchanges will be assessing the same fee for this CE program. The Exchange believes the proposed rule change will protect investors and the public interest by covering the administration of the program and allow the Exchange to tailor a CE fee for the Series 56. This allows the Exchange to better prevent fraudulent and manipulative acts and practices because the CE will properly educate PHIs in the topics of securities laws and other rules and help them to comply with those laws and rules.

Finally, the Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[12] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the individuals with a Series 56 registration with the Act, the rules and regulations thereunder, and the rules of the Exchange. The proposed rule change is designed to fund the administration of the S501, and, more specifically, to help more closely cover the costs of educating individuals that hold a Series 56 registration. Thus, the proposed changes will help the Exchange to enforce compliance of its Permit Holders with the Act and Exchange rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 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. In particular, the proposed rule change will not impose any burden on intermarket competition as it will merely serve to aid the Exchange in fulfilling its obligations as a Self-Regulatory Organization by further funding the administration of the new CE. The proposed rule change will not impose any burden on intramarket competition as all PHIs and associated persons of Permit Holders are required to pass a qualification exam as outline [sic] in Rule 3.4(a)(1) and fulfill a CE requirement as outlined in Rule 9.3A. In addition, the Exchange believes other exchanges will be assessing the same fee for this CE program.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii) of the Act[13] and subparagraph (f)(2) of Rule 19b–4[14] thereunder.

At any time within 60 days of the filing of this 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 will institute proceedings 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–C2–2013–030 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2013–030. 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

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *Id.*

[12] 15 U.S.C. 78f(b)(1).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

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–C2–2013–030 and should be submitted on or before September 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–20195 Filed 8–19–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70190; File No. SR–BATS–2013–042]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

August 14, 2013.

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 August 1, 2013, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') 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 Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on August 2, 2013.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant 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 modify the ''Equities Pricing'' section of its fee schedule effective August 2, 2013, in order to modify pricing related to executions that occur on EDGA EXCHANGE, Inc. (''EDGA'') through the Exchange's TRIM routing strategies.[6] EDGA implemented certain pricing changes effective August 1, 2013, including modification from a rebate of $0.0003 per share when removing liquidity to a rebate of $0.0002 per share when removing liquidity. To maintain a direct pass through of the applicable economics for executions at EDGA, the Exchange proposes to rebate $0.0002 per share for an order routed through its TRIM routing strategies and executed on EDGA, rather than the rebate of $0.0003 per share that it currently offers for such orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[7] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that the proposed changes to certain of the Exchange's non-standard routing fees and strategies are equitably allocated, fair and reasonable, and non-discriminatory in that they are equally applicable to all Members and are designed to mirror the rebate applicable to the execution if such routed orders were executed directly by the Member at EDGA Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution is extremely competitive, Members may readily opt to disfavor the Exchange's routing services if they believe that alternatives offer them better value. For orders routed through the Exchange and executed at EDGA Exchange, the proposed fee change is designed to equal the rebate that a Member would have received if such routed orders would have been executed directly by a Member at EDGA Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b-4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[6] As defined in BATS Rule 11.13(a)(3)(G).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

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) of the Act [9] and paragraph (f) of Rule 19b–4 thereunder.[10] 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–BATS–2013–042 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–BATS–2013–042. 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–BATS–2013–042 and should be submitted on or before September 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–20192 Filed 8–19–13; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b-4(f).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 13720 and # 13721]

Wisconsin Disaster # WI–00046

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Wisconsin (FEMA–4141–DR), dated 08/08/2013.

Incident: Severe storms, flooding, and mudslides.

Incident Period: 06/20/2013 through 06/28/2013.

DATES: *Effective Date:* 08/08/2013.

Physical Loan Application Deadline Date: 10/07/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 05/08/2014.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/08/2013, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Ashland; Bayfield; Crawford; Grant; Iowa; Richland; Saint Croix; Vernon, and the Red Cliff Band of Lake Superior Chippewa in Bayfield County.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.875
Non-Profit Organizations without Credit Available Elsewhere	2.875
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.875

The number assigned to this disaster for physical damage is 13720B and for economic injury is 13721B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2013–20199 Filed 8–19–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 13645 and # 13646]

Iowa Disaster Number IA–00054

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Iowa (FEMA—4126—DR), dated 07/02/2013.

Incident: Severe storms, tornadoes, and flooding.

Incident Period: 05/19/2013 through 06/14/2013.

Effective Date: 08/08/2013.

Physical Loan Application Deadline Date: 09/03/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 04/02/2014.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of IOWA,

dated 07/02/2013, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Worth, Howard.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2013–20198 Filed 8–19–13; 8:45 am]

BILLING CODE 8025–01–P

U.S. SMALL BUSINESS ADMINISTRATION

Annual Meeting of the Regional Small Business Regulatory Fairness Boards Office of the National Ombudsman

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

ACTION: Notice of open meeting of the Regional Small Business Regulatory Fairness Boards.

SUMMARY: The SBA, Office of the National Ombudsman is issuing this notice to announce the location, date, time and agenda for the annual board meeting of the ten Regional Small Business Regulatory Fairness Boards (RegFair Boards). The meeting is open to the public.

DATES: The meeting will be held on the following dates: Monday, August 19, 2013 from 8:30 a.m. to 5:00 p.m. EST and on Tuesday, August 20, 2013 from 8:30 a.m. to 3:30 p.m. EST.

ADDRESSES: The meeting will be at the Holiday Inn, 550 C Street SW., Washington, DC 20024, in the Discovery I Conference Room located on the 1st Floor.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public; however advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Regulatory Fairness Boards must contact Yolanda Swift, Acting National Ombudsman for Regulatory Enforcement Fairness, Office of the National Ombudsman, 409 3rd Street SW., Suite 7125, Washington, DC 20416 by August 16, 2013 by fax or email in order to be placed on the agenda, by phone (202) 205–6918, fax (202) 401–6128 or email *Yolanda.swift@sba.gov*.

Additionally, if you need accommodations because of a disability or require additional information, please contact José Méndez, Case Management Specialist, Office of the National Ombudsman, 409 3rd Street SW., Suite 7125, Washington, DC 20416, phone (202) 205–6178, fax (202) 401–2707, *email jose.mendez@sba.gov*.

For more information on the Office of the National Ombudsman, please visit our Web site at *www.sba.gov/ombudsman*.

SUPPLEMENTARY INFORMATION: Pursuant to the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121), Sec. 222, SBA announces the meeting of the Regional Regulatory Fairness Boards. The Regional Small Business Regulatory Fairness Boards are tasked to advise the National Ombudsman on matters of concern to small businesses relating to enforcement activities of agencies and to report on substantiated instances of excessive enforcement actions against small business concerns, including any findings or recommendations of the Board as to agency enforcement practice or policy.

The purpose of the meeting is to discuss the following topics related to the Regional Small Business Regulatory Fairness Boards:

—RegFair Board Member Duties, Responsibilities, and Standards of Conducting Briefing
—Securing Comments and the Comment Process
—Remarks by Esther Vassar, Former National Ombudsman
—Planning for and Logistics of Hearings and Roundtables
—Success by Working Together to Address Regulatory Issues for Small Businesses
—Remarks by Natalia Olson, SBA Region III Regional Administrator
—Remarks by Sara Lipscomb, SBA General Counsel
—Discussion of the Draft Annual Report to Congress and Comments from ONO Team and RegFair Board Members
—Board Member Travel Reimbursement
—Remarks by Dr. Winslow Sargeant, Chief Counsel, SBA Office of Advocacy
—Remarks by Karen Gordon Mills, SBA Administrator

Dated: August 14, 2013.

Christopher R. Upperman,

SBA Committee Management Officer.

[FR Doc. 2013–20297 Filed 8–16–13; 11:15 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Reopen the public comment period for 78 FR 42817.

SUMMARY: The U.S. Small Business Administration is reopening the public comment period for the notice to rescind a class waiver of the Nonmanufacturer Rule for *All Other Miscellaneous Electrical Equipment and Component Manufacturing,* North American Industry Classification System (NAICS) code 335999, Product Service Code (PSC) 5999, made available for public comment on July 17, 2013 (78 FR 42817). The public comment period for the notice to rescind this class waiver closed on August 1, 2013, and, because of a public request to reopen, is reopened and will close on September 19, 2013.

The public comment period for the notice was initially published on July 17, 2013 (78 FR 42817,) and closed on August 1, 2013. A small business manufacturer requested the public comment period be reopened to allow submission of additional data. The SBA reviewed the request to reopen the public comment period and decided to grant the request. The public comment period shall reopen with an end September 19, 2013.

FOR FURTHER INFORMATION CONTACT: You may submit comments, identified by docket number SBA–2013–17035, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Edward Halstead, Procurement Analyst, 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 include within your comment confidential business information (CBI) as defined in the Privacy and Use Notice/User Notice at *www.Regulations.gov* and you do not want that information disclosed, you must submit the comment by either Mail or Hand Delivery. In the submission, you must highlight the information that you consider is CBI and explain why you believe this information should be withheld as confidential. SBA will make a final determination, in its sole discretion, as to whether the information is CBI and therefore will be published or withheld.

FOR FURTHER INFORMATION CONTACT: Edward Halstead, (202) 205–9885, *Edward.halstead@sba.gov.*

SUPPLEMENTARY INFORMATION:

Section 8(a)(17) of the Small Business Act (the Act), 15 U.S.C. 637(a)(17), and

SBA's implementing regulations generally require that recipients of Federal supply contracts that are set aside for small businesses, Small Disabled Veteran Owned Small Business, Women-Owned Small Businesses, or Participants in the SBA's 8(a) Business Development Program provide the product of a domestic small business manufacturer or processor if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. 13 CFR 121.406(b). The Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market. In order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract or received a contract from the Federal government within the last 24 months. 13 CFR 121.1202(c). SBA defines ''class of products'' as an individual subdivision within a North American Industry Classification System (NAICS) Industry Number as established by the Office of Management and Budget in the NAICS Manual. 13 CFR 121.1202(d). In addition, SBA uses Product Service Codes (PSCs) to further identify particular products within the NAICS code to which a waiver would apply. SBA may then identify a specific item within a PSC and NAICS code to which a class waiver would apply.

On July 17, 2013, SBA published a notice in the **Federal Register** announcing that SBA was considering rescinding a class waiver of the Nonmanufacturer Rule for *All Other Miscellaneous Electrical Equipment and Component Manufacturing,* NAICS code 355999, based on information submitted by a small business manufacturer of *All Other Miscellaneous Electrical Equipment and Component Manufacturing,* that has done business with the Federal government within the previous 24 months. 78 FR 42817. The public comment period for the notice to rescind the class waiver under this NAICS code closed on August 1, 2013. This notice announces a reopening of the public comment period until September 19, 2013.

Ajoy K. Sinah,

Deputy Director, Office of Government Contracting.

[FR Doc. 2013–20206 Filed 8–19–13; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2013–0022]

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/Department of the Treasury/Internal Revenue Service (IRS))—Match Number 1016

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a renewal of an existing computer matching program that will expire on June 30, 2013.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with IRS.

DATES: We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869 or writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Kirsten J. Moncada,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Notice of Computer Matching Program, SSA with the Department of the Treasury/Internal Revenue Service (IRS)

A. PARTICIPATING AGENCIES

SSA and IRS

B. PURPOSE OF THE MATCHING PROGRAM

The purpose of this matching program is to set forth the terms under which IRS will disclose to us certain return information for use in verifying eligibility for, and the correct amount of, benefits provided under title XVI of the Social Security Act (Act) to qualified aged, blind, and disabled individuals; and Federally administered supplementary payments as described in section 1616(a) of the Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law (Pub. L.) 93–66).

C. AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM

The legal authority is Public Law 98–369, Deficit Reduction Act of 1984, which requires agencies administering certain Federally-assisted benefit programs to use certain information to ensure proper distribution of benefit payments.

6103(l)(7) of the Internal Revenue Code (26 U.S.C. 6103(l)(7)) authorizes IRS to disclose return information with respect to unearned income to Federal,

State and local agencies administering certain Federally-assisted benefit programs under the Act.

1631(e)(1)(B) of the Act (42 U.S.C. 1383(e)(1)(B)) requires verification of Supplemental Security Income (SSI) eligibility and benefit amounts with independent or collateral sources. This section of the Act also provides that the ''Commissioner of Social Security shall, as may be necessary, request and utilize information available pursuant to 6103(l)(7) of the Internal Revenue Code of 1986'' for purposes of Federally administered supplementary payments of the type described in 1616(a) of the Act (including payments pursuant to an agreement entered into under 212(a) of Pub. L. 93–66).

The legal authority for the disclosure of our data under this agreement is 1106 of the Act (42 U.S.C. 1306), (b)(3) of the Privacy Act (5 U.S.C. 552a(b)(3)), and the regulations and guidance promulgated under these provisions.

D. CATEGORIES OF RECORDS AND PERSONS COVERED BY THE MATCHING PROGRAM

SSA will provide IRS with identifying information with respect to applicants for and recipients of title XVI benefits as described in Section I.B. of this agreement from the Supplemental Security Income Record and Special Veterans Benefit (SSR), SSA/OASSIS 60–0103, as published at 71 FR 1795 (January 11, 2006).

SSA will disclose certain information to IRS on aged, blind, or disabled individuals who are applicants for or recipients of SSI benefits and/or Federally-administered State supplementary payments. IRS will match SSA's information with its Information Return Master File (IRMF) and disclose to SSA return information with respect to unearned income of applicants or recipients identified by SSA. The information IRS discloses to SSA is limited to unearned income reported on information returns.

IRS will extract return information with respect to unearned income from the IRMF, Treas./IRS 22.061, as published at 77 FR 47946–947 (August 10, 2012), through the Disclosure of Information to Federal, State and Local Agencies (DIFSLA) program.

E. INCLUSIVE DATES OF THE MATCHING PROGRAM

The effective date of this matching program is July 1, 2013 provided that the following notice periods have lapsed: 30 days after publication of this notice in the **Federal Register** and 40 days after notice of the matching program is sent to Congress and OMB. The matching program will continue for 18 months from the effective date and, if both agencies meet certain conditions, it may extend for an additional 12 months thereafter.

[FR Doc. 2013–20214 Filed 8–19–13; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 8425]

30-Day Notice of Proposed Information Collection: Application for Additional Visa Pages or Miscellaneous Passport Services

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to September 19, 2013.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to U.S. Department of State, Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support, 2201 C Street NW., Washington, DC 20520, who may be reached on (202) 485–6510 or at *PPTFormsOfficer@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Application for Additional Visa Pages or Miscellaneous Passport Services.
- *OMB Control Number:* 1405–0159.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support, Program Coordination Division (CA/PPT/S/PMO/PC).
- *Form Number:* DS–4085.
- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents:* 68,559 respondents per year.
- *Estimated Number of Responses:* 68,559 responses per year.
- *Average Time per Response:* 20 minutes per response.
- *Total Estimated Burden Time:* 22,853 hours per year.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection:

Under 22 United States Code (U.S.C.) Section 211a et seq. and Executive Order 11295 (August 5, 1966), the Secretary of State has authority to issue U.S. passports to U.S. citizens and non-citizen nationals. When the bearer of a valid U.S. passport applies for the addition of visa pages to that passport, the Department must confirm the applicant's identity and eligibility to receive passport services before the Department can return the passport to the applicant with additional visa pages. Form DS–4085 requests information that is necessary to determine whether the applicant is eligible to receive passport services in accordance with the requirements of Title III of the Immigration and Nationality Act (INA) (U.S.C. sections 1402–1504), the regulations at 22 CFR parts 50 and 51, and other applicable authorities.

Methodology:

Passport Services collects information from U.S. citizens and non-citizen

nationals when they complete and submit the Application for Additional Visa Pages or Miscellaneous Passport Services. Passport applicants can either download the DS–4085 from the internet or obtain one from an Acceptance Facility/Passport Agency. The form must be completed, signed, and submitted along with the applicant's valid U.S. passport.

The Department estimates that these changes will not result in an increase in the current burden time of 20 minutes.

Dated: August 8, 2013.

Brenda S. Sprague,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2013–20316 Filed 8–19–13; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 8419]

International Security Advisory Board (ISAB) Meeting Notice

Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App § 10(a)(2), the Department of State announces a meeting of the International Security Advisory Board (ISAB) to take place on September 19, 2013, at the Department of State, Washington, DC.

Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App § 10(d), and 5 U.S.C. 552b(c)(1), it has been determined that this Board meeting will be closed to the public because the Board will be reviewing and discussing matters properly classified in accordance with Executive Order 13526. The purpose of the ISAB is to provide the Department with a continuing source of independent advice on all aspects of arms control, disarmament, political-military affairs, international security and related aspects of public diplomacy. The agenda for this meeting will include classified discussions related to the Board's studies on current U.S. policy and issues regarding arms control, international security, nuclear proliferation, and diplomacy.

For more information, contact Richard W. Hartman II, Executive Director of the International Security Advisory Board, U.S. Department of State, Washington, DC 20520, telephone: (202) 736–4290.

Dated: August 7, 2013.

Richard W. Hartman, II,

Executive Director, International Security Advisory Board, U.S. Department of State.

[FR Doc. 2013–19631 Filed 8–19–13; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 8420]

Foreign Affairs Policy Board Meeting Notice

Closed Meeting

In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the Department of State announces a meeting of the Foreign Affairs Policy Board to take place on September 9, 2013, at the Department of State, Washington, DC.

The Foreign Affairs Policy Board reviews and assesses: (1) Global threats and opportunities; (2) trends that implicate core national security interests; (3) tools and capacities of the civilian foreign affairs agencies; and (4) priorities and strategic frameworks for U.S. foreign policy. Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App § 10(d), and 5 U.S.C. 552b(c)(1), it has been determined that this meeting will be closed to the public as the Board will be reviewing and discussing matters properly classified in accordance with Executive Order 13526.

For more information, contact Samantha Raddatz at (202) 647–2972.

Dated: August 5, 2013.

Andrew McCracken,

Designated Federal Officer.

[FR Doc. 2013–19628 Filed 8–19–13; 8:45 am]

BILLING CODE 4710–10–P

TENNESSEE VALLEY AUTHORITY

[Meeting No. 13–03]

Sunshine Act Meetings

The TVA Board of Directors will hold a public meeting on August 22, 2013, in the TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee. Members of the public may comment on any agenda item or subject at a public listening session which begins at 8:30 a.m. (ET). Registration of speakers at the public listening session is required. Speakers may preregister at *www.tva.com/abouttva/board/,* or register on-site until 15 minutes before the public listening session begins. Preregistered speakers will address the Board first. Following the public listening session, the meeting will be called to order to consider the agenda items listed below. TVA management will answer questions from the news media following the Board meeting.

STATUS: Open.

Agenda

New Business

1. Actions by Consent Agenda
   - A. Approval of minutes of April 18, 2013, Board meeting.
   - B. Health savings account contract.
   - C. Pharmacy benefits manager contract.
   - D. Appointment of assistant corporate secretaries.
2. Chairman's report.
3. Report from President and CEO.
4. Report of the Finance, Rates, and Portfolio Committee.
   - A. FY 2014 financial plan and budget.
   - B. Rate actions.
   - C. Financing authority.
   - D. Hydro-modernization contract.
   - E. Transmission construction contract.
   - F. Economic Development—Valley Commitment Program.
5. Report of the Nuclear Oversight Committee.
   - A. Amendment of Commitment to Nuclear Safety policy.
6. Report of the People and Performance Committee.
   - A. Employee incentive programs and goals.
   - B. Committee charter amendment.
7. Report of the Audit, Risk, and Regulation Committee.
   - A. FY 2014 external auditor selection.
   - B. Amendment to the Retail Rate Review Process.
8. Report of the External Relations Committee.
   - A. Revision to Policy on Nonconforming Loads.
   - B. Regional Energy Resource Council membership.

FOR MORE INFORMATION: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: August 15, 2013.

Ralph E. Rodgers,

General Counsel and Secretary.

[FR Doc. 2013–20354 Filed 8–16–13; 11:15 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA–2013–0317]

Hours of Service of Drivers: National Ready Mixed Concrete Association; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from the National Ready Mixed Concrete Association (NRMCA) for an exemption from the 30-minute rest break provision of the Agency's hours-of-service regulations for commercial motor vehicle (CMV) drivers. The requested exemption would apply industry-wide to all motor carriers and CMV drivers operating ready-mixed concrete trucks. Due to the nature of their operation, NRMCA believes that compliance with the 30-minute rest break rule is extremely difficult due to the numerous variables associated with delivery (e.g., weather, customer readiness, traffic) and becomes even more problematic and burdensome during periods of peak demand at construction sites. FMCSA requests public comment on NRMCA's application for exemption.

DATES: Comments must be received on or before September 19, 2013.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2013–0317 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the *Public Participation* heading below. Note that all comments received will be posted without change to www.regulations.gov, including any personal information provided. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov, and follow the online instructions for accessing the dockets, or go to the street address listed above.

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

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Bus and Truck Standards and Operations; Telephone: 202–366–4325. Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the FMCSRs. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

NRMCA Application for an Exemption

On December 27, 2011 (76 FR 81133), FMCSA published a final rule amending its hours-of-service (HOS) regulations for drivers of property-carrying commercial motor vehicles (CMVs). The final rule adopted several changes to the HOS regulations, including a new provision requiring drivers to take a rest break during the work day under certain circumstances. Drivers may drive a CMV only if 8 hours or less have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes. FMCSA did not specify when drivers must take the 30-minute break, but the rule requires that they wait no longer than 8 hours after the last off-duty or sleeper-berth period of that length or longer to take the break. Drivers who already take shorter breaks during the work day could comply with the rule by taking one of the shorter breaks and extending it to 30 minutes. The new requirement took effect on July 1, 2013.

NRMCA seeks an exemption from the 30-minute rest break provision in 49 CFR 395.3(a)(3)(ii). The requested exemption would apply industry-wide to all motor carriers and drivers operating ready-mixed concrete trucks. This industry currently operates roughly 68,000 ready-mixed concrete trucks, driven by approximately 68,000 drivers. Approximately 5 percent of ready-mixed concrete deliveries involve interstate commerce. NRMCA requests the exemption because it states that ready-mixed concrete drivers almost always spend less than half of their on-duty time actually driving the CMV. Most of the industry's drivers operate 8 hours per day, with 10 hours or more per day being a common schedule during the busy season.

NRMCA states that, on average, a typical driver will carry 4 loads per day, each of roughly 2 hours round-trip, and drive an average of only 14 miles one-way away from the ready-mixed concrete plant. The remainder of the driver's ''duty day'' is spent at the plant waiting to be dispatched, at the jobsite waiting for the contractor to receive the concrete, unloading concrete, and performing various other administrative duties.

According to NRMCA, concrete is a perishable product. Once the

ingredients that comprise ready-mixed concrete have been mixed (or batched) there is a ''window'' of roughly 90 minutes before the concrete hardens and by specification is no longer usable. NRMCA indicated the American Society for Testing and Materials (ASTM) *Standard Specification for Ready Mixed Concrete* requires delivery and unloading within 90 minutes. Thus, once a delivery is started it must be completed quickly or the concrete may harden in the CMV, causing monetary damage to the company and potentially violating a delivery contract. An uninterrupted delivery is also necessary in case a driver is made to wait a long period of time on a construction site before unloading, which is a common occurrence. NRMCA states that adding a 30-minute rest break to this process risks the integrity of the industry's delivered product, jeopardizing delivery contracts and creating the very real potential to cost concrete companies thousands of dollars in additional costs.

NRMCA believes the exemption would achieve the same level of safety provided by the rule requiring the 30-minute rest break because ready-mixed concrete drivers routinely receive numerous 10-, 15-, and 20-minute breaks throughout the work day. It is common for these drivers to take breaks of up to 2 hours resulting from weather or unforeseen construction delays. NRMCA claims that these frequent breaks work to keep the drivers awake and alert throughout the course of their work day. One additional 30-minute break—as is now required by the FMCSRs—would not add an additional level of safety for their operation. A copy of NRMCA's exemption application is available for review in the docket for this notice.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment on NRMCA's application for an exemption from certain provisions of the driver's HOS regulations in 49 CFR part 395. The Agency will consider all comments received by close of business on September 19, 2013. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on: August 14, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–20325 Filed 8–19–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–24015; FMCSA–2011–0024; FMCSA–2011–0102]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 16 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective August 16, 2013. Comments must be received on or before September 19, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–2006–24015; FMCSA–2011–0024; FMCSA–2011–0102], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 16 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 16 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are the following:

Juan D. Adame (TX)
Joel A. Cabrera (FL)
Rick A. Ervin (NM)
Ronald R. Fournier (NY)

Thomas W. Kent (IN)
Craig C. Lowry (MT)
Adolph L. Romero (FL)
Larry D. Warneke (WA)
Stanley C. Anders (SD)
Sherman W. Clapper (ID)
Eric Esplin (UT)
Ronald D. Jackman II (NV)
Gerald Kortesmaki (MN)
Robert J. MacInnis (MA)
Rodney W. Sukalski (MN)
Lonnie Wendinger (MN)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 16 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (71 FR 14566; 71 FR 30227; 73 FR 27014; 75 FR 50799; 76 FR 17481; 76 FR 28125; 76 FR 29022; 76 FR 44082). Each of these 16 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by September 19, 2013.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 16 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket numbers FMCSA–2006–24015; FMCSA–2011–0024; FMCSA–2011–0102 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2006–24015; FMCSA–2011–0024; FMCSA–2011–0102 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Issued on: August 9, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–20332 Filed 8–19–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2001–9258; FMCSA–2007–27515; FMCSA–2009–0121; FMCSA–2010–0354; FMCSA–2010–0413]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 16 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective August 16, 2013. Comments must be received on or before September 19, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–2001–9258; FMCSA–2007–27515; FMCSA–2009–0121; FMCSA–2010–0354; FMCSA–2010–0413], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 16 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 16 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are the following:

Robert L. Brown (IL)
Barry G. Church (OH)
Steven L. Forristall (WI)
Charles H. Lefew (VA)
Steve J. Morrison (ID)
Joseph B. Peacock (NC)
Charles A. Terry (AL)
Steven L. Thomas (IN)
Nicholas Cafaro (NY)
John J. Davis (SC)
Rocky D. Gysberg (MN)
John W. Locke (TX)
Earl R. Neugerbauer (CO)
Robert B. Steinmetz (OR)
James M. Tennyson (MD)
Daniel A. Wescott (CO)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 16 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (66 FR 17743; 66 FR 33990; 68 FR 35772; 70 FR 33937; 72 FR 21313; 72 FR 32703; 72 FR 32705; 74 FR 26461; 74 FR 26464; 74 FR 34630; 75 FR 72863; 76 FR 1493; 76 FR 2190; 76 FR 12408; 76 FR 34135; 76 FR 37168; 76 FR 37173). Each of these 16 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that

extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by September 19, 2013.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 16 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket numbers FMCSA–2001–9258; FMCSA–2007–27515; FMCSA–2009–0121; FMCSA–2010–0354; FMCSA–2010–0413 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2001–9258; FMCSA–2007–27515; FMCSA–2009–0121; FMCSA–2010–0354; FMCSA–2010–0413 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Issued on: August 9, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–20333 Filed 8–19–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0111; Notice 2]

Michelin North America, Inc., Moot of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of petition mootness.

SUMMARY: Michelin North America, Inc. (Michelin),[1] has determined that certain BF Goodrich brand tires manufactured between June 12, 2011 and April 21, 2012, do not fully comply with paragraph S5.5(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles.* Michelin has filed an appropriate report dated July 16, 2012, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Michelin submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of Michelin's petition was published, with a 30-day public comment period, on February 11, 2013, in the **Federal Register** (78 FR 9774). One comment was received from the Michelin stating that after further research it believes that it filed the petition in error because the described condition is not a noncompliance. To view the petition and all supporting documents log onto the Federal Docket Management System Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2012–0111.''

FOR FURTHER INFORMATION CONTACT: For further information on this decision, contact Mr. Abraham Diaz, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5310, facsimile (202) 366–7002.

Tires Involved: Affected are approximately 1,300 g-Force Sport Comp2, size 205/45ZR17 88W, BF Goodrich brand tires manufactured between June 12, 2011 and April 21, 2012.

Noncompliance: Michelin originally explained that the noncompliance is that, due to a mold labeling error, the subject tires sidewall markings on the opposite side of the full DOT TIN are lacking the designation ''Extra Load'' and thus do not conform to the requirements of 49 CFR 571.139 paragraph S5.5(b).

Rule Text: Paragraph S5.5 of FMVSS No. 139 requires in pertinent part:

S5.5 Tire markings. Except as specified in paragraphs (a) through (i) of S5.5, each tire must be marked on each sidewall with the information specified in S5.5(a) through (d)

[1] Michelin North America, Inc. is a manufacturer of replacement equipment and is registered under the laws of the state of New York.

and on one side-wall with the information specified in S5.5(e) through (i) according to the phase-in schedule specified in S7 of this standard. The markings must be placed between the maximum section width and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area that is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width that falls within that area, those markings must appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings must be in letters and numerals not less than 0.078 inches high and raised above or sunk below the tire surface not less than 0.015 inches . . .

(b) The tire size designation as listed in the documents and publications specified in S4.1.1 of this standard . . .

Summary of Michelin's Analysis: Michelin's original analysis stated its belief that while the noncompliant tires lack the marking ''Extra Load'' on the sidewall opposite of the full DOT TIN as required by FMVSS No. 139, it is inconsequential as it relates to motor vehicle safety for the following reasons:

1. The subject tires meet or exceed all applicable FMVSS performance standards.

2. Associated with the designation ''Extra Load'' is a higher maximum load and a possible higher maximum inflation pressure. Each of the subject tires has been marked on both sidewalls with a maximum load of 560 kg (1235 lbs) which, under the ETRTO standard, corresponds to an Extra Load (or Reinforced) tire of the size 205/45ZR17 and load index of 88. The maximum inflation pressure marked beneath each maximum load is 340 kPa (50 psi), which is consistent with an Extra Load tire.

3. Per FMVSS No. 139 and ETRTO standards, the marking ''Extra Load'' alerts the installer to the fact that the subject tire has a higher load carrying capacity than the standard load tire of the same dimension. In the absence of the ''Extra Load'' mark, an installer could fit the subject tire to a vehicle which requires a standard load tire. But since the subject tire has the performance capacity of an Extra Load tire, the load requirement of the standard load fitment would be exceeded.

4. The subject tire is also a directional tire for which there is no intended outboard sidewall, that is, the preferred direction of rotation is marked on the sidewall, and when the subject tires are mounted on a vehicle, the left side tires on the vehicle will show the full DOT TIN and no Extra Load designation after the tire size. While this may cause some confusion for the operator, the marked maximum load capacity of 560 kg (1235 lbs) will be visible on the outboard facing sidewall of all four tires, and will confirm the same maximum load capacity of each fitted tire.

5. All other sidewall markings are consistent with the requirements of FMVSS No. 139 for a passenger category tire and the non-conformity of the subject tires has no impact on the load carrying capacity of the tire on a motor vehicle, nor on motor vehicle safety.

Michelin has additionally informed NHTSA that it has corrected future production and that all other tire labeling information is correct.

In the comment that Michelin posted to the petition docket, it contends that after further research that it now believes that a noncompliance does not exist and that its petition is consequently moot. Michelin based this belief on previous statements published by NHTSA that it contends show that ''extra load'' is an ''optional load identification'' and is therefore considered as separate from the mandatory ''tire size designation.''

In summation, Michelin believes that its original determination that there is a noncompliance in the subject tires as described in the subject petition was in error and that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 was unnecessary and should be considered to be moot.

NHTSA Decision: Inconsequential noncompliance petitions filed under 49 CFR part 556 are only valid in situations where there is a noncompliance with a FMVSS. In its comment to the petition docket, Michelin explained that its petition was submitted in error and should be considered as moot.

Based on Michelin's description of the subject tire molding error NHTSA has determined that the alleged tire sidewall labeling noncompliance described in the subject petition is not a noncompliance with FMVSS No. 139 or any other applicable FMVSS because the ''extra load'' label is an ''optional load identification'' and not a mandatory ''tire size designation.'' Therefore, this petition is moot and no further action on the petition is warranted.

Authority: (49 U.S.C. 30118, 30120: Delegations of authority at CFR 1.95 and 501.8)

Issued On: August 7, 2013.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–20235 Filed 8–19–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Revision of an Approved Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a revision to this information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Currently, the OCC is soliciting comment concerning a revision to a regulatory reporting requirement for national banks and Federal savings associations titled, ''Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of $50 Billion or More under the Dodd-Frank Wall Street Reform and Consumer Protection Act.''

DATES: Comments must be received by October 21, 2013.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0311, 400 7th St. SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274 or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 400 7th St. SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

FOR FURTHER INFORMATION CONTACT: You can request additional information from Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers, (202) 649–5490, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th St. SW., Washington, DC 20219. In addition, copies of the templates referenced in this notice can be found on the OCC's

Web site under News and Issuances (*http://www.occ.treas.gov/tools-forms/forms/bank-operations/stress-test-reporting.html*).

SUPPLEMENTARY INFORMATION: The OCC is requesting comment on the following revision to an approved information collection:

Title: Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of $50 Billion or More under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

OMB Control No.: 1557–0311.

Description: Section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act [1] (Dodd-Frank Act) requires certain financial companies, including national banks and Federal savings associations, to conduct annual stress tests [2] and requires the primary financial regulatory agency [3] of those financial companies to issue regulations implementing the stress test requirements.[4] A national bank or Federal savings association is a ''covered institution'' and therefore subject to the stress test requirements if its total consolidated assets are more than $10 billion. Under section 165(i)(2), a covered institution is required to submit to the Board of Governors of the Federal Reserve System (Board) and to its primary financial regulatory agency a report at such time, in such form, and containing such information as the primary financial regulatory agency may require.[5] On October 9, 2012, the OCC published in the **Federal Register** a final rule implementing the section 165(i)(2) annual stress test requirement.[6] This rule describes the reports and information collections required to meet the reporting requirements under section 165(i)(2). These information collections will be given confidential treatment (5 U.S.C. 552(b)(4)).

In 2012, the OCC first implemented the reporting templates referenced in the final rule. *See* 77 FR 49485 (August 16, 2012) and 77 FR 66663 (November 6, 2012). The OCC is now revising them as described below.

The OCC intends to use the data collected to assess the reasonableness of the stress test results of covered institutions and to provide forward-looking information to the OCC regarding a covered institution's capital adequacy. The OCC also may use the results of the stress tests to determine whether additional analytical techniques and exercises could be appropriate to identify, measure, and monitor risks at the covered institution. The stress test results are expected to support ongoing improvement in a covered institution's stress testing practices with respect to its internal assessments of capital adequacy and overall capital planning.

The OCC recognizes that many covered institutions with total consolidated assets of $50 billion or more are required to submit reports using CCAR reporting form FR Y–14A.[7] The OCC also recognizes the Board has a proposal to modify the FR Y–14A out for comment and, to the extent practical, the OCC will keep its reporting requirements consistent with the Board's FR Y–14A in order to minimize burden on covered institutions.[8] Therefore, the OCC is proposing to revise its reporting requirements to remain consistent with the Board's proposed FR Y–14A for covered institutions with total consolidated assets of $50 billion or more.

Proposed Revisions to Reporting Templates for Institutions With $50 Billion or More in Assets

The proposed revisions to the DFAST–14A reporting templates consist of adding data items, deleting data items, and redefining existing data items. These proposed changes would (1) Provide additional information to greatly enhance the ability of the OCC to analyze the validity and integrity of firms' projections, (2) improve comparability across firms, and (3) increase consistency between the FR Y–14A reporting templates and DFAST–14A reporting templates. The OCC has conducted a thorough review of proposed changes and believes that the incremental burden of these changes is justified given the need for these data to properly conduct the OCC's supervisory responsibilities related to the stress testing.

Summary Schedule

The OCC proposes making a number of changes to the Summary Schedule to better assess covered institutions' calculation of risk-weighted assets and certain other items detailed below.

Risk Weighted Assets (RWA) and Regulatory Capital Related to Basel III

On July 9, 2013, the OCC approved a joint final rule that will revise and replace the OCC's risk-based and leverage capital requirements to be consistent with agreements reached by the Basel Committee on Banking Supervision in ''Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems'' (Basel III).[9] The revisions include implementation of a new definition of regulatory capital, a new common equity tier 1 minimum capital requirement, a higher minimum tier 1 capital requirement, and, for banking organizations subject to the Advanced Approaches capital rules, a supplementary leverage ratio that incorporates a broader set of exposures in the denominator measure. In addition, the rule will amend the methodologies for determining risk-weighted assets and introduce disclosure requirements that would apply to top-tier banking organizations domiciled in the United States with $50 billion or more in total assets.

Due to the timing of this proposal, the Dodd-Frank Act stress test, and the capital rulemaking, the OCC considered several options for the timing and scope of the proposal to collect information related to the proposed capital rulemaking. After careful consideration of the various options, the OCC determined that proposing the following revisions at this time would enable the OCC to collect these data while minimizing the burden to the industry.

Revisions to Capital Worksheet

To accommodate changes in the capital regime, the OCC proposes replacing the current Capital worksheet with three worksheets (General, Advanced Approaches, and Revised Capital worksheets) that incorporate the items of the current Capital worksheet and add or revise items to collect projections depending on which capital regime is applicable to the covered institution at any given point in the projection horizon. The General Capital worksheet would be required for all covered institutions for all projection quarters until the revised definition of capital becomes effective for the covered institution. The Advanced Approaches Capital worksheet would be required for covered institutions that have exited parallel run and are subject to the Advanced Approaches capital rules.

Proposed General Capital Worksheet

On the General Capital worksheet, the OCC proposes adding 9 line items that collect detail on the additions and adjustments to tier 1 capital that result

[1] Public Law 111–203, 124 Stat. 1376, July 2010.

[2] 12 U.S.C. 5365(i)(2)(A).

[3] 12 U.S.C. 5301(12).

[4] 12 U.S.C. 5365(i)(2)(C).

[5] 12 U.S.C. 5365(i)(2)(B).

[6] 77 FR 61238 (October 9, 2012).

[7] *http://www.federalreserve.gov/reportforms.*

[8] 78 FR 38033, June 25, 2013.

[9] *http://www.occ.gov/news-issuances/news-releases/2013/nr-occ-2013-110.html.*

in the calculation of total risk-based capital under the general risk-based capital rules. The OCC also proposes revising the description of the item collecting data on taxes paid in previous years to refer to the current year, one year ago, and two years ago, instead of specific years.

Proposed Advanced Approaches Capital Worksheet

On the Advanced Approaches Capital worksheet, the OCC proposes adding or revising six items in the tier 1 capital section to collect data consistent with the definition of tier 1 capital under the Advanced Approaches Rule (12 CFR part 3, Appendix C). The OCC also proposes adding 13 items to collect detail on the additions and adjustments to tier 1 capital that result in the calculation of total risk-based capital.

Proposed Revised Capital Worksheet

On the Revised Capital worksheet, the OCC proposes revising 49 items under the header ''Regulatory Capital'' to collect data elements consistent with the Basel III definition of capital, as well as an associated ''Exceptions Bucket'' for information necessary to calculate certain deductions from capital. For all three Capital worksheets, the OCC proposes to add one item to confirm whether the filing institution is internationally active, which affects the calculation of deferred-tax assets.

Addition of RWA Worksheets

To accommodate the eventual collection of RWA as outlined in the rulemakings, the OCC proposes to add two RWA worksheets: RWA General and RWA Advanced. The items in the two worksheets correspond to the general risk-based capital rules and Standardized and Advanced Approaches. As proposed, the reporting requirements for these schedules would be as follows:

1. All covered institutions would be required to submit projections on the General worksheet for all projection quarters, where applicable. Covered institutions would be required to complete the General RWA section for all projection quarters until the Standardized Approach becomes the applicable risk-based capital requirement. At that time (January 1, 2014 for Advanced Approaches institutions, January 1, 2015 for all other covered institutions) institutions would be required to report items in the Standardized Approach section. The Memoranda for Derivative Contracts section would collect notional principal amounts by type of derivative contracts for all quarters.

2. Covered institutions subject to market risk capital requirements would be required to report items in the Market RWA section of the applicable RWA worksheet, using methodologies outlined in that rule.

3. Covered institutions that have exited parallel run prior to the beginning of DFAST 2014 will be required to submit projections on the Advanced Approaches RWA worksheet for all projection quarters.

4. Institutions that have exited parallel run which are subject to the Advances Approaches rule would be required to report items in the Advanced Approaches Credit Risk and Operational Risks sections for all quarters. These institutions would be required to report items in the Revised Advanced Approaches section for all applicable quarters and these institutions would still be required to complete the General RWA worksheet in order to calculate minimum risk-based capital requirements per the Advanced Approaches rule.

Proposed General RWA Worksheet

The proposed General RWA worksheet, which is composed of 69 items, would collect RWA as calculated under the general risk-based capital framework and the standardized approach, when applicable.

Proposed Advanced RWA Worksheet

The proposed Advanced RWA worksheet, which would be composed of 68 items, would collect RWA projections as calculated under the Advanced Approaches rule.

In addition to the above proposed changes to the Capital worksheet, the OCC proposes changes to several other worksheets in the Summary Schedule as described below.

Current Balance Sheet Worksheet

On the Balance Sheet worksheet, the OCC proposes adding two items to the Securities section, three items to the Other Assets section, two items to the Deposits section, and two items to the Liabilities section to better align this schedule with other regulatory reports to provide better insight into historical behavior of respondents' assets and liabilities. In addition, the OCC proposes to revise the definition of one item, Accumulated other comprehensive income (AOCI), in the covered institution equity capital section. This item would now be estimated by all covered institutions using the conditions specified in the applicable macroeconomic scenario, rather than under the trading shock.

Securities Available-For-Sale (AFS) Market Shock Worksheet

Consistent with the redefinition of AOCI in the balance sheet worksheet, the OCC proposes renaming this worksheet to Securities AFS OCI by Portfolio. This worksheet would collect quarterly projections of other comprehensive income (OCI) related to fair-value gains and losses on AFS securities that are based on the conditions specified in the applicable macroeconomic scenario.

PPNR Net Interest Income Worksheet

On the PPNR Net Interest Income worksheet, the OCC proposes redefining the information collected in this worksheet to include all assets, including nonaccrual loans which were previously reported in the PPNR metrics worksheet. Covered institutions would be expected to include in the supporting documentation a breakout of the major categories of nonaccrual loans relevant to their own institution. The OCC proposes expanding detail on covered institution holdings of securities to better understand the underlying dynamics of securities balances and interest income by breaking out data items for Treasury and Agency debt, residential mortgage-backed securities issued by government agencies, and all other securities. Similarly, the OCC proposes redefining the information collected in this worksheet to include all liability balances and adding one item to capture other liabilities that fall outside the existing liability types reported.

To reduce burden on reporting institutions, the existing breakout of commercial and industrial loans into small business loans and other loans would be collapsed into one item.

PPNR Metrics Worksheet

Where applicable, the aforementioned changes to the PPNR Net Interest Income worksheet would also be reflected in the PPNR Metrics worksheet. In addition, the OCC would modify, delete, and add several items to better understand how PPNR projections compare to historical trends.

Finally, the OCC proposes adding four footnote items to allow the OCC to better assess covered institution PPNR projections. Outside of the worksheets named above, the OCC is proposing minor changes to the Balance Sheet, Retail Balance & Loss Projections, Securities OTTI Methodology, Securities OTTI by Portfolio, Securities AFS Market Shock, Securities Market Value Sources, OpRisk, and PPNR Projections worksheets.

Basel III Schedule

The OCC proposes adding a line item to the Capital Composition worksheet to capture deductions related to insurance underwriting subsidiaries, which will enable more precise calculations of regulatory capital. The OCC also proposes revising the General and Advanced Approaches RWA worksheets to align with certain changes made to the Summary Schedule. Specifically, the OCC proposes adding to the General RWA worksheet a ''RWA per Standardized Approach'' section, which would collect credit RWA using methodologies under the revised standardized approach.

Counterparty Schedule

The OCC proposes eliminating the aggregate worksheets EE Profile by Ratings and Credit Quality by Rating from the Counterparty Schedule and expanding the collection of the counterparty specific worksheets CP CVA by Top 200 CVA, EE Profile by CP, and Credit Quality by CP to capture the top counterparties that account for 95% of credit valuation adjustment (CVA). This expansion in scope is driven by the need to close the sometimes significant gap between the CVA of the top 200 counterparties and the covered institution's total CVA and to capture exposures to counterparties that are significantly large in other dimensions, but which are currently excluded from the top 200 by CVA. Additionally, the OCC proposes adding an additional worksheet that collects the top 20 counterparties by Securities Financing Transactions and Repo exposure to account for counterparty exposures other than derivatives. Finally, the OCC proposes adding columns on the worksheets of the template as appropriate to collect stressed counterparty data based on the Adverse and Severely Adverse scenarios as part of the stress testing process. In addition, the OCC proposes amending the scope of the respondents to the DFAST–14A CCR schedule and Trading and CCR worksheets of the DFAST–14A Summary schedule to include any company that the OCC may require to complete these schedules under 12 CFR 46.4.

Type of Review: Revision.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 20.

Estimated Total Annual Burden: 9,600 hours.

The OCC recognizes that the Board has estimated 67,021 hours for bank holding companies to prepare the Summary, Counterparty credit risk, Basel III and Capital reporting schedules submitted for the FR Y–14. The OCC believes that the systems covered institutions use to prepare the FR Y–14 reporting templates will also be used to prepare the reporting templates described in this notice. Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 15, 2013.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2013–20247 Filed 8–19–13; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Members of Senior Executive Service Performance Review Boards

AGENCY: Internal Revenue Service (IRS), Department of the Treasury (Treasury).

ACTION: Notice.

SUMMARY: The purpose of this notice is to publish the names of those IRS employees who will serve as members on IRS's Fiscal Year 2013 Senior Executive Service (SES) Performance Review Boards.

DATES: This notice is effective September 1, 2013.

FOR FURTHER INFORMATION CONTACT: Debbie Salisbury, IRS, 1111 Constitution Avenue NW., Room 2410, Washington, DC 20224, (202) 622–4116.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members to the IRS's SES Performance Review Boards. The names and titles of the executives serving on the boards are as follows:

Elizabeth Tucker, Deputy Commissioner for Operations Support

David P. Alito, Deputy Commissioner for Operations, Wage and Investment (W&I)

Peggy A. Bogadi, Commissioner, Wage and Investment (W&I)

Lauren Buschor, Associate Chief Information Officer (CIO), Enterprise Operations, Information Technology (IT)

Carol A. Campbell, Director, Return Preparer Office, Deputy Commissioner for Services and Enforcement (DCSE)

Robin L. Canady, Director, Strategy and Finance (W&I)

Daniel B. Chaddock, Associate CIO, Enterprise Services (IT)

Rebecca A. Chiaramida, Director, Privacy, Governmental Liaison and Disclosure (PGLD)

James P. Clifford, Director, Compliance (W&I)

Debra A. Cunn, Executive Director, Business Modernization, Taxpayer Advocate Service (TAS)

Monica H. Davy, Executive Director, Office of Equity, Diversity and Inclusion, Office of the Commissioner

Paul D. DeNard, Deputy Commissioner, Domestic, Large Business and International (LB&I)

Faris R. Fink, Commissioner, Small Business/Self-Employed (SB/SE)

David M. Fisher, Chief Risk Officer and Senior Advisor to the Commissioner, Office of the Commissioner

Carl T. Froehlich, Associate CIO, Strategy and Planning (IT)

Julieta Garcia, Director, Customer Assistance, Relationships and Education (W&I)

Silvana G. Garza, Deputy CIO, Operations (IT)

Rena C. Girinakis, Executive Director, Systemic Advocacy (TAS)

William T. Grams, Chief of Staff, Office of the Commissioner

David A. Grant, Chief, Agency-Wide Shared Services (AWSS)

Darren J. Guillot, Director, Enterprise Collection Strategy (SB/SE)

Patricia J. Haynes, Deputy Chief Criminal Investigation, Criminal Investigation (CI)

Shenita L. Hicks, Director, Examination (SB/SE)

Debra S. Holland, Deputy Commissioner for Support (W&I)

Robert L. Hunt, Director, Collection (SB/SE)

Robin DelRey Jenkins, Director, Office of Business Modernization (SB/SE)

Michael D. Julianelle, Deputy Commissioner, Tax Exempt and Government Entities (TEGE)

Gregory E. Kane, Deputy Chief Financial Officer, Chief Financial Office (CFO)
David A. Krieg, IRS Human Capital Officer, Human Capital Office (HCO)
Pamela J. LaRue, Chief Financial Officer (CFO)
Heather C. Maloy, Commissioner, Large Business and International (LB&I)
Stephen L. Manning, Deputy CIO, Strategy/Modernization (IT)
Rosemary D. Marcuss, Director, Research, Analysis and Statistics (RAS)
C. Andre Martin, Executive Director, Investigative and Enforcement Services (CI)
Rajive K. Mathur, Director, Online Services, Online Services (OLS)
Terence V. Milholland, Chief Technology Officer/Chief Information Officer (IT)
Debra L. Nelson, Director, Management Services (IT)
Nina E. Olson, National Taxpayer Advocate (TAS)
Jodell L. Patterson, Director, Return Integrity and Correspondence Services (W&I)
Ruth Perez, Deputy Commissioner, Small Business/Self-Employed (SB/SE)
Rene S. Schwartzman, Business Modernization Executive (W&I)
Verline A. Shepherd, Associate CIO, User and Network Services (IT)
Nancy A. Sieger, Associate CIO, Applications Development (IT)
Dean R. Silverman, Senior Advisor to the Commissioner (Compliance Analytics Initiatives), Office of the Commissioner
Marla L. Somerville, Associate CIO, Affordable Care Act—Program Management Office (IT)
David W. Stender, Associate CIO, Cybersecurity (IT)
Peter J. Stipek, Director, Customer Accounts Services (W&I)
Kathryn D. Vaughan, Director, Campus Compliance Services (SB/SE)
Peter C. Wade, Associate CIO, Enterprise IT Program Management Office (IT)
Richard Weber, Chief, Criminal Investigation (CI)
Matthew A. Weir, Deputy National Taxpayer Advocate (TAS)
Kirsten B. Wielobob, Deputy Chief Appeals, Appeals (AP)

This document does not meet the Treasury's criteria for significant regulations.

Dated: August 13, 2013.

Beth Tucker,

Deputy Commissioner for Operations Support, Internal Revenue Service.

[FR Doc. 2013–20211 Filed 8–19–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Proposed Information Collection (Access to Care Dialysis Pilot Survey and Interview); Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to evaluate the VA Dialysis Pilot program for the treatment of End Stage Renal Disease (ESRD) to improve access to dialysis care for Veterans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 21, 2013.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Cynthia Harvey-Pryor, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *cynthia.harvey-pryor@va.gov*. Please refer to ''OMB Control No. 2900–NEW (Access to Care Dialysis Pilot Survey and Interview)'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870 or fax (202) 495–5397.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

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

Titles: Access to Care Dialysis Pilot Survey and Interview, VA Form 10–10067.

a. Access to Care Questionnaire, VA Form 10–10067.

b. Access to Care Semi-Structured Interview Guide.

OMB Control Number: 2900–NEW (Access to Care Dialysis Pilot Survey and Interview).

Type of Review: New collection.

Abstract: The Access to Care assessment will provide an independent evaluation and analysis of barriers and facilitators that Veterans may experience while accessing the pilot VA-operated freestanding outpatient dialysis clinics. The information will be used to evaluate the performance of each pilot VA-operated free-standing dialysis clinic across the domains of quality of care; patient satisfaction; access to dialysis care; and cost.

Affected Public: Individuals or households.

Estimated Annual Burden: 50.

Estimated Average Burden per Respondent: 75 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 40.

Dated: August 15, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Species Status for the Austin Blind Salamander and Threatened Species Status for the Jollyville Plateau Salamander Throughout Their Ranges; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2012–0035; 4500030113]

RIN 1018–AY22

Endangered and Threatened Wildlife and Plants; Determination of Endangered Species Status for the Austin Blind Salamander and Threatened Species Status for the Jollyville Plateau Salamander Throughout Their Ranges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered species status for the Austin blind salamander (*Eurycea waterlooensis*) and threatened species status for Jollyville Plateau salamander (*Eurycea tonkawae*) under the Endangered Species Act of 1973 (Act), as amended. The effect of this regulation is to conserve these salamander species and their habitats under the Act. This final rule implements the Federal protections provided by the Act for these species.

DATES: This rule becomes effective September 19, 2013.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/southwest/es/AustinTexas/*. Comments and materials received, as well as supporting documentation used in preparing this final rule is available for public inspection, by appointment, during normal business hours, at U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Rd., Suite 200, Austin, TX 78758; by telephone 512–490–0057; or by facsimile 512–490–0974. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. Listing a species as an endangered or threatened species can only be completed by issuing a rule.

This rule lists the Austin blind salamander as an endangered species and the Jollyville Plateau salamander as a threatened species under the Act.

The basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. We have determined that the Austin blind salamander is an endangered species and the Jollyville Plateau salamander is a threatened species under the Act due to threats faced by the species both now and in the foreseeable future from Factors A, D, and E.

*Peer review and public commen*t. We sought comments from independent specialists to ensure that our designation is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on our listing proposal. We also considered all comments and information received during the comment period.

Background

Previous Federal Action

The Austin blind salamander was included in nine Candidate Notices of Review (67 FR 40657, June 13, 2002; 69 FR 24876, May 4, 2004; 70 FR 24870, May 11, 2005; 71 FR 53756, September 12, 2006; 72 FR 69034, December 6, 2007; 73 FR 75176, December 10, 2008; 74 FR 57804, November 9, 2009; 75 FR 69222, November 10, 2010; 76 FR 66370, October 26, 2011). The listing priority number has remained at 2 throughout the reviews, indicating that threats to the species were both imminent and high in impact. In addition, on May 11, 2004, the Service received a petition from the Center for Biological Diversity to list 225 species we previously had identified as candidates for listing in accordance with section 4 of the Act, including the Austin blind salamander.

The Jollyville Plateau salamander was petitioned to be listed as an endangered species on June 13, 2005, by Save Our Springs Alliance. Action on this petition was precluded by court orders and settlement agreements for other listing actions until 2006. On February 13, 2007, we published a 90-day petition finding (72 FR 6699) in which we concluded that the petition presented substantial information indicating that listing may be warranted. On December 13, 2007, we published the 12-month finding (72 FR 71040) on the Jollyville Plateau salamander, which concluded that listing was warranted, but precluded by higher priority actions. The Jollyville Plateau salamander was subsequently included in all of our annual Candidate Notices of Review (73 FR 75176, December 10, 2008; 74 FR 57804, November 9, 2009; 75 FR 69222, November 10, 2010; 76 FR 66370, October 26, 2011). Throughout the four reviews, the listing priority number has remained at 8, indicating that threats to the species were imminent, but moderate to low in impact. On September 30, 2010, the Jollyville Plateau salamander was petitioned to be emergency listed by Save Our Springs Alliance and Center for Biological Diversity. We issued a petition response letter to Save Our Springs Alliance and Center for Biological Diversity on December 1, 2011, which stated that emergency listing a species is not a petitionable action under the Administrative Procedure Act or the Act; therefore, we treat a petition requesting emergency listing solely as a petition to list a species under the Act.

On August 22, 2012, we published a proposed rule to list as endangered and designate critical habitat for the Austin blind salamander, Georgetown salamander (*Eurycea naufragia*), Jollyville Plateau salamander, and Salado salamander (*Eurycea chisholmensis*) (77 FR 50768). That proposal had a 60-day comment period, ending October 22, 2012. We held a public meeting and hearing in Round Rock, Texas, on September 5, 2012, and a second public meeting and hearing in Austin, Texas, on September 6, 2012. On January 25, 2013, we reopened the public comment period on the August 22, 2012, proposed listing and critical habitat designation; announced the availability of a draft economic analysis; and an amended required determinations section of the proposal (78 FR 9876).

Section 4(b)(6) of the Act and its implementing regulation, 50 CFR 424.17(a), requires that we take one of three actions within 1 year of a proposed listing: (1) Finalize the proposed listing; (2) withdraw the proposed listing; or (3) extend the final determination by not more than 6 months, if scientists knowledgeable about the species substantial disagreement regarding the sufficiency

or accuracy of the available data relevant to the determination, for the purposes of soliciting additional data.

The public comments we have received indicate substantial disagreement regarding the sufficiency or accuracy of the available data that is relevant to our determination of the proposed listing of the Georgetown and Salado salamanders. Therefore, in consideration of these disagreements, we are publishing a 6-month extension of final determination for the Georgetown and Salado salamanders elsewhere in today's **Federal Register**. With this 6-month extension, we will make a final determination on the proposed rule for the Georgetown and Salado salamanders no later than February 22, 2014.

On the other hand, more research has been conducted, and, therefore, more is known about the life history, population trends, and threats to the Austin blind and Jollyville Plateau salamanders. Although there may be some disagreement among scientists knowledgeable about the Austin blind and Jollyville Plateau salamanders, the disagreement is not substantial enough to extend the final determination for these species. Therefore, this rule constitutes our final determination to list the Austin blind and Jollyville Plateau salamanders as an endangered and threatened species, respectively.

Species Information

Taxonomy

The Austin blind and Jollyville Plateau salamanders are neotenic (do not transform into a terrestrial form) members of the family Plethodontidae. Plethodontid salamanders comprise the largest family of salamanders within the Order Caudata, and are characterized by an absence of lungs (Petranka 1998, pp. 157–158). The Jollyville Plateau salamander has very similar external morphology. Because of this, the Jollyville Plateau salamander was previously believed to be the same species as the Georgetown and Salado salamanders; however, molecular evidence strongly supports that there is a high level of divergence between the three groups (Chippindale *et al.* 2000, pp. 15–16). Based on our review of these differences, and taking into account the view expressed in peer reviews by taxonomists, we believe that the currently available evidence is sufficient for recognizing these salamanders as separate species.

Morphological Characteristics

As neotenic salamanders, they retain external feathery gills and inhabit aquatic habitats (springs, spring-runs, wet caves, and groundwater) throughout their lives (Chippindale *et al.* 2000, p. 1). In other words, the Austin blind and Jollyville Plateau salamanders are aquatic and respire through gills and permeable skin (Duellman and Trueb 1986, p. 217). Also, adult salamanders of these species are about 2 inches (in) (5 centimeters (cm)) long (Chippindale *et al.* 2000, pp. 32–42; Hillis *et al.* 2001, p. 268).

Habitat

Each species inhabits water of high quality with a narrow range of conditions (for example, temperature, pH, and alkalinity) maintained by groundwater from various sources. Both the Austin blind and Jollyville Plateau salamanders depend on water in sufficient quantity and quality to meet their life-history requirements for survival, growth, and reproduction. Much of this water is sourced from the Edwards Aquifer, which is a karst aquifer characterized by open chambers such as caves, fractures, and other cavities that were formed either directly or indirectly by dissolution of subsurface rock formations. Water for the salamanders is provided by infiltration of surface water through the soil or recharge features (caves, faults, fractures, sinkholes, or other open cavities) into the Edwards Aquifer, which discharges from springs as groundwater (Schram 1995, p. 91). In addition, some Jollyville Plateau salamander populations rely on water from other sources. For instance, springs, such as Rieblin Spring, may discharge from the Walnut formation, and some, such as Pit Spring, may discharge from the Glen Rose formation (part of the Trinity Aquifer) (Johns 2012, COA, pers. comm.; Johnson *et al.* 2012, pp. 1, 3, 46–53, 82). Other springs, such as Lanier Spring, appear to have alluvial aquifer sources (derived from water-bearing soil or sediments usually adjacent to streams) (Johns 2012, pers. comm.).

The Austin blind and Jollyville Plateau salamanders spend varying portions of their life within their surface habitats (the wetted top layer of substrate in or near spring openings and pools as well as spring runs) and subsurface habitats (within caves or other underground areas of the underlying groundwater source). Although surface and subsurface habitats are often discussed separately within this final rule, it is important to note the interconnectedness of these areas. Subsurface habitat does not necessarily refer to an expansive cave underground. Rather, it may be described as the rock matrix below the stream bed. As such, subsurface habitats are impacted by the same threats that impact surface habitat, as the two exist as a continuum (Bendik 2012, COA, pers. comm.).

Salamanders move an unknown depth into interstitial spaces (empty voids between rocks) within the spring or streambed substrate that provide foraging habitat and protection from predators and drought conditions (Cole 1995, p. 24; Pierce and Wall 2011, pp. 16–17). They may also use deeper passages of the aquifer that connect to the spring opening (Dries 2011, COA, pers. comm.). This behavior makes it difficult to accurately estimate population sizes, as only salamanders on the surface can be regularly monitored. However, techniques have been developed for marking individual salamanders, which allows for better estimating population numbers using ''mark and recapture'' data analysis techniques. These techniques have been used by the City of Austin (COA) on the Jollyville Plateau salamander (Bendik *et al.* 2013, pp. 2–7).

Range

The habitat of the Austin blind salamander occurs in the Barton Springs Segment of the Edwards Aquifer, while the habitats of the three other species occur in the Northern Segment of the Edwards Aquifer (although some reside in spring locations with different groundwater sources, as explained above). The recharge and contributing zones of these segments of the Edwards Aquifer are found in portions of Travis, Williamson, Blanco, Bell, Burnet, Lampasas, Mills, Hays, Coryell, and Hamilton Counties, Texas (Jones 2003, p. 3; Mahler *et al.* 2006).

Diet

A stomach content analysis by the COA demonstrated that the Jollyville Plateau salamander preys on varying proportions of aquatic invertebrates, such as ostracods, copepods, mayfly larvae, fly larvae, snails, water mites, aquatic beetles, and stone fly larvae, depending on the location of the site (Bendik 2011b, pers. comm.). The feces of one wild-caught Austin blind salamander contained amphipods, ostracods, copepods, and plant material (Hillis *et al.* 2001, p. 273). Gillespie (2013, pp. 5–9) also found that the diet of the closely related Barton Springs salamanders consisted primarily of planarians or chironomids (flatworms or nonbiting midge flies) depending on which was more abundant and amphipods when planarians and chironomids were rare.

Predation

The Austin blind and Jollyville Plateau salamanders also share similar predators, which include centrarchid fish (carnivorous freshwater fish belonging to the sunfish family), crayfish (*Cambarus* sp.), and large aquatic insects (Pierce and Wall 2011, pp. 18–20; Bowles *et al.* 2006, p. 117; Cole 1995, p. 26).

Reproduction

The detection of juveniles in all seasons suggests that reproduction occur year-round (Bendik 2011a, p. 26; Hillis *et al.* 2001, p. 273). However, juvenile abundance of Jollyville Plateau salamanders typically increases in spring and summer, indicating that there may be relatively more reproduction occurring in winter and early spring compared to other seasons (Bowles *et al.* 2006, p. 116; Pierce 2012, pp. 10–11, 18, 20). Because eggs are very rarely found on the surface, these salamanders likely deposit their eggs underground for protection (O'Donnell *et al.* 2005, p. 18).

Population Connectivity

More study is needed to determine the nature and extent of the dispersal capabilities of the Austin blind and Jollyville Plateau salamanders. It has been suggested that they may be able to travel some distance through subsurface aquifer conduits. For example, it has been thought that Austin blind salamander can occur underground throughout the entire Barton Springs complex (Dries 2011, COA, pers. comm.). The spring habitats used by salamanders of the Barton Springs complex are not connected on the surface, so the Austin blind salamander population could extend a horizontal distance of at least 984 feet (ft) (300 meters (m)) underground, as this is the approximate distance between the farthest two outlets within the Barton Springs complex known to be occupied by the species. However, a mark-and-recapture study failed to document the movement of endangered Barton Springs salamanders (*Eurycea sosorum*) between any of the springs in the Barton Springs complex (Dries 2012, COA, pers. comm.). This could indicate that individual salamanders are not moving the distances between spring openings. Alternatively, this could mean that the study simply failed to capture the movement of salamanders. This study has only recently begun and is relatively small in scope.

Due to the similar life history of the Austin blind salamander to the other three *Eurycea* species considered here, it is plausible that populations of these species could also extend 984 ft (300 m) through subterranean habitat. However, subsurface movement is likely to be limited by the highly dissected nature of the aquifer system, where spring sites can be separated from other spring sites by large canyons or other physical barriers to movement. Surface movement is similarly inhibited by geologic, hydrologic, physical, and biological barriers (for example, predatory fish commonly found in impoundments along urbanized tributaries (Bendik 2012, COA, pers. comm.). Dye-trace studies have demonstrated that some Jollyville Plateau salamander sites located miles apart are connected hydrologically (Whitewater Cave and Hideaway Cave) (Hauwert and Warton 1997, pp. 12–13), but it remains unclear if salamanders are travelling between those sites. In conclusion, some data indicate that populations could be connected through subterranean water-filled spaces, although we are unaware of any information available on the frequency of movements and the actual nature of connectivity among populations.

Population Persistence

A population's persistence (ability to survive and avoid extirpation) is influenced by a population's demographic factors (such as survival and reproductive rates) as well as its environment. The population needs of the central Texas salamander species are the factors that provide for a high probability of population persistence over the long term at a given site (for example, low degree of threats and high survival and reproduction rates). We are unaware of detailed studies that describe all of the demographic factors that could affect the population persistence of the Austin blind and Jollyville Plateau salamanders; however, we have assessed their probability of persistence by evaluating environmental factors (threats to their surface habitats) and what we know about the number of salamanders that occur at each site.

To estimate the probability of persistence of each population involves considering the predictable responses of the population to various environmental factors (such as the amount of food available or the presence of a toxic substance), as well as the stochasticity. Stochasticity refers to the random, chance, or probabilistic nature of the demographic and environmental processes (Van Dyke 2008, pp. 217–218). Generally, the larger the population, the more likely it is to survive stochastic events in both demographic and environmental factors (Van Dyke 2008, p. 217). Conversely, the smaller the population, the higher are its chances of extirpation when experiencing this demographic and environmental stochasticity.

Rangewide Needs

We used the conservation principles of redundancy, representation, and resiliency (Shaffer and Stein 2000, pp. 307, 309–310) to better inform our view of what contributes to these species' probability of persistence and how best to conserve them. ''Resiliency'' is the ability of a species to persist through severe hardships or stochastic events (Tear *et al.* 2005, p. 841). ''Redundancy'' means a sufficient number of populations to provide a margin of safety to reduce the risk of losing a species or certain representation (variation) within a species, particularly from catastrophic or other events. ''Representation'' means conserving ''some of everything'' with regard to genetic and ecological diversity to allow for future adaptation and maintenance of evolutionary potential. Representation can be measured through the breadth of genetic diversity within and among populations and ecological diversity (also called environmental variation or diversity) occupied by populations across the species' range.

A variety of factors contribute to a species' resiliency. These can include how sensitive the species is to disturbances or stressors in its environment, how often they reproduce and how many young they have, how specific or narrow their habitat needs are. A species' resiliency can also be affected by the resiliency of individual populations and the number of populations and their distribution across the landscape. Protecting multiple populations and variation of a species across its range may contribute to its resiliency, especially if some populations or habitats are more susceptible or better adapted to certain threats than others (Service and NOAA 2011, p. 76994). The ability of individuals from populations to disperse and recolonize an area that has been extirpated may also influence their resiliency. As population size and habitat quality increase, the population's ability to persist through periodic hardships also increases.

A minimal level of redundancy is essential for long-term viability (Shaffer and Stein 2000, pp. 307, 309–310; Groves *et al.* 2002, p. 506). This provides a margin of safety for a species to withstand catastrophic events (Service and NOAA 2011, p. 76994) by

decreasing the chance of any one event affecting the entire species.

Representation and the adaptive capabilities (Service and NOAA 2011, p. 76994) of each of the central Texas salamander species should also be conserved. Because a species' genetic makeup is shaped through natural selection by the environments it has experienced (Shaffer and Stein 2000, p. 308), populations should be protected in the array of different environments in which the salamanders occur (surface and subsurface) as a strategy to ensure genetic representation, adaptive capability, and conservation of the species.

To increase the probability of persistence of each species, populations of the Austin blind and Jollyville Plateau salamanders should be conserved in a manner that ensures their variation and representation. This result can be achieved by conserving salamander populations in a diversity of environments (throughout their ranges), including: (1) Both spring and cave locations, (2) habitats with groundwater sources from various aquifers and geologic formations, including the Edwards and Trinity Aquifers and the Edwards, Walnut, and Glen Rose formations, and (3) at sites with different hydrogeological characteristics, including sites where water flows come from artesian pressure, a perched aquifer, or resurgence through alluvial deposits (for example, artesian springs, Edwards and Edwards/Walnut headwater springs, and Bull Creek alluvial resurgence areas).

Information for Austin blind and Jollyville Plateau salamanders is discussed separately for each species in more detail below.

Austin Blind Salamander

The Austin blind salamander has a pronounced extension of the snout, no external eyes, and weakly developed tail fins. In general appearance and coloration, the Austin blind salamander is more similar to the Texas blind salamander (*Eurycea rathbuni*) that occurs in the Southern Segment of the Edwards Aquifer than its sympatric (occurring within the same range) species, the Barton Springs salamander. The Austin blind salamander has a reflective, lightly pigmented skin with a pearly white or lavender appearance (Hillis *et al.* 2001, p. 271). Before the Austin blind salamander was formally described, juvenile salamanders were sighted occasionally in Barton Springs, and thought to be a variation of the Barton Springs salamander. It was not until 2001 that enough specimens were available to formally describe these juveniles as a separate species using morphological and genetic characteristics (Hillis *et al.* 2001, p. 267). Given the reduced eye structure of the Austin blind salamander, and the fact that it is rarely seen at the water's surface (Hillis *et al.* 2001, p. 267), this salamander is thought to be more subterranean than the primarily surface-dwelling Barton Springs salamander.

The Austin blind salamander occurs in Barton Springs in Austin, Texas. These springs are fed by the Barton Springs Segment of the Edwards Aquifer. This segment covers roughly 155 square miles (mi) (401 square kilometers (km)) from southern Travis County to northern Hays County, Texas (Smith and Hunt 2004, p. 7). It has a storage capacity of more than 300,000 acre-feet of water. The contributing zone for the Barton Springs Segment of the Edwards Aquifer that supplies water to the salamander's spring habitat extends into Travis, Blanco, and Hays Counties, Texas (Ross 2011, p. 3). Under drought conditions, Barton Springs (particularly Sunken Garden/Old Mill Springs) also receives some recharge from the Blanco River (Johnson *et a*l. 2012, p. 82), whose waters originate from the Trinity Aquifer.

The Austin blind salamander is found in three of the four Barton Springs outlets in the COA's Zilker Park, Travis County, Texas: Parthenia (Main) Springs, Eliza Springs, and Sunken Garden (Old Mill or Zenobia) Springs where the Barton Springs salamander also occurs (Dries 2012, p. 4). Parthenia Springs provides water for the Barton Springs Pool, which is operated by the COA as a public swimming pool. These spring sites have been significantly modified for human use. The area around Parthenia Springs was impounded in the late 1920s to create Barton Springs Pool. Flows from Eliza and Sunken Garden Springs are also retained by concrete structures, forming small pools on either side of Barton Springs Pool (COA 1998, p. 6; Service 2005, pp. 1.6–25). The Austin blind salamander has not been observed at the fourth Barton Springs outlet, known as Upper Barton Springs (Hillis *et al.* 2001, p. 273; Dries 2012, p. 4). Upper Barton Springs flow only intermittently (and can cease flowing for weeks or months at a time) (Dries 2012, p. 4). We are unaware of any information that suggests Main, Eliza, or Sunken Garden Springs have ever stopped flowing.

From January 1998 to December 2000, there were only 17 documented observations of the Austin blind salamander. During this same timeframe, 1,518 Barton Springs salamander observations were made (Hillis *et al.* 2001, p. 273). The abundance of Austin blind salamanders increased slightly from 2002 to 2006, but fewer observations have been made in more recent years (2009 to 2010) (COA 2011a, pp. 51–52). In fact, during an 11-month period of drought conditions from 2008 to 2009, neither the Austin blind salamander nor the Barton Springs salamander was seen at all (Dries 2012, p. 17), despite almost monthly survey attempts (Dries 2012, p. 7). When they are observed, Austin blind salamanders occur in relatively low numbers (COA 2011a, pp. 51–52; Dries 2012, p. 4) within the surface habitat. Although the technology to mark salamanders for individual recognition has recently been developed (Bendik *et al.* 2013, p. 7), population estimates for this species have not been undertaken. However, population estimates are possible for aquifer-dwelling species using genetic techniques, and one such study is planned for the Austin blind salamander in the near future (Texas Parks and Wildlife Department (TPWD) 2011, p. 11).

Jollyville Plateau Salamander

Surface-dwelling populations of Jollyville Plateau salamanders have large, well-developed eyes; wide, yellowish heads; blunt, rounded snouts; dark greenish-brown bodies; and bright yellowish-orange tails (Chippindale *et al.* 2000, pp. 33–34). Some cave forms of Jollyville Plateau salamanders, which are also entirely aquatic, exhibit cave-associated morphologies, such as eye reduction, flattening of the head, and dullness or loss of color (Chippindale *et al.* 2000, p. 37). Genetic analysis suggests a taxonomic split within this species that appears to correspond to major geologic and topographic features of the region (Chippindale 2010, p. 2). Chippindale (2010, pp. 5, 8) concluded that the Jollyville Plateau salamander exhibits a strong genetic separation between two lineages within the species: A ''Plateau'' clade that occurs in the Bull Creek, Walnut Creek, Shoal Creek, Brushy Creek, South Brushy Creek, and southeastern Lake Travis drainages; and a ''peripheral'' clade that occurs in the Buttercup Creek and northern Lake Travis drainages (Chippindale 2010, pp. 5–8). The study also suggests this genetic separation may actually represent two species (Chippindale 2010, pp. 5, 8). However, a formal, peer-reviewed description of the two possible species has not been published. Because this split has not been recognized by the scientific community, we do not recognize a

separation of the Jollyville Plateau salamander into two species.

The Jollyville Plateau salamander occurs in the Jollyville Plateau and Brushy Creek areas of the Edwards Plateau in northern Travis and southern Williamson Counties, Texas (Chippindale *et al.* 2000, pp. 35–36; Bowles *et al.* 2006, p. 112; Sweet 1982, p. 433). Upon classification as a species, Jollyville Plateau salamanders were known from Brushy Creek and, within the Jollyville Plateau, from Bull Creek, Cypress Creek, Long Hollow Creek, Shoal Creek, and Walnut Creek drainages (Chippindale *et al.* 2000, p. 36). Since it was described, the Jollyville Plateau salamander has also been documented within the Lake Creek drainage (O'Donnell *et al.* 2006, p. 1). Jollyville Plateau salamanders are known from 1 cave in the Cypress Creek drainage and 15 caves in the Buttercup Creek cave system in the Brushy Creek drainage (Chippindale *et al.* 2000, p. 49; Russell 1993, p. 21; Service 1999, p. 6; HNTB 2005, p. 60). There are 106 known surface sites for the Jollyville Plateau salamander.

The Jollyville Plateau salamander's spring-fed habitat is typically characterized by a depth of less than 1 ft (0.3 m) of cool, well oxygenated water (COA 2001, p. 128; Bowles *et al.* 2006, p. 118) supplied by the underlying Northern Segment of the Edwards Aquifer (Cole 1995, p. 33), the Trinity Aquifer (Johns 2012, COA, pers. comm.), or local alluvial sources (Johns 2012, COA, pers. comm.). The main aquifer that feeds this salamander's habitat is generally small, shallow, and localized (Chippindale *et al.* 2000; p. 36; Cole 1995, p. 26). Jollyville Plateau salamanders are typically found near springs or seep outflows and likely require constant temperatures (Sweet 1982, pp. 433–434; Bowles *et al.* 2006, p. 117). Salamander densities are higher in pools and riffles and in areas with rubble, cobble, or boulder substrates rather than on solid bedrock (COA 2001, p. 128; Bowles *et al.* 2006, pp. 114–116). Surface-dwelling Jollyville Plateau salamanders also occur in subsurface habitat within the underground aquifer (COA 2001, p. 65; Bowles *et al.* 2006, p. 118).

Some Jollyville Plateau salamander populations have likely experienced decreases in abundance in recent years. Survey data collected by COA staff indicate that four of the nine sites that were regularly monitored by the COA between December 1996 and January 2007 had statistically significant declines in salamander abundance over 10 years (O'Donnell *et al.* 2006, p. 4). The average number of salamanders counted at each of these 4 sites declined from 27 salamanders counted during surveys from 1996 to 1999 to 4 salamanders counted during surveys from 2004 to 2007. In 2007, monthly mark-recapture surveys were conducted in concert with surface counts at three sites in the Bull Creek watershed (Lanier Spring, Lower Rieblin, and Wheless Spring) over a 6- to 8-month period to obtain surface population size estimates and detection probabilities for each site (O'Donnell *et al.* 2008, p. 11). Using these estimation techniques, surface population estimates at Lanier Spring varied from 94 to 249, surface population estimates at the Lower Rieblin site varied from 78 to 126, and surface population estimates at Wheless Spring varied from 187 to 1,024 (O'Donnell *et al.* 2008, pp. 44–45). These numbers remained fairly consistent in more recent population estimates for the three sites (Bendik 2011a, p. 22). However, Bendik (2011a, pp. 5, 12–24, 26, 27) reported statistically significant declines in Jollyville Plateau salamander counts over a 13-year period (1996–2010) at six monitored sites with high impervious cover (18 to 46 percent) compared to two sites with lower (less than 1 percent) impervious cover. These results are consistent with Bowles *et al.* (2006, p. 111), who found lower densities of Jollyville Plateau salamanders at urbanized sites. Based on the best available information, these counts likely reflect changes in the salamander populations at these sites.

Summary of Comments and Recommendations

We requested comments from the public on the proposed designation of critical habitat for the Austin blind salamander and Jollyville Plateau salamanders during two comment periods. The first comment period associated with the publication of the proposed rule (77 FR 50768) opened on August 22, 2012, and closed on October 22, 2012, during which we held public meetings and hearings on September 5 and 6, 2012, in Round Rock and Austin, Texas, respectively. We reopened the comment period on the proposed listing rule from January 25, 2013, to March 11, 2013 (78 FR 5385). We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and draft economic analysis during these comment periods.

We received a total of approximately 416 comments during the open comment period for the proposed listing, proposed critical habitat, and associated documents. All substantive information provided during the comment periods has been incorporated directly into the final listing rule for the Austin blind and Jollyville Plateau salamanders and is addressed below. Comments from peer reviewers and State agencies are grouped separately below. Comments received are grouped into general issues specifically relating to the proposed listing for each salamander species. Beyond the comments addressed below, several commenters submitted additional reports and references for our consideration, which were reviewed and incorporated into this critical habitat final rule as appropriate.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from 22 knowledgeable individuals with scientific expertise with the hydrology, taxonomy, and ecology that is important to these salamander species. The focus of the taxonomists was to review the proposed rule in light of an unpublished report by Forstner (2012) that questioned the taxonomic validity of the Austin blind, Georgetown, Jollyville Plateau, and Salado salamanders as separate species. We received responses from 13 of the peer reviewers.

During the first comment period we received public comments from SWCA Environmental Consultants (SWCA) and COA that contradicted each other. We also developed new information relative to the listing determination. For these reasons, we conducted a second peer review on: (1) Salamander demographics and (2) urban development and stream habitat. The peer reviewers were provided with the contradictory comments from SWCA and COA. During this second peer review, we solicited expert opinions from knowledgeable individuals with expertise in the two areas identified above, which included all of the peer reviewers from the first comment period except the taxonomists. We received responses from eight peer reviewers. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final listing and critical habitat rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

Taxonomy

(1) *Comment:* Most peer reviewers stated that the best available scientific information was used to develop the proposed rule and the Service's analysis of the available information was scientifically sound. Further, most reviewers stated that our assessment that the Austin blind, Georgetown, Jollyville Plateau, and Salado salamanders are four distinct species and our interpretation of literature addressing threats (including reduced habitat quality due to urbanization and increased impervious cover) to these species were well researched. However, some researchers suggested that further research would strengthen or refine our understanding of these salamanders. For example, one reviewer stated that the Jollyville Plateau salamander was supported by ''weak but suggestive evidence,'' and, therefore, it needed more study. Another reviewer thought there was evidence of missing descendants in the group that included the Jollyville Plateau salamander in the enzyme analysis presented in the original species descriptions (Chippindale *et al.* 2000).

Our Response: Peer reviewers' comments indicate that we used the best available science, and we correctly interpreted that science as recognizing the Austin blind, Georgetown, Jollyville Plateau, and Salado salamanders as four separate species. In the final listing rule, we continue to recognize the Austin blind and Jollyville Plateau salamanders as distinct and valid species. However, we acknowledge that the understanding of the taxonomy of these salamander species can be strengthened by further research.

(2) *Comment:* Forstner (2012, pp. 3–4) used the size of geographic distributions as part of his argument for the existence of fewer species of *Eurycea* in Texas than are currently recognized. Several peer reviewers commented that they saw no reason for viewing the large number of *Eurycea* species with small distributions in Texas as problematic when compared to the larger distributions of *Eurycea* species outside of Texas. They stated that larger numbers and smaller distributions of Texas *Eurycea* species are to be expected given the isolated spring environments that they inhabit within an arid landscape. Salamander species with very small ranges are common in several families and are usually restricted to island, mountain, or cave habitats.

Our Response: See our response to comment 1.

(3) *Comment:* Forstner (2012, pp. 15–16) used results from Harlan and Zigler (2009), indicating that levels of genetic variation within the eastern species *E. lucifuga* are similar to those among six currently recognized species of Texas *Eurycea,* as part of his argument that there are fewer species in Texas than currently recognized. Several peer reviewers said that these sorts of comparisons can be very misleading in that they fail to take into consideration differences in the ages, effective population sizes, or population structure of the units being compared. The delimitation of species should be based on patterns of genetic variation that bear on the separation (or lack thereof) of gene pools rather than on the magnitude of genetic differences, which can vary widely within and between species.

Our Response: See our response to comment 1.

(4) *Comment:* Several peer reviewers stated that the taxonomic tree presented in Forstner (2012, pp. 20, 26) is difficult to evaluate because of the following reasons: (1) no locality information is given for the specimens; (2) it disagrees with all trees in other studies (which seem to be largely congruent with one another), including that in Forstner and McHenry (2010, pp. 13–16) with regard to monophyly (more than one member of a group sharing the same ancestor) of several of the currently recognized species; and (3) the tree is only a gene tree, presenting sequence data on a single gene, which provides little or no new information on species relationships of populations.

Our Response: See our response to comment 1.

(5) *Comment:* Peer reviewers generally stated that Forstner (2012, pp. 13–14) incorrectly dismisses morphological data that have been used to recognize some of the Texas *Eurycea* species on the basis that it is prone to convergence (acquisition of the same biological trait in unrelated lineages) and, therefore, misleading. The peer reviewers commented that it is true that similarities in characters associated with cave-dwelling salamanders can be misleading when suggesting that the species possessing those characters are closely related. However, this in no way indicates that the reverse is true; that is, indicating differences in characters is not misleading in identifying separate species.

Our Response: See our response to comment 1.

Impervious Cover

(6) *Comment:* The 10 percent impervious cover threshold may not be protective of salamander habitat based on a study by Coles *et al.* (2012, pp. 4–5), which found a loss of sensitive species due to urbanization and that there was no evidence of a resistance threshold to invertebrates that the salamanders preyed upon. A vast amount of literature indicates that 1 to 2 percent impervious cover can cause habitat degradation, and, therefore, the 10 percent threshold for impervious cover will not be protective of these species.

Our Response: We recognize that low levels of impervious cover in a watershed may have impacts on aquatic life, and we have incorporated results of these studies into the final listing rule. However, we are aware of only one peer-reviewed study that examined watershed impervious cover effects on salamanders in central Texas, and this study found impacts on salamander density in watersheds with over 10 percent impervious cover (Bowles *et al.* 2006, pp. 113, 117–118). Because this impervious cover study was done locally, we are using 10 percent as a guideline to categorize watersheds that are impacted in terms of salamander density.

(7) *Comment:* While the Service's impervious cover analysis assessed impacts on stream flows and surface habitat, it neglected to address impacts over the entire recharge zone of the contributing aquifers on spring flows in salamander habitat. Also, the surface watersheds analyzed in the proposed rule are irrelevant because these salamanders live in cave streams and spring flows that receive groundwater. Without information on the groundwater recharge areas, the rule should be clear that the surface watersheds are only an approximation of what is impacting the subsurface drainage basins.

Our Response: We acknowledge that the impervious cover analysis is limited to impacts on the surface watershed. Because the specific groundwater recharge areas of individual springs are unknown, we cannot accurately assess the current or future impacts on these areas. However, we recognize subsurface flows as another avenue for contaminants to reach the salamander sites, and we tried to make this clearer in the final rule.

(8) *Comment:* Several of the watersheds analyzed for impervious cover in the proposed rule were overestimated. The sub-basins in these larger watersheds need to be analyzed for impervious cover impacts.

Our Response: We have refined our impervious cover analysis in this final listing rule to clarify the surface

watersheds of individual spring sites. Our final impervious cover report containing this refined analysis is available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2012–0035 and at *http://www.fws.gov/southwest/es/AustinTexas/*.

Threats

(9) *Comment:* One peer reviewer stated that the threat to these species from over collection for scientific purposes may be understated.

Our Response: We have reevaluated the potential threat of overutilization for scientific purposes and have incorporated a discussion of this under Factor B ''*Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.''* We recognize that removing individuals from small, localized populations in the wild without any proposed plans or regulations to restrict these activities could increase the population's vulnerability of extinction and decrease its resiliency and ability to withstand stochastic events. However, we do not consider overutilization from collecting salamanders in the wild to be a threat by itself, but it may cause significant population declines, and could negatively impact the species in combination with other threats.

Salamander Demographics

(10) *Comment:* Several peer reviewers agreed that COA's salamander survey data were generally collected and analyzed appropriately and that the results are consistent with the literature on aquatic species' responses to urbanizing watersheds. Three reviewers had some suggestions on how the data analysis could be improved, but they also state that COA's analysis is the best scientific data available, and alternative methods of analysis would not likely change the conclusions.

Our Response: Because the peer reviewers examined COA's salamander demographic data, as well as SWCA's analysis of the COA's data, and generally agreed that the COA's data was the best information available, we continue to rely upon this data set in the final listing rule.

(11) *Comment:* Two peer reviewers pointed out that SWCA's water samples were collected during a period of very low rainfall and, therefore, under represent the contribution of water influenced by urban land cover. The single sampling of water and sediment at the eight sites referenced in the SWCA report do not compare in scope and magnitude to the extensive studies referenced from the COA. The numerous studies conducted (and referenced) within the known ranges of the Austin blind and Jollyville Plateau salamanders provide scientific support at the appropriate scale for recent and potential habitat degradation due to urbanization. One peer reviewer pointed out that if you sort the spring sites SWCA sampled into ''urbanized'' and ''rural'' categories, the urban sites generally have more degraded water quality than the rural sites, in terms of nitrate, nitrite, *E. coli* counts, and fecal coliform bacteria counts.

Our Response: We agree with the peer reviewers who stated that SWCA (2012, pp. 21–24) did not present convincing evidence that overall water quality at sites in Williamson County is good or that urbanization is not impacting the water quality at these sites. Water quality monitoring based on one or a few samples are not necessarily reflective of conditions at the site under all circumstances that the salamanders are exposed to over time. Based on this assessment, we continued to rely upon the best scientific evidence available that states water quality will decline as urbanization within the watershed increases.

(12) *Comment:* The SWCA report indicates that increasing conductivity is related to drought. (Note: Conductivity is a measure of the ability of water to carry an electrical current and can be used to approximate the concentration of dissolved inorganic solids in water that can alter the internal water balance in aquatic organisms, affecting the Austin blind and Jollyville Plateau salamanders' survival. Conductivity levels in the Edwards Aquifer are naturally low. As ion concentrations such as chlorides, sodium, sulfates, and nitrates rise, conductivity will increase. The stability of the measured ions makes conductivity an excellent monitoring tool for assessing the impacts of urbanization to overall water quality. High conductivity has been associated with declining salamander abundance.) While SWCA's report notes lack of rainfall as the dominant factor in increased conductivity, the confounding influence of decreases in infiltration and increases in sources of ions as factors associated with urbanization and changes in water quality in these areas is not addressed by SWCA. The shift to higher conductivity associated with increasing impervious surface is well documented in the COA references. Higher conductivity in urban streams is well documented and was a major finding of the U.S. Geological Survey (USGS) urban land use studies (Coles *et al.* 2012). Stream conductivity increased with increasing urban land cover in every metropolitan area studied. Conductivity is an excellent surrogate for tracking changes in water quality related to land use change associated with urbanization due to the conservative nature of the ions.

Our Response: While drought may result in increased conductivity, increased conductivity is also a reflection of increased urbanization. We incorporated information from the study by Coles *et al.* (2012) in the final listing rule, and we continued to include conductivity as a measure of water quality in the primary constituent elements for the Austin blind and Jollyville Plateau salamanders in the final critical habitat rule as published elsewhere in today's **Federal Register**.

(13) *Comment:* One peer reviewer stated that SWCA's criticisms of COA's linear regression analysis, general additive model, and population age structure were not relevant and unsupported. In addition, peer reviewers agreed that COA's mark-recapture estimates are robust and highly likely to be correct. Three peer reviewers agreed that SWCA misrepresented the findings of Luo (2010) and stated that this thesis does not invalidate the findings of COA.

Our Response: Because the peer reviewers examined COA's data, as well as SWCA's analysis of the COA's data, and generally agreed that the COA's data was the best information available, we continue to rely upon this data set in the final listing rule.

(14) *Comment:* One peer reviewer stated that the long-term data collected by the COA on the Jollyville Plateau salamander were simple counts that serve as indexes of relative population abundance, and not of absolute abundance. This data assumes that the probability of observing salamanders remains constant over time, season, and among different observers. This assumption is often violated, which results in unknown repercussions on the assessment of population trends. Therefore, the negative trend observed in several sites could be due to a real decrease in population absolute abundance, but could also be related to a decrease in capture probabilities over time (or due to an interaction between these two factors). Absolute population abundance and capture probabilities should be estimated in urban sites using the same methods implemented at rural sites by COA. However, even in the absence of clear evidence of local population declines of Jollyville Plateau salamanders, the proposed rule was correct in its assessment because there is objective evidence that stream alterations negatively impact the density

of *Eurycea* salamanders (Barrett *et al.* 2010).

Our Response: We recognize that the long-term survey data of Jollyville Plateau salamanders using simple counts may not give conclusive evidence on the true population status at each site. However, based on the threats and evidence from scientifically peer-reviewed literature, we believe the declines in counts seen at urban Jollyville Plateau salamander sites are likely representative of real declines in the population.

(15) *Comment:* One peer reviewer had similar comments on COA salamander counts and relating them to populations. They stated that the conclusion of a difference in salamander counts between sites with high and low levels of impervious cover is reasonable based on COA's data. However, this conclusion is not about salamander populations, but instead about the counts. The COA's capture-mark-recapture analyses provide strong evidence of both nondetection and substantial temporary emigration, findings consistent with other studies of salamanders in the same family as the Jollyville Plateau salamander. This evidence cautions against any sort of analysis that relies on raw count data to draw inferences about populations.

Our Response: See our response to previous comment.

(16) *Comment:* The SWCA (2012, pp. 70–76) argues that declines in salamander counts can be attributed to declines in rainfall during the survey period, and not watershed urbanization. However, one peer reviewer stated that SWCA provided no statistical analysis to validate this claim and misinterpreted the conclusions of Gillespie (2011) to support their argument. A second peer reviewer agrees that counts of salamanders are related to natural wet and dry cycles, but points out that COA has taken this effect into account in their analyses. Another peer reviewer points out that this argument contradicts SWCA's (2012) earlier claim that COA's salamander counts are unreliable data. If the data were unreliable, they probably would not correlate to environmental changes.

Our Response: Although rainfall is undoubtedly important to these strictly aquatic salamander species, the best scientific evidence suggests that rainfall is not the only factor driving salamander population fluctuations. In the final listing rule, we continue to rely upon this evidence as the best scientific and commercial information available, which suggests that urbanization is also a large factor influencing declines in salamander counts.

Regarding comments from SWCA on the assessment of threats, peer reviewers made the following comments:

(17) *Comment:* SWCA's (2012, pp. 84–85) summary understates what is known about the ecology of *Eurycea* species and makes too strong of a conclusion about the apparent ''coexistence with long-standing human development.'' Human development and urbanization is an incredibly recent stressor in the evolutionary history of the central Texas *Eurycea,* and SWCA's assertion that the *Eurycea* will be ''hardy and resilient'' to these new stressors is not substantiated with any evidence.

(18) *Comment:* SWCA (2012, p. 7) states that, ''Small population size and restricted distribution are not among the five listing criteria and do not of themselves constitute a reason for considering a species at risk of extinction.'' To the contrary, even though the salamanders may naturally occur in small isolated populations, small isolated populations and the inability to disperse between springs should be considered under listing criteria E as a natural factor affecting the species' continued existence. In direct contradiction, SWCA (2012, p. 81) later states that, ''limited dispersal ability (within a spring) may increase the species' vulnerability as salamanders may not move from one part of the spring run to another when localized habitat loss or degradation occurs.'' It is well known that small population size and restricted distributions make populations more susceptible to selection or extinction due to stochastic events. Small population size can also affect population density thresholds required for successful mating.

(19) *Comment:* SWCA (2012, p. v) contests that the Jollyville Plateau salamander is not in immediate danger of extinction because, ''over 60 of the 90-plus known Jollyville Plateau salamander sites are permanently protected within preserve areas. . . .'' This statement completely ignores the entire aquifer recharge zone, which is not included in critical habitat. Furthermore, analysis of the COA's monitoring and water quality datasets clearly demonstrate that, even within protected areas, there is deterioration of water quality and decrease in population size of salamanders.

(20) *Comment:* SWCA (2012, p. 11) criticizes the Service and the COA for not providing a ''direct cause and effect'' relationship between urbanization, nutrient levels and salamander populations. There is, in fact, a large amount of peer-reviewed literature on the effects of pollutants and deterioration of water quality on sensitive macroinvertebrate species as well as on aquatic amphibians. In the proposed rule, the Service cites just a small sampling of the available literature regarding the effects of pollutants on the physiology and indirect effects of urbanization on aquatic macroinvertebrates and amphibians. In almost all cases, there are synergistic and indirect negative effects on these species that may not have one single direct cause. There is no ecological requirement that any stressor (be it a predator, a pollutant, or a change in the invertebrate community) must be a direct effect to threaten the stability or long-term persistence of a population or species. Indirect effects can be just as important, especially when many are combined.

Our Response to Comments 17–20: We had SWCA's (2012) report peer reviewed. The peer reviewers generally agreed that we used the best information available in our proposed listing rule.

(21) *Comment:* One reviewer stated that, even though there is detectable gene flow between populations, it may be representative of subsurface connections in the past, rather than current population interchange. However, dispersal through the aquifer is possible even though there is currently no evidence that these species migrate. Further, they stated that there is no indication of a metapopulation structure where one population could recolonize another that had gone extinct.

Our Response: We acknowledge that more study is needed to determine the nature and extent of the dispersal capabilities of the Austin blind and Jollyville Plateau salamanders. It is plausible that populations of these species could extend through subterranean habitat. However, subsurface movement is likely to be limited by the highly dissected nature of the aquifer system, where spring sites can be separated from other spring sites by large canyons or other physical barriers to movement. Dye-trace studies have demonstrated that some Jollyville Plateau salamander sites located miles apart are connected hydrologically (Whitewater Cave and Hideaway Cave) (Hauwert and Warton 1997, pp. 12–13), but it remains unclear if salamanders are travelling between those sites. There is some indication that populations could be connected through subterranean water-filled spaces, although we are unaware of any information available on the frequency of movements and the actual nature of connectivity among populations.

Comments From States

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' Comments received from all State agencies and entities in Texas regarding the proposal to list the Austin blind and Jollyville Plateau salamanders are addressed below.

(22) *Comment:* Chippindale (2010) demonstrated that it is possible for Jollyville Plateau salamanders to move between sites in underground conduits. Close genetic affinities between populations in separate watersheds on either side of the RM 620 suggest that these populations may be connected hydrologically. Recent studies (Chippindale 2011 and 2012, in prep) indicate that gene flow among salamander populations follows groundwater flow routes in some cases and that genetic exchange occurs both horizontally and vertically within an aquifer segment.

Our Response: We agree that genetic evidence suggests subsurface hydrological connectivity exist between sites at some point in time, but we are unable to conclude if this connectivity occurred in the past or if it still occurs today without more hydrogeological studies or direct evidence of salamander migration from mark-recapture studies. Also, one of our peer reviewers stated that this genetic exchange is probably representative of subsurface connection in the past (see comment 21 above).

(23) *Comment:* Very little is known about Austin blind salamander, and COA has a plan in place to protect and improve habitat without listing.

Our Response: We agree that more study is needed on the ecology of the Austin blind salamander, but enough scientific and commercial data is available on the threats to this species to make a listing determination. We make our listing determinations based on the five listing factors, singly or in combination, as described in section 4(a)(1) of the Act. We recognize the conservation actions made by the COA in the final listing and critical habitat rules, but we determined that these actions are inadequate to protect the species from threats that are occurring from outside of the COA's jurisdiction (that is, the surface watershed and recharge area of Barton Springs).

(24) *Comment:* Regarding all central Texas salamanders, there was insufficient data to evaluate the long-term flow patterns of the springs and creeks, and the correlation of flow, water quality, habitat, ecology, and community response. Current research in Williamson County indicates that water and sediment quality remain good with no degradation, no elevated levels of toxins, and no harmful residues in known springs.

Our Response: We have reviewed the best available scientific and commercial information in making our final listing determination. We sought comments from independent peer reviewers to ensure that our designation is based on scientifically sound data, assumptions, and analysis. And the peer reviewers stated that our proposed rule was based on the best available scientific information. Additionally, recent research on water quality in Williamson County springs was considered in our listing rule. The peer reviewers agreed that these data did not present convincing evidence that overall water quality at salamander sites in Williamson County is good or that urbanization is not impacting the water quality at these sites (see Comment 19 above).

(25) *Comment:* The listing will have negative impacts to private development and public infrastructure.

Our Response: In accordance with the Act, we cannot make a listing determination based on economic impacts. Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. However, economic considerations are not taken into consideration as part of listing determinations.

(26) *Comment:* It was suggested that there are adequate regulations in Texas to protect the Austin blind and Jollyville Plateau salamanders, and their respective habitats. The overall programs to protect water quality—especially in the watersheds of the Edwards Aquifer region—are more robust and protective than suggested by the Service's descriptions of deficiencies. The Service overlooks the improvements in the State of Texas and local regulatory and incentive programs to protect the Edwards Aquifer and spring-dependent species over the last 20 years. Texas has extensive water quality management and protection programs that operate under State statutes and the Federal Clean Water Act. These programs include: Surface Water Quality Monitoring Program, Clean Rivers Program, Water Quality Standards, Texas Pollutant Discharge Elimination System (TPDES) Stormwater Permitting, Total Maximum Daily Load Program, Nonpoint Source Program, Edwards Aquifer Rules, and Local Ordinances and Rules (San Marcos Ordinance and COA Rules). Continuing efforts at the local, regional, and State level will provide a more focused and efficient approach for protecting these species than Federal listing.

Our Response: Section 4(b)(1)(A) of the Act requires us to take into account those efforts being made by a State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, and we fully recognize the contributions of the State and local programs. We consider relevant Federal, State, and tribal laws and regulations when developing our threats analysis. Regulatory mechanisms may preclude the need for listing if we determine such mechanisms address the threats to the species such that listing is no longer warranted. However, the best available scientific and commercial data supports our determination that existing regulations and local ordinances are not adequate to remove all of the threats to the Austin blind and Jollyville Plateau salamanders. We have added further discussion of these regulations and ordinances to Factor D in the final listing rule.

(27) *Comment:* The requirement in the Edwards Rules for wastewater to be disposed of on the recharge zone by land application is an important and protective practice for aquifer recharge and a sustainable supply of groundwater. Permits for irrigation of wastewater are fully evaluated and conditioned to require suitable vegetation and sufficient acreage to protect water quality.

Our Response: Based on the best available science, wastewater disposal on the recharge zone by land application can contribute to water quality degradation in surface waters and the underground aquifer. Previous studies have demonstrated negative impacts to water quality (increases in nitrate levels) at Barton Springs (Mahler *et al.* 2011, pp. 29–35) and within streams (Ross 2011, pp. 11–21) that were likely associated with the land application of wastewater.

(28) *Comment:* A summary of surface water quality data for streams in the watersheds of the Austin blind and Jollyville Plateau salamanders was provided and a suggestion was made that sampling data indicated high-quality aquatic life will be maintained despite occasional instances where parameters exceeded criteria or screening levels.

Our Response: In reviewing the 2010 and 2012 Texas Water Quality Integrated Reports prepared by the Texas Commission on Environmental Quality (TCEQ), the Service identified 14 of 28 (50 percent) stream segments located within surface drainage areas occupied by the salamanders, which contained measured parameters within water samples that exceeded screening level criteria. These included ''screening level concerns'' for parameters such as nitrate, dissolved oxygen, impaired benthic communities, sediment toxicity, and bacteria. In addition, as required under Sections 303(d) and 304(a) of the Clean Water Act, 4 of 28 stream segments located within surface drainage areas occupied by the salamanders have been identified as impaired waters ''. . . for which effluent limitations are not stringent enough to implement water quality standards.'' Water quality data collected and summarized in TCEQ reports supports our concerns with water quality degradation within the surface drainage areas occupied by the salamanders. This information is discussed under *D. The Inadequacy of Existing Regulatory Mechanisms* in this final listing rule.

Public Comments

Existing Regulatory Mechanisms

(29) *Comment:* Many commenters expressed concern that the Service had not adequately addressed all of the existing regulatory mechanisms and programs that provided protection to the salamanders. In addition, many of the same commenters believed there were adequate Federal, State, and local regulatory mechanisms to protect the Austin blind and Jollyville Plateau salamanders and their aquatic habitats.

Our Response: Section 4(b)(1)(A) of the Act requires us to take into account those efforts being made by a State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species. Under *D. The Inadequacy of Existing Regulatory Mechanisms* in the final listing rule, we provide an analysis of the inadequacy of existing regulatory mechanisms. During the comment period, we sought out and were provided information on several local, State, and Federal regulatory mechanisms that we had not considered when developing the proposed rule. We have reviewed these mechanisms and have included them in our analysis under *D. The Inadequacy of Existing Regulatory Mechanisms* in the final listing rule. Our expanded analysis still concluded that existing regulations and local ordinances are not effective at removing the threats to the salamanders.

Protections

(30) *Comment:* The Service fails to consider existing local conservation measures and habitat conservation plans (HCPs) including the regional permit issued to the COA and Travis County, referred to as the Balcones Canyonlands Conservation Plan (BCCP), which benefits the salamanders. While the salamanders are not covered in most of these HCPs, some commenters believe that measures are in place to mitigate any imminent threats to the species. The Service overlooks permanent conservation actions undertaken by both public and private entities over the last two or more decades, including preservation of caves, which protects water quality through recharge, and the preservation of the original Water Treatment Plant 4 site as conservation land in perpetuity, which the COA is now managing as part of the Balcones Canyonlands Preserve. Additionally, Travis County conducts quarterly surveys at two permanent survey sites, and the COA monitors several spring sites, along with additional searches for new localities within the BCCP-managed properties. The HCPs and water quality protection standards are sufficient to prevent significant habitat degradation. Several commenters stated that the majority of Jollyville Plateau salamander sites were already protected by the Balcones Canyonlands Preserve.

Our Response: In the final listing rule, we included a section titled ''Conservation Efforts to Reduce Habitat Destruction, Modification, or Curtailment of Its Range'' that describes existing conservation measures including the regional permit issued to the COA and Travis County for the BCCP and the Williamson County Regional HCP. These conservation efforts and the manner in which they are helping to ameliorate threats to the species were considered in our final listing determination. The Service considered the amount and location of managed open space when analyzing impervious cover levels within each surface watershed (Service 2012, 2013). We also considered preserves when projecting how impervious cover levels within the surface watershed of each spring site would change in the future. These analyses included the benefits from open space as a result of several HCPs (including, but not limited to, the BCCP, Rockledge HCP, and Comanche Canyon HCP). Additional conservation lands considered, but not part of, an HCP, includes the Lower Colorado River Authority (LCRA), The Nature Conservancy of Texas, and Travis Audubon Society. While these conservation lands contribute to the protection of the surface and subsurface watersheds, other factors contribute to the decline of the salamander's habitat. Other factors include, but are not limited to: (1) Other areas within the surface watershed that have high levels of impervious cover, which increases the overall percentage of impervious cover within the watershed; (2) potential for groundwater pollution from areas outside of the surface watershed; and (3) disturbance of the surface habitat of the spring sites themselves.

With regard to the BCCP specifically, we recognize that the BCCP system offers some water quality benefits to the Jollyville Plateau salamander in portions of the Bull Creek, Brushy Creek, Cypress Creek, and Long Hollow Creek drainages through preservation of open space (Service 1996, pp. 2–28–2–29). Despite the significant conservation measures being achieved by the BCCP and their partners, the potential for groundwater degradation still exists from outside these preserves. For example, eight of the nine COA monitoring sites occupied by the Jollyville Plateau salamander within the BCCP have experienced water quality degradation where pollution sources likely originated upstream and outside of the preserved tracts (O'Donnell *et al.* 2006, pp. 29, 34, 37, 49; COA 1999, pp. 6–11; Travis County 2007, p. 4).

(31) *Comment:* The proposed rule directly contradicts the Service's recent policy titled Expanding Incentives for Voluntary Conservation Actions Under the Act (77 FR 15352, March 15, 2012), which concerns the encouragement of voluntary conservation actions for non-listed species and is available at *http://www.gpo.gov/fdsys/pkg/FR-2012-03-15/pdf/2012-6221.pdf.*

Our Response: The commenter did not specify how the proposed rule contradicts the Service's recent policy pronouncements concerning the encouragement of voluntary conservation actions for nonlisted species. The recent policy pronouncements specifically state that voluntary conservation actions undertaken are unlikely to be sufficient to affect the need to list the species. However, if the species is listed and voluntary conservation actions are implemented, as outlined in policy pronouncements, the Service can provide assurances that if the conditions of a conservation agreement are met, the landowner will not be asked to do more, commit more resources, or be subject to further land use restrictions than agreed

upon. We may also allow a prescribed level of incidental take by the landowner.

Listing Process and Policy

(32) *Comment:* The Service is pushing these listings because of the legal settlement and not basing its decision on science and the reality of the existing salamander populations.

Our Response: We are required by court-approved settlement agreements to remove Austin blind and Jollyville Plateau salamanders from the candidate list within a specified timeframe. To remove these salamanders from the candidate list means to propose them for listing as threatened or endangered or to prepare a not-warranted finding. The Act requires us to determine whether a species warrants listing based on our assessment of the five listing factors described in the Act using the best available scientific and commercial information. We already determined, prior to the court settlement agreement, that the Austin blind and Jollyville Plateau salamanders warranted listing under the Act, but were precluded by the necessity to commit limited funds and staff to complete higher priority species actions. The Austin blind and Jollyville Plateau salamanders have been included in our annual Candidate Notices of Review for multiple years, during which time scientific literature and data have and continue to indicate that these salamander species are detrimentally impacted by ongoing threats, and we continued to find that listing each species was warranted but precluded. While the settlement agreement has set a court-ordered timeline for rendering our final decision, our determination is still guided by the Act and its implementing regulations considering the five listing factors and using the best available scientific and commercial information.

(33) *Comment:* Commenters requested that the Service extend the comment period for another 45 days after the first comment period. The commenters were concerned about the length of the proposed listing, which is very dense and fills 88 pages in the **Federal Register** and that the public hearing was held only 2 weeks after the proposed rule was published. The commenter does not consider this enough time to read and digest how the Service is basing a listing decision that will have serious consequences for Williamson County. Furthermore, the 60-day comment period does not give the public enough time to submit written comments to such a large proposed rule.

Our Response: The initial comment period for the proposed listing and critical habitat designation consisted of 60 days, beginning August 22, 2012, and ending on October 22, 2012. We reopened the comment period for an additional 45 days, beginning on January 25, 2013, and ending on March 11, 2013. We consider the comment periods described above an adequate opportunity for both written and oral public comment.

(34) *Comment:* One commenter suggested recognition of two distinct population segments for Jollyville Plateau salamander.

Our Response: In making our listing determinations, we first decide whether a species is endangered or threatened throughout its entire range. Because we have already determined that the Jollyville Plateau salamander is warranted for listing throughout its entire range, we are not considering whether a distinct vertebrate population segment of the species meets the definition of an endangered or threatened species.

(35) *Comment:* One commenter expressed concern with the use of ''unpublished'' data in the proposed rule. It is important that the Service takes the necessary steps to ensure all data used in the listing and critical habitat designations are reliable, verifiable, and peer reviewed, as required by President Obama's 2009 directive for transparency and open government. In December of 2009, the Office of Management and Budget (OMB) issued clarification on the presentation and substance of data used by Federal agencies and required in its Information Quality Guidelines. Additionally under the OMB guidelines, all information disseminated by Federal agencies must meet the standard of ''objectivity.'' Additionally, relying on older studies instead of newer ones conflicts with the Information Quality Guidelines.

Our Response: Our use of unpublished information and data does not contravene the transparency and open government directive. Under the Act, we are obligated to use the best available scientific and commercial information, including results from surveys, reports by scientists and biological consultants, various models, and expert opinion from biologists with extensive experience studying the salamanders and their habitat, whether published or unpublished. One element of the transparency and open government directive encourages executive departments and agencies to make information about operations and decisions readily available to the public. Supporting documentation used to prepare the proposed and final rules is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Rd, Suite 200, Austin, Texas 78758.

Peer Review Process

(36) *Comment:* One commenter requested that the Service make the peer review process as transparent and objective as possible. The Service should make available the process and criteria used to identify peer reviewers. It is not appropriate for the Service to choose the peer review experts. For the peer review to be credible, the entire process including the selection of reviewers must be managed by an independent and objective party. We recommend that the peer review plan identify at least two peer reviewers per scientific discipline. Further, the peer reviewers should be identified.

Our Response: To ensure the quality and credibility of the scientific information we use to make decisions, we have implemented a formal peer review process. Through this peer review process, we followed the guidelines for Federal agencies spelled out in the Office of Management and Budget (OMB) ''Final Information Quality Bulletin for Peer Review,'' released December 16, 2004, and the Service's ''Information Quality Guidelines and Peer Review,'' revised June 2012. Part of the peer review process is to provide information online about how each peer review is to be conducted. Prior to publishing the proposed listing and critical habitat rule for the Austin blind and Jollyville Plateau salamanders, we posted a peer review plan on our Web site, which included information about the process and criteria used for selecting peer reviewers.

In regard to transparency, the OMB and Service's peer review guidelines mandate that we not conduct anonymous peer reviews. The guidelines state that we advise reviewers that their reviews, including their names and affiliations, and how we respond to their comments will be included in the official record for review, and, once all the reviews are completed, their reviews will be available to the public. We followed the policies and standards for conducting peer reviews as part of this rulemaking process.

(37) *Comment:* The results of the peer review process should be available to the public for review and comment well before the end of the public comment period on the listing decision. Will the

public have an opportunity to participate in the peer review process?

Response: As noted above, OMB and the Service's guidelines state that we make available to the public the peer reviewers information, reviews, and how we respond to their comments once all reviews are completed. The peer reviews are completed at the time the last public comment period closes, and our responses to their comments are completed at the time the final listing decision is published in the **Federal Register**. All peer review process information is available upon request at this time and will be made available from the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Rd, Suite 200, Austin, Texas 78758.

(38) *Comment:* New information has been provided during the comment period. The final listing decision should be peer reviewed.

Response: During the second public comment period, we asked peer reviewers to comment on new and substantial information that we received during the first comment period. We did not receive any new information during the second comment period that we felt rose to the level of needing peer review. Furthermore, as part of our peer review process, we asked peer reviewers not to provide comments or recommendations on the listing decision. Peer reviewers were asked to comment specifically on the quality of information and analyses used or relied on in the reviewed documents. In addition, they were asked to identify oversights, omissions, and inconsistencies; provide advice on reasonableness of judgments made from the scientific evidence; ensure that scientific uncertainties are clearly identified and characterized and that potential implications of uncertainties for the technical conclusions drawn are clear; and provide advice on the overall strengths and limitations of the scientific data used in the document.

(39) *Comment:* One commenter requested a peer review of the Austin blind, Georgetown, Jollyville Plateau, and Salado salamanders' taxonomy and recommended that, to avoid any potential bias, peer reviewers not be from Texas or be authors or contributors of any works that the Service has or is relying upon to diagnose the Austin blind, Georgetown, Jollyville Plateau, and Salado salamanders as four distinct species. This commenter also provided a list of four recommended scientists for the peer review on taxonomy.

Our Response: We requested peer reviews of the central Texas salamander taxonomy from 11 scientific experts in this field. Because we considered the 4 recommended scientists to be qualified as independent experts, we included the 4 experts recommended by the commenter among the 11. Eight scientists responded to our request, and all eight scientists agreed with our recognition of four separate and distinct salamander species, as described in the *Species Information* section of the proposed and final listing rules. The commenter also provided an unpublished paper offering an alternative interpretation of the taxonomy of central Texas salamanders (Forstner 2012, entire), and that information was also provided to peer reviewers. We included two authors of the original species descriptions of the Austin blind, Georgetown, Jollyville Plateau, and Salado salamanders to give them an opportunity to respond to criticisms of their work and so that we could fully understand the taxonomic questions about these species.

(40) *Comment:* One commenter requested a revision to the peer review plan to clarify whether it is a review of non-influential information or influential information.

Our Response: We see no benefit from revising the peer review plan to clarify whether the review was of non-influential or influential information. The Service's ''Information Quality Guidelines and Peer Review,'' revised June 2012, defines influential information as information that we can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important policy or private sector decisions. Also, we are authorized to define influential in ways appropriate for us, given the nature and multiplicity of issues for which we are responsible. As a general rule, we consider an impact clear and substantial when a specific piece of information is a principle basis for our position.

(41) *Comment:* One commenter requested clarification on what type of peer review was intended. Was it a panel review or individual review? Did peer reviewers operate in isolation to generate individual reports or did they work collaboratively to generate a single peer review document.

Our Response: Peer reviews were requested individually. Each peer reviewer who responded generated independent comments.

(42) *Comment:* It does not seem appropriate to ask peer reviewers, who apparently do not have direct expertise on *Eurycea* or central Texas ecological systems, to provide advice on reasonableness of judgments made from generic statements or hyper-extrapolations from studies on other species. The peer review plan states that reviewers will have expertise in invertebrate ecology, conservation biology, or desert spring ecology. The disciplines of invertebrate ecology and desert spring ecology do not have any apparent relevance to the salamanders in question. The *Eurycea* are vertebrate species that spend nearly all of their life cycle underground. Central Texas is not a desert. The peer reviewers should have expertise in amphibian ecology and familiarity with how karst hydrogeology operates.

Our Response: The peer review plan stated that we sought out peer reviewers with expertise in invertebrate ecology or desert spring ecology, but this was an error. In the first comment period, we asked and received peer reviews from independent scientists with local and non-local expertise in amphibian ecology, amphibian taxonomy, and karst hydrology. In the second comment period, we sought out peer reviewers with local and non-local expertise in population ecology and watershed urbanization.

(43) *Comment:* The peer review plan appears to ask peer reviewers to consider only the scientific information reviewed by the Service. The plan should include the question of whether the scientific information reviewed constitutes the best available scientific and commercial data. The plan should be revised to clarify that the peer reviewers are not limited to the scientific information in the Service's administrative record.

Our Response: The peer review plan states that we may ask peer reviewers to identify oversights and omissions of information as well as to consider the information reviewed by the Service. When we sent out letters to peer reviewers asking for their review, we specifically asked them to identify any oversights, omissions, and inconsistencies with the information we presented in the proposed rule.

(44) *Comment:* The proposed peer review plan falls far short of the OMB Guidelines (2004 Office of Management and Budget promulgated its Final Information Quality Bulletin for Peer Review).

Our Response: This commenter failed to tell us how the plan falls short of the OMB Guidelines. We tried to adhere to the guidelines set forth for Federal agencies and in OMB's ''Final Information Quality Bulletin for Peer Review,'' released December 16, 2004, and the Service's ''Information Quality Guidelines and Peer Review,'' revised June 2012. While the draft peer review plan had some errors, we believe we satisfied the intent of the guidelines and

that the errors did not affect the rigor of the actual peer review that occurred.

Salamander Populations

(45) *Comment:* Studies indicate that there are healthy populations of Jollyville Plateau salamanders in many locations, including highly developed areas such as State Highway 45 at RM 620 and along Spicewood Springs Road between Loop 1 and Mesa Drive.

Our Response: We are unaware of long-term monitoring studies that have demonstrated healthy populations of Jollyville Plateau salamanders over time in highly developed areas. Furthermore, the fact that some heavily urbanized areas still have salamanders in them does not indicate the probability of population stability. In the case of the Spicewood Spring site mentioned by the commenter, salamander monitoring by COA since 1996 has consistently found low numbers of salamanders (Bendik 2011a, pp. 14, 19–20).

(46) *Comment:* A recent study by SWCA proposes that the COA's data is inadequate to assess salamander population trends and is not representative of environmental and population control factors (such as seasonal rainfall and drought). The study also states that there is very little evidence linking increased urban development to declining water quality.

Our Response: We have reviewed the report by SWCA and COA's data and determined that it is reasonable to conclude that a link between increased urban development, declining water quality, and declining salamander populations exists for these species. Peer reviewers have also generally agreed with this assessment.

(47) *Comment:* Given the central Texas climate and the general geology and hydrology of the Edwards Limestone formation north of the Colorado River, the description ''surface-dwelling'' or ''surface residing'' overstates the extent and frequency that the Jollyville Plateau salamander utilizes surface water. The phrase ''surface dwelling population'' in the proposed rule appears to be based on two undisclosed and questionable assumptions pertaining to Jollyville Plateau salamander species: (1) There are a sufficient number of these salamanders that have surface water available to them for sufficient periods of times so that the group could be called a ''population;'' and (2) there are surface-dwelling Jollyville Plateau salamander populations that are distinct from subsurface dwelling Jollyville Plateau salamander populations. Neither assumption can be correct unless the surface area is within a spring-fed impoundment that maintains water for a significant portion of a year. The notion of Jollyville Plateau salamander being a ''surface dwelling *Eurycea''* most likely stems from an early description of the Barton Springs salamander adopted by the Service. Characterizing the Barton Springs salamander as ''predominately surface dwelling'' is highly questionable. The history of the Barton Springs Pool provides a tremendous amount of information regarding the life history of the Barton Springs salamander (and other Texas *Eurycea*), the relative importance of surface habitat areas, and the absolute necessity for underground habitat.

Our Response: In the proposed rule, we did not mean to imply or assume that ''surface-dwelling populations'' are restricted to surface habitat only. In fact, we made clear in the proposed rule that these populations need access to subsurface habitat. In addition, we also considered the morphology of these species in our description of their habitat use. The morphology of the Jollyville Plateau salamander serves as indicators of surface and subsurface habitat use. The Jollyville Plateau salamander's surface populations have large, well-developed eyes. In addition, the Jollyville Plateau salamanders have yellowish heads and dark greenish-brown bodies. Subterranean populations of this species have reduced eyes and dullness of color, indicating adaptation to subsurface habitat. In contrast, the Austin blind salamander has no external eyes and has lightly pigmented skin, indicating it is more subterranean than surface-dwelling.

Threats

(48) *Comment:* One commenter described an experiment at Barton Springs Pool in 1998 designed to measure the impacts on the Barton Springs salamander from lowering the water level during pool cleanings. At the time, the substrate of the beach area was described by the Service as ''basically silt and sediment with algae on top'' and ''like concrete.'' In other words, it was nothing like the habitat in the proposed rule, which emphasized the need for interstitial spaces (the space between the rocks) free from sediments. Despite this untraditional habitat, 23 Barton Springs salamanders were found in the beach area, and prey items such as amphipods were also found. Later, the COA removed the silt and algae substrate, restricting salamander habitat to the rocky substrate. The events of 1998 demonstrate that unobstructed interstitial space is not necessarily critical to impounded habitats. Constant water impoundments (Barton Springs Pool and Spring Lake in San Marcos) are a unique type of habitat (pond) for *Eurycea* distinct from ephemeral spring flow areas and underground areas. The San Marcos salamander uses aquatic vegetation as cover. It is noteworthy that Spring Lake has a significantly higher density of salamanders than does Barton Springs Pool. Threats the Service associates with sediment must be assessed differently for impounded areas compared to ephemeral spring flow areas.

Our Response: We recognize that these salamanders can use habitat types other than rocky substrate. Jollyville Plateau salamanders have been found under leaf litter, vegetation, and in open areas (Bowles *et al.* 2006, pp. 114–116). Pierce *et al.* (2010, p. 295) observed closely related Georgetown salamanders in open spaces and under sticks, leaf litter, and other structural cover. However, these peer-reviewed studies also came to the conclusion that salamanders are much more likely to be under rocks than other cover objects and that they select rocks with larger surface areas (Pierce *et al.* 2010, p. 296; Bowles *et al.* 2006, p. 118). These results are consistent with studies on other aquatic salamanders nationwide (Davic and Orr 1987; Parker 1991; Welsh and Ollivier 1998; Smith and Grossman 2003). Therefore, based on the best available information, we consider habitat containing substrates other than large rocks to be suboptimal habitat for the Austin blind and Jollyville Plateau salamanders. Regarding sediment, we explain the impacts that sedimentation has on salamanders in the proposed and final listing rules under Factor A. The assessment of this threat is based on a number of studies, which peer reviewers have agreed comprise the best available information. Impoundments promote sedimentation and generally suboptimal habitat for salamanders, as described under Factor A of the proposed and final listing rules. Despite the persistence of salamander species at impounded locations, these are not natural habitat types in which the species have evolved and would be unlikely to persist in perpetuity if restricted to sites like this.

(49) *Comment:* The Service appears reluctant to distinguish between what are normal, baseline physical conditions (climate, geology, and hydrology) found in central Texas and those factors outside of the norm that might actually threaten the survival of the Austin blind and Jollyville Plateau salamanders species. Cyclical droughts and regular flood events are part of the normal

central Texas climate and have been for thousands of years. The Service appears very tentative about accepting the obvious adaptive behaviors of the salamanders to survive floods and droughts.

Our Response: The final listing rule acknowledges that drought conditions are common to the region, and the ability to retreat underground may be an evolutionary adaptation to such natural conditions (Bendik 2011a, pp. 31–32). However, it is important to note that, although salamanders may survive a drought by retreating underground, this does not necessarily mean they are resilient to future worsening drought conditions in combination with other environmental stressors. For example, climate change, groundwater pumping, decreased water infiltration to the aquifer, potential increases in saline water encroachments in the aquifer, and increased competition for spaces and resources underground all may negatively affect their habitat (COA 2006, pp. 46–47; TPWD 2011, pp. 4–5; Bendik 2011a, p. 31; Miller *et al.* 2007; p. 74; Schueler 1991, p. 114). These factors may exacerbate drought conditions to the point where salamanders cannot survive. In addition, we recognize threats to surface habitat at a given site may not extirpate populations of these salamander species in the short term, but this type of habitat degradation may severely limit population growth and increase a population's overall risk of extirpation from cumulative impacts of other stressors occurring in the surface watershed of a spring.

(50) *Comment:* The Service cited two COA studies (COA 2001, p.15; COA 2010a, p. 16) within the proposed rule to support the finding of water quality degradation in the Bull Creek watershed. To the extent that the 2001 study is superseded by the 2010 study, the 2001 study should be excluded. The COA 2001 report (p. 16) states that ''Although this study found some evidence of a negative shift in the Bull Creek watershed, many COA watershed health measures, including the habitat quality index, the TCEQ aquatic life use score, the number of macroinvertebrate taxa, and the three diatom community metrics, all continue to indicate an overall healthy creek.'' The use of the 2010 study without providing a full disclosure or analysis of the overall findings of this study does not meet the objectivity standard of the Information Quality Guidelines.

Our Response: We cited the COA 2010 study twice in the proposed rule: once to state that sensitive macroinvertebrate species were lost in Bull Creek (77 FR 50778), and once to state that Tributary 5 of Bull Creek increased in conductivity, chloride, and sodium and decreased in invertebrate diversity from 1996 to 2008 (77 FR 50779). We do not believe that these statements were misleading or misrepresenting the results of the study. In addition, the COA 2010 report (p. 16) summarized their study by stating that ''currently Bull Creek ranks highest out of all sampled creeks in the COA; however, spatial differences between sites coupled with temporal shifts over the past decade indicate negative changes in the watershed, particularly in the headwater tributaries.'' This statement is followed by a list of water quality declines found in headwater tributaries 5 and 6. This is the area of Bull Creek where Jollyville Plateau salamander habitat is located.

Further, the Service has relied on other data to support the conclusion that water quality is degrading in the Bull Creek watershed. For example, O'Donnell *et al.* (2006, p. 45) state that despite the amount of preserve land in the watershed, ''the City of Austin has reported significant declines in Jollyville Plateau salamander abundance at one of their Jollyville Plateau salamander monitoring sites within Bull Creek even though our analysis found that 61 percent of the land within this watershed has 0 percent impervious cover.'' O'Donnell *et al.* (2006, p. 46) state, ''Poor water quality, as measured by high specific conductance and elevated levels of ion concentrations, is cited as one of the likely factors leading to statistically significant declines in salamander abundance at the COA's long-term monitoring sites.''

(51) *Comment:* The Service cites a 2005 COA study (Turner 2005a, p. 6) that reported ''significant changes over time'' for several chemical constituents (77 FR 50779). The proposed rule does not disclose the following finding from this study: ''No significant trends at the 0.05 level were found when the data from the last five years was eliminated.'' Also not disclosed were the study's author's admonition regarding the limitations of the study and statement that the study should not be used to predict future water quality concentrations. Finally, the proposed rule did not disclose the last sentence of this report: ''Significance and presence of trends is variable depending on flow conditions ('baseflow vs. stormflow, recharge vs. non-recharge').'' Such non-disclosures do not comport with the Information Quality Guidelines.

Our Response: We do not believe that our characterization of this study was misleading or misrepresenting the results of the study. The fact that significant trends were not found when the last 5 years of data (from 1995 through 1999) were excluded from the analysis supports our conclusion that recent urbanization in the surrounding areas was driving declines in water quality. The author states that their regression model should not be used to predict future water quality concentrations (Turner 2005, p. 6). We made no such predictions based on this model in the proposed rule. Regarding the last point made by the commenter, the proposed rule did in fact state that, ''The significance and presence of trends in other pollutants were variable depending on flow conditions (baseflow vs. stormflow, recharge vs. non-recharge) (Turner 2005a, p. 20)'' (see 77 FR 50779).

(52) *Comment:* The Tonkawa Springs and Great Oaks neighborhoods in Williamson County, Texas, had their water supply contaminated in 1995 after gasoline from a nearby gas station leaked into water wells for the two neighborhoods. These water wells had to be decommissioned and another water supplier found.

Our Response: We agree that leaking underground storage tanks and other sources of hazardous materials pose a threat to salamanders. The final listing rules cite this type of hazardous spill as a threat.

(53) *Comment:* One commenter contests the idea that land application irrigation from wastewater treatment plants increases pollutants in the aquifer.

Our Response: No citation is provided by the commenter to support this view; however, Ross (2011, pp. 11–18) reported that residential irrigation with wastewater effluent had led to excessive nutrient input into the recharge zone of the Barton Springs Segment of the Edwards Aquifer. Mahler *et al.* (2011, p. 35) also cites land application of treated wastewater as the likely source of excess nutrients, and possibly wastewater compounds, detected in tributaries recharging Barton Springs. This information has been updated in the final listing rule.

(54) *Comment:* City of Round Rock is extending its contract for the third time to build a fire station next to Krienke Spring in Jollyville Plateau salamander critical habitat Unit 1. No detention facilities have been proposed, and none appear possible because of topography without excavation into karst rock layer. The City of Round Rock had a geological assessment and geotechnical studies done as well as an engineering feasibility study, which includes logs of boring with lab test data, boring location

plan, and preliminary foundation and pavement design information. Copies were provided in the comment letter.

Our Response: The final listing rule cites population growth and urban development as a primary threat to salamanders. To achieve recovery of these salamander species, we will seek cooperative conservation efforts on private, State, and other lands.

(55) *Comment:* Through measuring water-borne stress hormones, researchers found that salamanders from urban sites had significantly higher corticosterone stress hormone levels than salamanders from rural sites. This finding serves as evidence that chronic stress can occur as development encroaches upon these spring habitats.

Our Response: We are aware that researchers are pursuing this relatively new approach to evaluate salamander health based on differences in stress hormones between salamanders from urban and nonurban sites. Stress levels that are elevated due to natural or unnatural (that is, anthropogenic) environmental stressors can affect an organism's ability to meet its life-history requirements, including adequate foraging, predator avoidance, and reproductive success. We encourage continued development of this and other nonlethal scientific methods to improve our understanding of salamander health and habitat quality.

(56) *Comment:* Information in the proposed rule does not discern whether water quality degradation is due to development or natural variation in flood and rainfall events. Fundamental differences in surface counts of salamanders between sites are due to a natural dynamic of an extended period of above-average rainfall followed by recent drought.

Our Response: We recognize that aquatic-dependent organisms such as the Austin blind and Jollyville Plateau salamanders will respond to local weather conditions; however, the best available science indicates that rainfall alone does not explain lower salamander densities at urban sites monitored by the COA. Furthermore, there is scientific consensus among numerous studies on the impacts of urbanization that conclude species diversity and abundance consistently declines with increasing levels of development, as described under Factor A in the final listing rule.

(57) *Comment:* Studies carried out by the Williamson County Conservation Foundation (WCCF) do not support the Service's assertions that habitat for the salamanders is threatened by declining water quality and quantity. New information from water quality studies performed within the past 3 months at Jollyville Plateau salamander sites indicate that aquifer water is remarkably clean and that water quality protection standards already in place throughout the county are working.

Our Response: The listing process requires the Service to consider both ongoing and future threats to the species. Williamson County has yet to experience the same level of population growth as Travis County, but is projected to have continued rapid growth in the foreseeable future. Therefore, it is not surprising that some areas where the Jollyville Plateau salamanders occur in Williamson County may exhibit good water quality. However, our peer reviewers concluded that the water quality data referenced by the commenter is not enough evidence to conclude that water quality at salamander sites in Williamson County is sufficient for the Jollyville Plateau salamander. The best available science indicates that water quality and species diversity consistently declines with increasing levels of urban development. Existing regulatory programs designed to protect water quality are often not adequate to preserve native ecosystem integrity. Although some springs support larger salamander populations compared to others, among the Jollyville Plateau salamander sites for which we have long-term monitoring data, there is a strong correlation between highly urbanized areas and lower salamander densities. According to COA, densities of Jollyville Plateau salamanders are an average of three times lower at urban sites compared to rural streams.

(58) *Comment:* Aerial photography in the Travis County soil survey indicates that the entire surface watershed of Indian Spring was built out as primarily single-family residential subdivisions before 1970 in the absence of any water quality regulations. Impervious cover levels in the watershed have remained above 40 percent for more than 40 years. Despite nearly 75 years of contiguous development and habitat modification to Indian Spring, the salamanders have persisted and appear to thrive.

Our Response: We were provided no references in support of the comment ''. . . Indian Spring . . . salamanders have persisted and appear to thrive.'' Our records indicate the status of the salamander population at Indian Springs is currently unknown. As stated in our response to comment 62 above, we are unaware of long-term monitoring studies that have demonstrated stable populations of Jollyville Plateau salamanders over time in highly developed areas. Furthermore, the fact that some heavily urbanized areas still have salamanders in them does not indicate the probability of population persistence over the long term.

Hydrology

(59) *Comment:* The Service homogenizes ecosystem characteristics across central Texas salamander species. The proposed rule often assumes that the ''surface habitat'' characteristics of the Barton Springs salamander and Austin blind salamander (year-round surface water in manmade impoundments) apply to the Jollyville Plateau salamanders, which live in very different geologic and hydrologic habitat. The Jollyville Plateau salamander lives in water contained within a ''perched'' zone of the Edwards Limestone formation that is relatively thin and does not retain or recharge much water when compared to the Barton Springs segment of the Edwards Aquifer. Many of the springs where Jollyville Plateau salamanders are found are more ephemeral due to the relatively small drainage basins and relatively quick discharge of surplus groundwater after a rainfall event. Surface water at several of the proposed creek headwater critical habitat units is generally short lived following a rain event. The persistence of Jollyville Plateau salamanders at these headwater locations demonstrates that this species is not as dependent on surface water as occupied impoundments suggest.

Our Response: The Service recognizes that the Austin blind salamander is more subterranean than the other three species of salamander. However, the Jollyville Plateau salamander spends large portions of its life in subterranean habitat. Further, the Jollyville Plateau salamander has cave-associated forms. The Austin blind and Jollyville Plateau salamander species are within the same genus, entirely aquatic throughout each portion of their life cycles, respire through gills, inhabit water of high quality with a narrow range of conditions, depend on water from the Edwards Aquifer, and have similar predators. The Barton Springs salamander shares these same similarities. Based on this information, the Service has determined that these species are suitable surrogates for each other.

Exactly how much these species depend on surface water is unclear, but the best available information suggests that the productivity of surface habitat is important for individual growth. For example, a recent study showed that Jollyville Plateau salamanders had negative growth in body length and tail width while using subsurface habitat during a drought and that growth did

not become positive until surface flow returned (Bendik and Gluesenkamp 2012, pp. 3–4). In addition, the morphological variation found in these salamander populations may provide insight into how much time is spent in subsurface habitat compared to surface habitat.

(60) *Comment:* Another commenter stated that salamander use of surface habitat is entirely dependent on rainfall events large enough to generate sufficient spring and stream flow. Even after large rainfall events, stream flow decreases quickly and dissipates within days. As a result, the salamanders are predominately underground species because groundwater is far more abundant and sustainable.

Our Response: See our response to previous comment.

(61) *Comment:* Several commenters stated that there is insufficient data on long-term flow patterns of the springs and creek and on the correlation of flow, water quality, habitat, ecology, and community response to make a listing determination. Commenters propose that additional studies be conducted to evaluate hydrology and surface recharge area, and water quality.

Our Response: We agree that there is a need for more study on the hydrology of salamander sites, but there is enough data available on the threats to these species to make a listing determination. We make our listing determinations based on the five listing factors, singly or in combination, as described in section 4(a)(1) of the Act.

Pesticides

(62) *Comment:* Claims of pesticides posing a significant threat are unsubstantiated. The references cited in the proposed rule are in some cases misquoted, and others are refuted by more robust analysis. The water quality monitoring reports, as noted in the proposed rule, indicate that pesticides were found at levels below criteria set in the aquatic life protection section of the Texas Surface Water Quality Standards, and they were most often at sites with urban or partly urban watersheds. This information conflicts with the statement that the frequency and duration of exposure to harmful levels of pesticides have been largely unknown or undocumented.

Our Response: We recognize there are uncertainties about the degree to which different pesticides may be impacting water quality and salamander health across the range of the Austin blind and Jollyville Plateau salamanders, but the very nature of pesticides being designed to control unwanted organisms through toxicological mechanisms and their persistence in the environment makes them pose an inherent risk to nontarget species. Numerous studies have documented the presence of pesticides in water, particularly areas impacted by urbanization and agriculture, and there is ample evidence that full life-cycle and multigenerational exposures to dozens of chemicals, even at low concentrations, contribute to declines in the abundance and diversity of aquatic species. Few pesticides or their breakdown products have been tested for multigenerational effects to amphibians, and many do not have an applicable State or Federal water quality standard. For these reasons, we maintain that commercial and residential pesticide use contributes to habitat degradation and poses a threat to the Austin blind and Jollyville Plateau salamanders, as well as the aquatic organisms that comprise their diet.

(63) *Comment:* There were no detections of insecticides or fungicides in a USGS monitoring program that analyzed for 52 soluble pesticide residues in the Barton Springs aquifer from 2003 through 2005 (Maher *et al.* 2006). This same study found the highest atrazine concentrations detected was about 0.08 µg/L in a sample from Upper Spring, indicated as 40 times lower than levels of concern (Maher *et al.* 2006). The maximum value of 0.44 µg/L cited from older USGS monitoring data, though still lower than levels of concern, appears to be abnormally high and not representative of actual exposure. The body of evidence available strongly suggests that historical levels of pesticide residues in the aquifers inhabited by the Austin blind and Jollyville Plateau salamanders have always been low and are diminishing.

Our Response: We agree that levels of pesticides documented in Barton Springs and other surface water bodies of the Edwards Aquifer often occur at relatively low concentrations; nevertheless, we believe they are capable of negatively impacting habitat quality and salamander health. Barton Springs in particular is an artesian spring with high flows that would serve to dilute pollutants that are introduced to the system via storm events, irrigation runoff, or other non-point sources and may, therefore, not be representative of pesticide concentrations in springs throughout the range of the Austin blind and Jollyville Plateau salamanders. Furthermore, persistent compounds that bioaccumulate could enter aquatic systems at low levels, but nevertheless reach levels of concern in sediments and biological tissues over time. We agree that pesticide residues would be expected to be low historically in the aquifer, but we disagree that pesticides are decreasing. No citation was provided by the commenter to substantiate this claim. We believe that, with projected human population growth, the frequency and concentration of pesticides in the environment will increase in the future.

(64) *Comment:* The Service cites Rohr *et al.* (2003, p. 2,391) indicating that carbaryl causes mortalities and deformities in streamside salamanders (*Ambystoma barbouri*). However, Rohr *et al.* (2003, p. 2,391) actually found that larval survival was reduced by the highest concentrations of carbaryl tested (50 µg/L) over a 37-day exposure period. Rohr *et al.* (2003, p. 2,391) also found that embryo survival and growth was not affected, and hatching was not delayed in the 37 days of carbaryl exposure. In the same study, exposure to 400 µg/L of atrazine over 37 days (the highest dose tested) had no effect on larval or embryo survival, hatching, or growth. A Scientific Advisory Panel (SAP) of the Environmental Protection Agency (EPA) reviewed available information regarding atrazine effects on amphibians, including the Hayes (2002) study cited by the Service, and concluded that atrazine appeared to have no effect on clawed frog (*Xenopus laevis*) development at atrazine concentrations ranging from 0.01 to 100 µg/L. These studies do not support the Service's conclusions.

Our Response: We do not believe that our characterization of Rohr *et al.* (2003) misrepresented the results of the study. In their conclusions, Rohr *et al.* (2003, p. 2,391) state, ''Carbaryl caused significant larval mortality at the highest concentration and produced the greatest percent of malformed larvae, but did not significantly affect behavior relative to controls. Although atrazine did not induce significant mortality, it did seem to affect motor function.'' This study clearly demonstrates that these two pesticides can have an impact on amphibian biology and behavior. In addition, the EPA (2007, p. 9) also found that carbaryl is likely to adversely affect the Barton Springs salamander both directly and indirectly through reduction of prey.

Regarding the Hayes (2002) study, we acknowledge that an SAP of the EPA reviewed this information and concluded that atrazine concentrations less than 100 µg/L had no effects on clawed frogs in 2007. However, the 2012 SAP did reexamine the conclusions of the 2007 SAP using a meta-analysis of published studies along with additional studies on more species (EPA 2012, p. 35). The 2012 SAP expressed concern

that some studies were discounted in the 2007 SAP analysis, including studies like Hayes (2002) that indicated that atrazine is linked to endocrine disruption in amphibians (EPA 2012, p. 35). In addition, the 2007 SAP noted that their results on clawed frogs are insufficient to make global conclusions about the effects of atrazine on all amphibian species (EPA 2012, p. 33). Accordingly, the 2012 SAP has recommended further testing on at least three amphibian species before a conclusion can be reached that atrazine has no effect on amphibians at concentrations less than 100 µg/L (EPA 2012, p. 33). Due to potential differences in species sensitivity, exposure scenarios that may include dozens of chemical stressors simultaneously, and multigenerational effects that are not fully understood, we continue to view pesticides in general, including carbaryl, atrazine, and many others to which aquatic organisms may be exposed, as a potential threat to water quality, salamander health, and the health of aquatic organisms that comprise the diet of salamanders.

Impervious Cover

(65) *Comment:* One commenter stated that, in the draft impervious cover analysis, the Service has provided no data to prove a cause and effect relationship between impervious cover and the status of surface salamander sites or the status of underground habitat.

Our Response: Peer reviewers agreed that we used the best available scientific information in regard to the link between urbanization, water quality, and salamander populations.

(66) *Comment:* On page 18 of the draft impervious cover analysis, the Service dismisses the role and effectiveness of water quality controls to mitigate the effects of impervious cover: ''. . . the effectiveness of storm water runoff measures, such as passive filtering systems, is largely unknown in terms of mitigating the effects of watershed-scale urbanization.'' The Service recognized the effectiveness of such storm water runoff measures in the final rule listing the Barton Springs salamander as endangered in 1997. Since 1997, the Service has separately concurred that the water quality controls imposed in the Edwards Aquifer area protect the Barton Springs salamander.

Our Response: Since 1997, water quality and Jollyville Plateau salamander counts have declined at several salamander sites, as described under Factor A in the final listing rule. This is in spite of water quality control measures implemented in the Edwards Aquifer area. Further discussion of these measures can be found under Factor D in this final listing rule.

(67) *Comment:* The springshed, as defined in the draft impervious cover analysis, is a misnomer because the so-called springsheds delineated in the study are not the contributing or recharge area for the studied springs. Calling a surface area that drains to a specific stretch of a creek a springshed is disingenuous and probably misleading to less informed readers.

Our Response: We acknowledge that the term springshed may be confusing to readers, and we have thus replaced this term with the descriptors ''surface drainage area of a spring'' or ''surface watershed of a spring'' throughout the final listing rule and impervious cover analysis document.

(68) *Comment:* Page 18 of the draft impervious cover analysis states, ''. . . clearly-delineated recharge areas that flow to specific springs have not been identified for any of these spring sites; therefore, we could not examine impervious cover levels on recharge areas to better understand how development in those areas may impact salamander habitat.'' This statement is not accurate with respect to the springs in which the Austin Blind salamander has been observed. Numerous studies, including several dye studies, have been conducted on the recharge area for these springs. Enclosed with this letter are seven studies that describe the ''springshed'' for these springs. Further, Barton Springs Pool is largely isolated from Barton Creek due to dams and bypass structures except during larger rainfall events when the creek tops the upstream dam. That the draft impervious cover analysis misses these obvious and widely known facts indicates a fundamental misunderstanding of how the Barton Springs segment of the Edwards Aquifer operates.

Our Response: We acknowledge that the recharge area for Barton Springs is much better studied compared to springs for other central Texas salamanders, and we have incorporated this information in the final impervious cover analysis. We are also aware of the upstream dam above Barton Springs. However, this dam does not isolate the springs from threats occurring within the surface watershed. We believe the surface watershed of Barton Springs does play a role in determining the overall habitat quality of this site. For example, development in the surface watershed may increase the frequency and severity of flood events that top the upstream dam. These floods contain contaminants and sediments that accumulate in Barton Springs (Geismar 2005, p. 2; COA 2007a, p. 4).

(69) *Comment:* During the first public comment period, many entities submitted comments and information directing the Service's attention to the actual data on water quality in the affected creeks and springs. Given the amount of water quality data available to the Service and the public, the Texas Salamander Coalition is concerned that the Service continues to ignore local data and instead focuses on impervious cover and impervious cover studies conducted in other parts of the country without regard to existing water quality regulations. Why use models, generic data, and concepts when actual data on the area of concern is readily available?

Our Response: The Service has examined and incorporated all water quality data submitted during the public comment periods. However, the vast majority of salamander sites are still lacking long-term monitoring data that are necessary to make conclusions on the status of the site's water quality. The impervious cover analysis allows us to quantify this specific threat for sites where information is lacking.

(70) *Comment:* Spicewood Springs, proposed critical habitat Unit 31 for the Jollyville Plateau salamander, was fully built out prior to 1995. No open space exists within Unit 31 aside from the narrow wooded area along an unnamed tributary. Impervious cover in Unit 31 exceeds 55 percent. Impervious cover within the Spicewood Springs surface watershed exceeds 50 percent. Development has almost certainly led to bank erosion, increased velocity, decreased water depths, fill from construction activities, and stream maintenance and stabilization. These modifications have altered the natural and traditional character of the tributary in which Spicewood Springs are located. Extensive, historic impervious cover in the watershed (55 percent) and the subsequent baseline water quality has not eliminated Jollyville Plateau salamander at the spring, documenting that the threat of the habitat degradation is absent in Unit 31. By the criteria in the proposed rule, the Jollyville Plateau salamander should no longer occupy Spicewood Springs because the impervious cover is greater than 15 percent and has been for 30 years. However, Jollyville Plateau salamanders have been found by the COA in 1996 after which most of the development in the area was complete. Further, recent water quality sampling by SWCA shows baseline levels of almost all contaminants. Any future added impervious cover is not likely to significantly reduce the current amount

of groundwater recharging. Groundwater depletion may also result from groundwater extraction. Review of the Texas Water Development Board data indicates no Edwards formation water wells are in the area.

Our Response: Numerous variables affect the extent to which any given spring may be impacted by surrounding land uses and human activities that occur both within the immediate watershed and in areas of groundwater recharge. Some springs may be more resistant or resilient to increased pollution loading due to high flow volume, extensive subsurface habitat, or other physical, chemical, or biological features that ameliorate the effects of environmental stressors. Impervious cover estimates are a useful tool to indicate the likelihood of injury to aquatic resources, but there are exceptions. However, the scientific literature overwhelmingly indicates a strong pattern of lower water quality and aquatic biodiversity in the presence of increasing levels of impervious cover.

Disease

(71) *Comment:* The Service concludes in the proposed rule that chytrid fungus is not a threat to any of the salamanders. The Service's justification for this conclusion is that they have no data to indicate whether impacts from this disease may increase or decrease in the future. There appears to be inconsistency in how the information regarding threats is used.

Our Response: Threats are assessed by their imminence and magnitude. Currently, we have no data to indicate that chytrid fungus is a significant threat to the species. The few studies that have looked for chytrid fungus in central Texas *Eurycea* found the fungus, but no associated pathology was found within several populations and among different salamander species.

(72) *Comment:* The statement about chytrid fungus having been documented on Austin blind salamanders in the wild is incorrect. Chytrid fungus has only been documented on captive Austin blind salamanders. The appropriate citation for this is Chamberlain 2011, COA, (pers. comm.), not O'Donnell *et al.* 2006, as cited in the proposed rule.

Our Response: This statement has been corrected in the final listing rule.

Climate Change

(73) *Comment:* Climate change has already increased the intensity and frequency of extreme rainfall events globally (numerous references) and in central Texas. This increase in rainfall extremes means more runoff possibly overwhelming the capacity of recharge features. This has implications for water storage. Implications are that the number of runoff events recharging the aquifer with a higher concentration of toxic pollutants than past events will be occurring more frequently, likely in an aquifer with a lower overall volume of water to dilute pollutants. Understanding high concentration toxicity needs to be evaluated in light of this.

Our Response: We agree that climate change will likely result in less frequent recharge, affecting both water quantity and quality of springs throughout the aquifer. We have added language in the final listing rule to further describe the threat of climate change and impacts to water quality.

(74) *Comment:* The section of the proposed rule addressing climate change fails to include any consideration or description of a baseline central Texas climate. The proposed rule describes flooding and drought as threats, but fails to provide any serious contextual analysis of the role of droughts and floods in the life history of the central Texas salamanders.

Our Response: The proposed and final listing rules discuss the threats of drought conditions and flooding, both in the context of naturally occurring weather patterns and as a result of anthropogenic activities.

(75) *Comment:* The flooding analysis is one of several examples in the proposed rule in which the Service cites events measured on micro-scales of time and area, and fails to comprehend the larger ecosystem at work. For example, the proposed rule describes one flood event causing ''erosion, scouring the streambed channel, the loss of large rocks, and creation of several deep pools.'' Scouring and depositing sediment are both normal results of the intense rainfall events in central Texas.

Our Response: While we agree that scouring and sediment deposition are normal hydrologic processes, when the frequency and intensity of these events is altered by climate change, urbanization, or other anthropogenic forces, the resulting impacts to ecosystems can be more detrimental than what would occur naturally.

Other Threats

(76) *Comment:* The risk of extinction is negatively or inversely correlated with population size. Also, small population size, in and of itself, can increase the risk of extinction due to demographic stochasticity, mutation accumulation, and genetic drift. The correlation between extinction risk and population size is not necessarily indirect (that is, due to an additional extrinsic factor such as environmental perturbation).

Our Response: Although we do not consider small population sizes to be a threat in and of itself to any of the Austin blind and Jollyville Plateau salamanders, we do believe that small population sizes make them more vulnerable to extinction from other existing or potential threats, such as major stochastic events.

Taxonomy

(77) *Comment:* The level of genetic divergence among the Jollyville Plateau, Georgetown, and Salado salamanders is not sufficiently large to justify recognition of three species. The DNA papers indicate a strong genetic relationship between individual salamanders found across the area. Such a strong relationship necessarily means that on an ecosystem-wide basis, the salamanders are exchanging genetic material on a regular basis. There is no evidence that any of these salamanders are unique species.

Our Response: The genetic relatedness of the Georgetown salamander, Jollyville Plateau salamander, and Salado salamanders is not disputed. The three species are included together on a main branch of the tree diagrams of mtDNA data (Chippindale *et al.* 2000, Figs. 4 and 6). The tree portraying relationships based on allozymes (genetic markers based on differences in proteins coded by genes) is concordant with the mtDNA trees (Chippindale *et al.* 2000, Fig. 5). These trees support the evolutionary relatedness of the three species, but not their identity as a single species. The lack of sharing of mtDNA haplotype markers, existence of unique allozyme alleles in each of the three species, and multiple morphological characters diagnostic of each of the three species are inconsistent with the assertion that they are exchanging genetic material on a regular basis. The Austin blind salamander is on an entirely different branch of the tree portraying genetic relationships among these species based on mtDNA and has diagnostic, morphological characters that distinguish it from other Texas salamanders (Hillis *et al.* 2001, p. 267). Based on our review of these differences, and taking into account the views expressed in peer reviews by expert taxonomists, we believe that the currently available evidence is sufficient for recognizing these salamanders as four separate species.

(78) *Comment:* A genetics professor commented that Forstner's report (2012) disputing the taxonomy of the Austin

blind, Georgetown, Jollyville Plateau, and Salado salamanders represents a highly flawed analysis that has not undergone peer review. It is not a true taxonomic analysis of the *Eurycea* complex and does not present any evidence that call into question the current taxonomy of the salamanders. Forstner's (2012) report is lacking key information regarding exact methodology and analysis. It is not entirely clear what resulting length of base pairs was used in the phylogenetic analysis and the extent to which the data set was supplemented with missing or ambiguous data. The amount of sequence data versus missing data is important for understanding and interpreting the subsequent analysis. It also appears as though Forstner included all individuals with available, unique sequence when, in fact, taxonomic sampling—that is, the number of individuals sampled within a particular taxon compared with other taxa—can also affect the accuracy of the resulting topology. The Forstner (2012) report only relies on mitochondrial DNA whereas the original taxonomic descriptions of these species relied on a combination of nuclear DNA, mitochondrial DNA, as well as morphology (Chippindale *et al.* 2000, Hillis *et al.* 2001). Forstner's (2012) report does not consider non-genetic factors such as ecology and morphology when evaluating taxonomic differences. Despite the limitations of a mitochondrial DNA-only analysis, Forstner's (2012) report actually contradicts an earlier report by the same author that also relied only on mtDNA.

Our Response: This comment supports the Service's and our peer reviewers' interpretation of the best available data (see Responses to Comments 1 through 5 above).

(79) *Comment:* Forstner (2012) argues that the level of genetic divergence among the three species of Texas *Eurycea* is not sufficiently large to justify recognition of three species. A genetics professor commented that this conclusion is overly simplistic. It is not clear that the populations currently called *Eurycea lucifuga* in reality represent a single species, as Forstner (2012) assumes. Almost all cases of new species in the United States for the last 20 years (*E. waterlooensis* is a rare exception) have resulted from DNA techniques used to identify new species that are cryptic, meaning their similarity obscured the genetic distinctiveness of the species. One could view the data on *Eurycea lucifuga* as supporting that cryptic species are also present. Moreover, Forstner's (2012) comparison was made to only one species, rather than to salamanders generally. Moreover, there is perhaps a problem with the Harlan and Zigler (2009) data. They sequenced 10 specimens of *E. lucifuga,* all from Franklin County, Tennessee; 9 of these show genetic distances between each other from 0.1 to 0.3 percent, which is very low. One specimen shows genetic distance to all other nine individuals from 1.7 to 1.9 percent, an order of magnitude higher. This single specimen is what causes the high level of genetic divergence to which Forstner compares the *Eurycea.* This discrepancy is extremely obvious in the Harlan and Zigler (2009) paper, but was not mentioned by Forstner (2012). A difference of an order of magnitude in 1 specimen of 10 is highly suspect, and, therefore, these data should not be used as a benchmark in comparing *Eurycea.*

The second argument in Forstner (2012) is that the phylogenetic tree does not group all individuals of a given species into the same cluster or lineage. Forstner's (2012) conclusions are overly simplistic. The failure of all sequences of *Eurycea tonkawae* to cluster closely with each other is due to the amount of missing data in some sequences. It is well known in the phylogenetics literature that analyzing sequences with very different data (in other words, large amounts of missing data) will produce incorrect results because of this artifact. As an aside, why is there missing data? The reason is that these data were produced roughly 5 years apart. The shorter sequences were made at a time when lengths of 350 bases for cytochrome b were standard because of the limitations of the technology. As improved and cheaper methods were available (about 5 to 6 years later), it became possible to collect sequences that were typically 1,000 to 1,100 bases long. It is important to remember that the data used to support the original description of the three northern species by Chippindale *et al.* (2000) were not only cytochrome b sequences, but also data from a different, but effective, analysis of other genes, as well as analysis of external characteristics. Forstner's (2012) assessment of the taxonomic status (species or not) of the three species of the northern group is not supported by the purported evidence that he presents (much of it unpublished).

Our Response: This comment supports the Service's and our peer reviewers' interpretation of the best available data (see Responses to Comments 1 through 5 above).

(80) *Comment:* Until the scientific community determines the appropriate systematic approach to identify the number of species, it seems imprudent to elevate the salamanders to endangered.

Our Response: The Service must base its listing determinations on the best available scientific and commercial information, and such information includes considerations of correct taxonomy. To ensure the appropriateness of our own analysis of the relevant taxonomic literature, we sought peer reviews from highly qualified taxonomists, particularly with specialization on salamander taxonomy, of our interpretation of the available taxonomic literature and unpublished reports. We believe that careful analysis and peer review is the best way to determine whether any particular taxonomic arrangement is likely to be generally accepted by experts in the field. The peer reviews that we received provide overall support, based on the available information, for the species that we accept as valid in the final listing rule.

Technical Information

(81) *Comment:* Clarify whether the distance given for the Austin blind salamander extending ''at least 984 feet (ft) (300 meters (m) underground'' is a vertical depth or horizontal distance.

Our Response: It is a horizontal distance. This has been clarified in the final listing rule.

(82) *Comment:* The Service made the following statement in the proposed rule: ''Therefore, the status of subsurface populations is largely unknown, making it difficult to assess the effects of threats on the subsurface populations and their habitat.'' In fact, the difficulty of assessing threats for subsurface populations depends upon the threats. One can more easily assess threats of chemical pollutants, for example, because subterranean populations will be affected similarly to surface ones because they inhabit the same or similar water.

Our Response: The statement above was meant to demonstrate the problems associated with not knowing how many salamanders exist in subsurface habitat rather than how threats are identified. We have removed the statement in the final listing rule to eliminate this confusion.

(83) *Comment:* In addition to the references cited in the proposed rule, Bowles *et al.* (2006) also documents evidence of reproduction throughout the year in Jollyville Plateau salamanders.

Our Response: We examined the published article by Bowles *et al.* (2006, pp. 114, 116, 118), and found that, while there were juvenile salamanders observed nearly year-round, there was

also evidence of a seasonal reproduction pattern among their study's findings. We have included this information in the final listing rule.

(84) *Comment:* Geologists with the COA have extensively reviewed the possibility that a small test well caused the dewatering of Moss Gully Spring, as discussed in the proposed rule, and have been unable to substantiate that theory. In fact, the boring was drilled near the spring in 1985, and the spring was found to have significant flow and a robust Jollyville Plateau salamander population in the early 1990s. Reduction in flow and a smaller salamander population was observed at Moss Gully Spring around 2005 or 2006, but there had been no changes to the boring. Subsequent groundwater tracing also failed to delineate a definitive connection between the well and the spring.

Our Response: Given the existing uncertainty that dewatering at this site was caused by the 1985 test well, we have removed the discussion of Moss Gully Spring from the final listing rule.

(85) *Comment:* The discussion of the COA's Water Treatment Plant 4 project in the proposed rule could be misconstrued as posing a threat to the Jollyville Plateau salamander.

Our Response: We agree that construction and operation of the Jollyville Transmission Main tunnel, including associated vertical shafts, is unlikely to adversely affect the Jollyville Plateau salamander due to best management practices and environmental monitoring implemented by the COA. We have modified this discussion in the final listing rule to clarify our assessment.

Changes From Proposed Listing Rule

On August 22, 2012 (77 FR 50768), we published a proposed rule to list the Jollyville Plateau salamander as endangered. Based on additional information we received during the comment period on the proposed rule and after further analysis of the magnitude and imminence of threats to the species, we are listing the Jollyville Plateau salamander as a threatened species in this final rule. For more detailed information, please see *Listing Determination for the Jollyville Plateau Salamander* below.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat modification, in the form of degraded water quality and quantity and disturbance of spring sites, is the primary threat to the Austin blind and Jollyville Plateau salamanders. Water quality degradation in salamander habitat has been cited as the top concern in several studies (Chippindale *et al.* 2000, pp. 36, 40, 43; Hillis *et al.* 2001, p. 267; Bowles *et al.* 2006, pp. 118–119; O'Donnell *et al.* 2006, pp. 45–50). These salamanders spend their entire life cycle in water. All of the species have evolved under natural aquifer conditions both underground and as the water discharges from natural spring outlets. Deviations from high water quality and quantity have detrimental effects on salamander ecology because the aquatic habitat can be rendered unsuitable for salamanders by changes in water chemistry and flow patterns. Substrate modification is also a major concern for the salamander species (COA 2001, pp. 101, 126; Geismar 2005, p. 2; O'Donnell *et al.* 2006, p. 34). Unobstructed interstitial space is a critical component to the surface habitat for the Austin blind and Jollyville Plateau salamanders, because it provides cover from predators and habitat for their macroinvertebrate prey items within surface sites. When the interstitial spaces become compacted or filled with fine sediment, the amount of available foraging habitat and protective cover for salamanders is reduced (Welsh and Ollivier 1998, p. 1,128).

Threats to the habitat of the Austin blind and Jollyville Plateau salamanders (including those that affect water quality, water quantity, or the physical habitat) may affect only the surface habitat, only the subsurface habitat, or both habitat types. For example, substrate modification degrades the surface springs and spring-runs, but does not impact the subsurface environment, while water quality degradation can impact both the surface and subsurface habitats, depending on whether the degrading elements are moving through groundwater or are running off the ground surface into a spring area (surface watershed). Our assessment of water quality threats from urbanization is largely focused on surface watersheds. Impacts to subsurface areas are also likely to occur from urbanization over recharge zones within the Edwards Aquifer region; however, these impacts are more difficult to assess given the limited information available on subsurface flows and drainage areas that feed into these subsurface flows to the springs and cave locations. These recharge areas are additional pathways for impacts to the Austin blind and Jollyville Plateau salamanders to occur that we are not able to precisely assess at each known salamander site. However, we can consider urbanization and various other sources of impacts to water quality and quantity over the larger recharge zone to the aquifer (as opposed to individual springs) to assess the potential for impacts at salamander sites.

The threats under Factor A will be presented in reference to stressors and sources. We consider a stressor to be a physical, chemical, or biological alteration that can induce an adverse response from an individual salamander. These alterations can act directly on an individual or act indirectly on an individual through impacts to resources the species requires for feeding, breeding, or sheltering. A source is the origin from which the stressor (or alteration) arises. The majority of the discussion below under Factor A focuses on evaluating the nature and extent of stressors and their sources related to urbanization, the primary source of water quality degradation, within the ranges of the Austin blind and Jollyville Plateau salamanders. Additionally, other stressors causing habitat destruction and modification, including water quantity degradation and physical disturbance to surface habitat, will be addressed.

Water Quality Degradation

Urbanization

Urbanization is the concentration of human populations into discrete areas, leading to transformation of land for residential, commercial, industrial, and transportation purposes. It is one of the most significant sources of water quality degradation that can affect the future survival of central Texas salamanders (Bowles *et al.* 2006, p. 119; Chippindale and Price 2005, pp. 196–197). Urban development leads to various stressors

on spring systems, including increased frequency and magnitude of high flows in streams, increased sedimentation, increased contamination and toxicity, and changes in stream morphology and water chemistry (Coles *et al.* 2012, pp. 1–3, 24, 38, 50–51). Urbanization can also impact aquatic species by negatively affecting their invertebrate prey base (Coles *et al.* 2012, p. 4).

The ranges of the Austin blind and Jollyville Plateau salamanders reside within increasingly urbanized areas of Travis and Williamson Counties that are experiencing rapid human population growth. For example, the population of the COA grew from 251,808 people in 1970 to 656,562 people in 2000. By 2007, the population had grown to 735,088 people (COA 2007b, p. 1). This represents a 192 percent increase over the 37-year period. Population projections from the Texas State Data Center (2012, pp. 496–497) estimate that Travis County will increase in population from 1,024,266 in 2010, to 1,990,820 in 2050. This would be a 94 percent increase in the human population size over this 40-year period. The Texas State Data Center also estimates an increase in human population in Williamson County from 422,679 in 2010 to 2,015,294 in 2050, exceeding the size of Travis County. This would represent a 477 percent increase over a 40-year timeframe. All human population projections from the Texas State Data Center presented here are under a high growth scenario, which assumes that migration rates from 2000 to 2010 will continue through 2050 (Texas State Data Center and the Office of the State Demographer 2012, p. 9). By comparison, the national United States' population is expected to increase from 310,233,000 in 2010, to 439, 010,000 in 2050, which is about a 42 percent increase over the 40-year period (U.S. Census Bureau 2008, p. 1). Growing human populations increase demand for residential and commercial development, drinking water supply, wastewater disposal, flood control, and other municipal goods and services that alter the environment, often degrading salamander habitat by changing hydrologic regimes, and affecting the quantity and quality of water resources.

As development increases within the watersheds where the Austin blind and Jollyville Plateau salamanders occur, more opportunities exist for the detrimental effects of urbanization to impact salamander habitat. A comprehensive study by the USGS found that, across the United States, contaminants, habitat destruction, and increasing streamflow flashiness (rapid response of large increases of streamflow to storm events) resulting from urban development have been associated with the disruption of biological communities, particularly the loss of sensitive aquatic species (Coles *et al.* 2012, p. 1).

Several researchers have also examined the negative impact of urbanization on stream salamander habitat by making connections between salamander abundances and levels of development within the watershed. In 1972, Orser and Shure (p. 1,150) were among the first biologists to show a decrease in stream salamander density with increasing urban development. A similar relationship between salamanders and urbanization was found in North Carolina (Price *et al.* 2006, pp. 437–439; Price *et al.* 2012, p. 198), Maryland, and Virginia (Grant *et al.* 2009, pp. 1,372–1,375). Willson and Dorcas (2003, pp. 768–770) demonstrated the importance of examining disturbance within the entire watershed as opposed to areas just adjacent to the stream by showing that salamander abundance is most closely related to the amount and type of habitat within the entire watershed. In central Texas, Bowles *et al.* (2006, p. 117) found lower Jollyville Plateau salamander densities in tributaries with developed watersheds as compared to tributaries with undeveloped watersheds. Developed tributaries also had higher concentrations of chloride, magnesium, nitrate-nitrogen, potassium, sodium, and sulfate (Bowles *et al.* 2006, p. 117).

The impacts that result from urbanization can affect the physiology of individual salamanders. An unpublished study (Gabor 2012, Texas State University, pers. comm.) has demonstrated that Jollyville Plateau salamanders in disturbed habitats have greater stress levels than those in undisturbed habitats, as determined by measurements of water-borne stress hormones in disturbed (urbanized) and undisturbed streams (Gabor 2012, Texas State University, pers. comm.). Chronic stress can decrease survival of individuals and may lead to a decrease in reproduction. Both of these factors may partially account for the decrease in abundance of salamanders in streams within disturbed environments (Gabor 2012, Texas State University, pers. comm.).

Urbanization occurring within the watersheds of the Austin blind and Jollyville Plateau salamanders could cause irreversible declines or extirpation of salamander populations with continuous exposure over a relatively short time span. We consider this to be an ongoing threat of high impact for the Jollyville Plateau salamander that is expected to increase in the future as development within its range expands.

Impervious cover is another source of water quality degradation and is directly correlated with urbanization (Coles *et al.* 2012, p. 30). For this reason, impervious cover is often used as a surrogate for urbanization (Schueler *et al.* 2009, p. 309), even though it does not account for many sources of water quality degradation associated with urbanization, including human population density, fertilizer and pesticide use, septic tanks, and fuel storage and transport. Impervious cover is any surface material that prevents water from filtering into the soil, such as roads, rooftops, sidewalks, patios, paved surfaces, or compacted soil (Arnold and Gibbons 1996, p. 244). Once vegetation in a watershed is replaced with impervious cover, rainfall is converted to surface runoff instead of filtering through the ground (Schueler 1991, p. 114). Such urbanized development in a watershed may: (1) Alter the hydrology or movement of water through a watershed, (2) increase the inputs of contaminants to levels that greatly exceed those found naturally in streams, and (3) alter habitats in and near streams that provide living spaces for aquatic species (Coles *et al.* 2012, p. 38), such as the Austin blind and Jollyville Plateau salamanders. During periods of high precipitation levels, stormwater runoff in urban areas can enter recharge areas of the Edwards Aquifer and rapidly transport sediment, fertilizer nutrients, and toxic contaminants (such as pesticides, metals, and petroleum hydrocarbons) to salamander habitat.

Both nationally and locally, consistent relationships between impervious cover and water quality degradation through contaminant loading have been documented. In a study of contaminant input from various land use areas in Austin, stormwater runoff loads were found to increase with increasing impervious cover (COA 1990, pp. 12–14). This study also found that contaminant input rates of the more urbanized watersheds were higher than those of the small suburban watersheds. Soeur *et al.* (1995, p. 565) determined that stormwater contaminant loading positively correlated with development intensity in Austin. In a study of 38 small watersheds in the Austin area, several different contaminants were found to be positively correlated with impervious cover (5-day biochemical oxygen demand, chemical oxygen demand, ammonia, dissolved phosphorus, copper, lead, and zinc)

(COA 2006, p. 35). Using stream data from 1958 to 2007 at 24 Austin-area sites, some of which are located within watersheds occupied by Austin blind salamanders and Jollyville Plateau salamanders, Glick *et al.* (2009, p. 9) found that the COA's water quality index had a strong negative correlation with impervious cover. Veenhuis and Slade (1990, pp. 18–61) also reported mean concentrations of most water quality constituents, such as total suspended solids and other pollutants, are lower in undeveloped watersheds than those for urban watersheds.

Impervious cover has demonstrable impacts on biological communities within streams. Schueler (1994, p. 104) found that sites receiving runoff from high impervious cover drainage areas had sensitive aquatic macroinvertebrate species replaced by species more tolerant of pollution and hydrologic stress (high rate of changes in discharges over short periods of time). An analysis of nine regions across the United States found considerable losses of algal, invertebrate, and fish species in response to stressors brought about by urban development (Coles *et al.* 2012, p. 58). In an analysis of 43 North Carolina streams, Miller *et al.* (2007, pp. 78–79) found a strong negative relationship between impervious cover and the abundance of larval southern two-lined salamanders (*Eurycea cirrigera*). The COA cited five declining salamander populations from 1997 to 2006: Balcones District Park Spring, Tributary 3, Tributary 5, Tributary 6, and Spicewood Tributary (O'Donnell *et al.* 2006, p. 4). All of these populations occur within surface watersheds containing more than 10 percent impervious cover (Service 2013, pp. 9–11). Springs with relatively low amounts of impervious cover (6.77 and 0 percent for Franklin and Wheless Springs, respectively) in their surface drainage areas tend to have generally stable or increasing salamander populations (Bendik 2011a, pp. 18–19). Bendik (2011a, pp. 26–27) reported statistically significant declines in Jollyville Plateau salamander populations over a 13-year period at six monitored sites with high impervious cover (18 to 46 percent) compared to two sites with low impervious cover (less than 1 percent). These results are consistent with Bowles *et al.* (2006, p. 111), who found lower densities of Jollyville Plateau salamanders at urbanized sites compared to non-urbanized sites.

We recognize that the long-term survey data of Jollyville Plateau salamanders using simple counts may not give conclusive evidence on the long-term trend of the population at each site. However, based on the threats and evidence from the literature, the declines in counts seen at urban Jollyville Plateau salamander sites are likely real declines in the population. We expect downward trends in salamander populations to continue into the future as human population growth and urbanization drive further declines in habitat quality and quantity.

Impervious Cover Analysis

For this final rule, we calculated impervious cover within the watersheds occupied by the Austin blind and Jollyville Plateau salamanders. In this analysis, we delineated the surface areas that drain into spring sites and which of these sites may be experiencing habitat quality degradation as a result of impervious cover in the surface drainage area. However, we only examined surface drainage areas for each spring site for the Jollyville Plateau salamander because we did not know the recharge area for specific spring or cave sites. This information was available for the Austin blind salamander and the Barton Springs system. Another limitation of this analysis is that we did not account for riparian (stream edge) buffers or stormwater runoff control measures, both of which have the potential to mitigate some of the effects of impervious cover on streams (Schueler *et al.* 2009, pp. 312–313). Please see the Service's Refined Impervious Cover Analysis (Service 2013, pp. 2–7) for a description of the methods used to conduct this analysis. This analysis is most likely an underestimation of current impervious cover because small areas of impervious cover may have gone undetected at the resolution of our analysis and additional areas of impervious cover may have been added since 2006, which is the year the impervious-cover data for our analysis was generated. We compared our results with the results of similar analyses completed by SWCA and COA, and impervious-cover percentages at individual sites from both analyses were generally higher than our own (Service 2013, Appendix C).

Impervious Cover Categories

We examined studies that report ecological responses to watershed impervious- cover levels based on a variety of degradation measurements (Service 2013, Table 1, p. 4). Most studies examined biological responses to impervious cover (for example, aquatic invertebrate and fish diversity), but several studies measured chemical and physical responses as well (for example, water quality parameters and stream channel modification). The most commonly reported impervious cover level at which noticeable degradation to aquatic ecosystems begins to occur is approximately 10 percent, with more recent studies reporting levels of 10 percent and lower. Recent studies in the eastern United States have reported large declines in aquatic macroinvertebrates (the prey base of salamanders) at impervious-cover levels as low as 0.5 percent (King and Baker 2010, p. 1002; King *et al.* 2011, p. 1664). Bowles *et al.* (2006, pp. 113, 117–118) found lower Jollyville Plateau salamander densities in watersheds with more than 10 percent impervious cover. To our knowledge, this is the only peer-reviewed study that examined watershed impervious-cover effects on salamanders in our study area. This is also in agreement with the Center for Watershed Protection's impervious-cover model, which predicts that stream health begins to decline at 5 to 10 percent impervious cover in small watersheds (Schueler *et al.* 2009, pp. 309, 313). Their prediction is based on a meta-analysis of 35 recent research studies (Schueler *et al.* 2009, p. 310). However, a USGS investigation found immediate declines in aquatic invertebrate communities as soon as the percentage of developed land increased from background levels, including areas with less than 10 percent impervious cover (Coles *et al.* 2012, p. 64).

Various levels of impervious cover within watersheds have been cited as having detrimental effects to water quality and biological communities within streams (Schueler *et al.* 2009, pp. 312–313; Coles *et al.* 2012, p. 65). An impervious-cover model generated using data from relevant literature by Schueler *et al.* (2009, p. 313) indicates that stream degradation generally increases as impervious cover increases, and occurs at impervious cover of 5 to 10 percent. This model predicts that streams transition from an ''impacted'' status (clear signs of declining stream health) to a ''nonsupporting'' status (no longer support their designated uses in terms of hydrology, channel stability, habitat, water quality, or biological diversity) at impervious-cover levels from 20 to 25 percent. However, a recent national-scale investigation of the effects of urban development on stream ecosystems revealed that degradation of invertebrate communities can begin at the earliest levels of urban development (Coles *et al.* 2012, p. 64), thereby contradicting the resistance thresholds described by Schueler (1994, pp. 100–102). Therefore, the lack of a resistance

threshold in biological responses indicates that no assumptions can be made with regard to a ''safe zone'' of impervious cover less than 10 percent (Coles *et al.* 2012, p. 64). In light of these studies, we created the following impervious cover categories:

- None: 0 percent impervious cover in the watershed
- Low: Greater than 0 percent to 10 percent impervious cover in the watershed
- Medium: Greater than 10 percent to 20 percent impervious cover in the watershed
- High: Greater than 20 percent impervious cover in the watershed

Sites in the Low category may still be experiencing impacts from urbanization, as cited in studies such as Coles *et al.* (2012, p. 64), King *et al.* (2011, p. 1664), and King and Baker (2010, p. 1002). In accordance with the findings of Bowles *et al.* (2006, pp. 113, 117–118), sites in the Medium category are likely experiencing impacts from urbanization that are negatively impacting salamander densities. Sites in the High category are so degraded that habitat recovery will either be impossible or very difficult (Schueler *et al.* 2009, pp. 310, 313).

Results of Our Impervious Cover Analysis

We estimated impervious cover percentages for each surface drainage area of a spring known to have at least one population of either an Austin blind or Jollyville Plateau salamander (cave locations were omitted). These estimates and maps of the surface drainage area of spring locations are provided in our refined impervious cover analysis (Service 2013, pp. 1–25). A total of 114 watersheds were analyzed, encompassing a total of 543,269 acres (ac) (219,854 hectares (ha)).

The Austin blind salamander had three watersheds delineated, one for each of the springs where the species is found. Eliza and Parthenia Springs had nearly identical large surface drainage areas, while the watershed of Sunken Garden (Old Mill) was found to be a much smaller area. Even though the level of impervious cover was Low in Eliza and Parthenia watersheds, most of the impervious cover occurs within 5 mi (8 km) of the springs.

We also calculated the impervious cover levels for the contributing and recharge zones of the Barton Springs Segment of the Edwards Aquifer. Unlike the known locations for the Jollyville Plateau salamander, the sources of subsurface water feeding the sites of Austin blind salamander (Barton Springs complex) are fairly well-delineated. Barton Springs is the principal discharge point for the Barton Springs Segment of the Edwards Aquifer, and recharge throughout most of the aquifer converges to this discharge point (Slade *et al.* 1986, p. 28; Johnson *et al.* 2012, p. 2). Most of the water recharging the Barton Springs Segment of the Edwards Aquifer was believed to be derived from percolation through six creeks that cross the recharge zone (Slade *et al.* 1986, pp. 43, 51), but more recent work shows that a significant amount of recharge occurs in the upland areas (Hauwert 2009, pp. 212–213). Approximately 75 percent of the Barton Springs Segment of the recharge zone has no impervious cover. Overall, the recharge zone of the Barton Springs Segment of the Edwards Aquifer has 6.9 percent impervious cover. The contributing zone of the Barton Springs Segment has 1.81 percent impervious cover overall.

For the Jollyville Plateau salamander, a total of 93 watersheds were delineated, representing 106 surface sites. The watersheds varied greatly in size, ranging from the 3-ac (1-ha) watershed of Cistern (Pipe) Spring to the 49,784-ac (20,147-ha) watershed of Brushy Creek Spring. Impervious cover also varied greatly among watersheds. Twelve watersheds had no impervious cover. Eighty-one of the 93 watersheds had some level of impervious cover, with 31 watersheds categorized as High, 26 as Medium, and 21 as Low. The highest level of impervious cover (48 percent) was found in the watershed of Troll Spring.

Based on our analysis of impervious-cover levels in land draining across the surface into salamander surface habitat (Service 2013, pp. 1–25), the Jollyville Plateau salamander had a high proportion of watersheds (47 of 93 analyzed) with medium and high levels of impervious cover. Conversely, the watersheds encompassing the Austin blind salamander were relatively low in impervious cover. No watersheds for the Austin blind salamander were classified as medium or high (that is, greater than 10 percent impervious cover). In addition, the recharge and contributing zones of the Barton Springs segment of the Edwards Aquifer were classified as low.

Although some watersheds in our analysis were classified as low, it is important to note that low levels of impervious cover (that is, less than 10 percent) may degrade salamander habitat. Recent studies in the eastern United States have reported large declines in aquatic macroinvertebrates (the prey base of salamanders) at impervious cover levels as low as 0.5 percent (King and Baker 2010, p. 1002; King *et al.* 2011, p. 1,664). Several authors have argued negative effects to stream ecosystems are seen at low levels of impervious cover and gradually increase as impervious cover increases (Booth *et al.* 2002, p. 838; Groffman *et al.* 2006, pp. 5–6; Schueler *et al.* 2009, p. 313; Coles *et al.* 2012, pp. 4, 64).

Although general percentages of impervious cover within a watershed are helpful in determining the general level of impervious cover within watersheds, it does not tell the complete story of how urbanization may be affecting salamanders or their habitat. Understanding how a salamander might be affected by water quality degradation within its habitat requires an examination of where the impervious cover occurs and what other threats to water quality (for example, non-point-source runoff, highways and other sources of hazardous materials, livestock and feral hogs, and gravel and limestone mining) are present within the watershed.

In addition, several studies have demonstrated that the spatial arrangement of impervious cover has impacts on aquatic ecosystems. An analysis of 42 watersheds in the State of Washington found that certain urban pattern variables, such as land use intensity, land cover composition, landscape configuration, and connectivity of the impervious area are important in predicting effects to aquatic ecosystems (Alberti *et al.* 2007, pp. 355–359). King *et al.* (2005, pp. 146–147) found that the closer developed land was to a stream in the Chesapeake Bay watershed, the larger the effect it had on stream macroinvertebrates. On a national scale, watersheds with development clustered in one large area (versus being interspersed throughout the watershed), and development located closer to streams had higher frequency of high-flow events (Steuer *et al.* 2010, pp. 47–48, 52). Based on these studies, it is likely that the way development is situated in the landscape of a surface drainage area of a salamander spring site plays a large role in how that development impacts salamander habitat.

One major limitation of this analysis is that we only examined surface drainage areas (watersheds) for each spring site for the Jollyville Plateau salamander. In addition to the surface habitat, this salamander uses the subsurface habitat. Moreover, the base flow of water discharging from the springs on the surface comes from groundwater sources, which are in turn replenished by recharge features on the surface. As Shade *et al.* (2008, pp. 3–4)

points out, ''. . . little is known of how water recharges and flows through the subsurface in the Northern Segment of the Edwards Aquifer. Groundwater flow in karst is often not controlled by surface topography and crosses beneath surface water drainage boundaries, so the sources and movements of groundwater to springs and caves inhabited by the Jollyville Plateau salamander are poorly understood. Such information is critical to evaluating the degree to which Jollyville Plateau salamander sites can be protected from urbanization.'' So a recharge area for a spring may occur within the surface watershed, or it could occur many miles away in a completely different watershed. A site completely surrounded by development may still contain unexpectedly high water quality because that spring's base flow is coming from a distant recharge area that is free from impervious cover. While some dye tracer work has been done in the Northern Segment (Shade *et al.* 2008, p. 4), clearly delineated recharge areas that flow to specific springs in the Northern Segment have not been identified for any of these spring sites; therefore, we could not examine impervious-cover levels on recharge areas to better understand how development in those areas may impact salamander habitat.

Impervious cover by itself within the watersheds of the Austin blind and Jollyville Plateau salamanders could cause irreversible declines or extirpation of populations with continuous exposure to water quality degradation stressors over a relatively short timespan. Given the current levels of impervious cover within the surface watersheds for the Jollyville Plateau salamander, we consider this to be a threat of high impact for this species that is expected to increase in the future as development within its range expands. Although the impervious cover level for the Austin blind salamander remains relatively low at the present time, impacts from this threat could increase in the future as urbanization expands.

Hazardous Material Spills

The Edwards Aquifer is at risk from a variety of sources of contaminants and pollutants (Ross 2011, p. 4), including hazardous materials that have the potential to be spilled or leaked, resulting in contamination of both surface and groundwater resources (Service 2005, pp. 1.6–14–1.6–15). For example, a number of point-sources of pollutants exist within the Jollyville Plateau salamander's range. Utility structures such as storage tanks or pipelines (particularly gas and sewer lines) can accidentally discharge. Any activity that involves the extraction, storage, manufacture, or transport of potentially hazardous substances, such as fuels or chemicals, can contaminate water resources and cause harm to aquatic life. Spill events can involve a short release with immediate impacts, such as a collision that involves a tanker truck carrying gasoline. Alternatively, the release can be long term, involving the slow release of chemicals over time, such as a leaking underground storage tank.

A peer reviewer for the proposed rule provided information from the National Response Center's database of incidents of chemical and hazardous materials spills (*http://www.nrc.uscg.mil/foia.html*) from anthropogenic activities including, but not limited to, automobile or freight traffic accidents, intentional dumping, storage tanks, and industrial facilities. The number of incidents is likely to be an underestimate of the total number of incidents because not all incidents are discovered or reported. The database produced 450 records of spill events (145 that directly affected a body of water) in Travis County between 1990 and 2012 and 189 records of spill events (33 that directly affected a body of water) in Williamson County during the same time period. Spills that did not directly affect aquatic environments may have indirectly done so by contaminating soils or lands that drain to water bodies (Gillespie 2012, University of Texas, pers. comm.). The risk of this type of contamination is currently ongoing and expected to increase with increasing activities associated with urbanization in central Texas.

Hazardous material spills pose a significant threat to the Austin blind and Jollyville Plateau salamanders, and impacts from spills could increase substantially under drought conditions due to lower dilution and buffering capability of impacted water bodies. Spills under low flow conditions are predicted to have an impact at much smaller volumes (Turner and O'Donnell 2004, p. 26). For example, it is predicted that at low flows (10 cubic feet per second (cfs)) a spill of 360 gallons (1,362.7 liters) of gasoline 3 mi (4.8 km) from Barton Springs could be catastrophic for the Austin blind salamander population (Turner and O'Donnell 2004, p. 26).

A significant hazardous materials spill within stream drainages of the Austin blind salamander could have the potential to threaten its long-term survival and sustainability of multiple populations or possibly the entire species. Because the Austin blind salamander resides in only one spring system, a catastrophic spill in its surface and subsurface habitat could cause the extinction of this species in the wild. However, because the Jollyville Plateau salamander occurs in 106 surface and 16 cave populations over a broad range, the potential for a catastrophic hazardous materials spill to cause the extinction of this species in the wild is highly unlikely. Even so, a hazardous materials spill has the potential to cause localized Jollyville Plateau salamander populations to be extirpated. In combination with the other threats identified in this final rule, a catastrophic hazardous materials spill could contribute to the Jollyville Plateau salamanders' risk of extinction by reducing its overall probability of persistence. Furthermore, we consider hazardous material spills to be a potential significant threat to the Austin blind salamanders due to their limited distributions, the number of potential sources, and the amount of damage that could be done by a single event.

Underground Storage Tanks

The risk of hazardous material spills from underground storage tanks is widespread in Texas and is expected to increase as urbanization continues to occur. As of 1996, more than 6,000 leaking underground storage tanks in Texas had resulted in contaminated groundwater (Mace *et al.* 1997, p. 2). In 1993, approximately 6,000 gallons (22,712 liters) of gasoline leaked from an underground storage tank located near Krienke Springs in southern Williamson County, Texas, which is known to be occupied by the Jollyville Plateau salamander (Manning 1994, p. 1).

Leaking underground storage tanks have been documented as a problem within the Jollyville Plateau salamander's range (COA 2001, p. 16). The threat of water quality degradation from an underground storage tank could by itself cause irreversible declines or extirpation in local populations or significant declines in habitat quality of the Austin blind and Jollyville Plateau salamanders with only one exposure event. This is considered to be an ongoing threat of high impact to the Jollyville Plateau salamander. Although we are unaware of any information that indicates underground storage tanks have resulted in spills within the vicinity of Austin blind salamander sites, they are likely present within the watersheds that recharge Barton Springs given its urbanized environment. We expect this to become a more significant

threat in the future as urbanization continues to expand.

Highways

The transport of hazardous materials is common on many highways, which are major transportation routes (Thompson *et al.* 2011, p. 1). Every year, thousands of tons of hazardous materials are transported over Texas highways (Thompson *et al.* 2011, p. 1). Transporters of hazardous materials (such as gasoline, cyclic hydrocarbons, fuel oils, and pesticides) carry volumes ranging from a few gallons up to 10,000 gallons (37,854 liters) or more of hazardous material (Thompson *et al.* 2011, p. 1). An accident involving hazardous materials can cause the release of a substantial volume of material over a very short period of time. As such, the capability of standard stormwater management structures (or best management practices) to trap and treat such releases might be overwhelmed (Thompson *et al.* 2011, p. 2).

Interstate Highway 35 crosses the watersheds that contribute groundwater to spring sites occupied by the Austin blind and Jollyville Plateau salamanders. A catastrophic spill could occur if a transport truck overturned and its contents entered the recharge zone of the Northern or Barton Springs Segments of the Edwards Aquifer. Transportation accidents involving hazardous materials spills at bridge crossings are of particular concern because recharge areas in creek beds can transport contaminants directly into the aquifer (Service 2005, pp. 1.6–14). The threat of water quality degradation from highways could by itself cause irreversible declines or extirpation in local populations or significant declines in habitat quality of the Austin blind and Jollyville Plateau salamanders with only one exposure event. We consider this to be an ongoing threat to the Austin blind and Jollyville Plateau salamanders.

Energy Pipelines

Energy pipelines are another source of potential hazardous material spills. They carry crude oil and refined products made from crude oil, such as gasoline, home heating oil, diesel fuel, and kerosene. Liquefied ethylene, propane, butane, and some petrochemicals are also transported through energy pipelines (U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration 2013, p. 1). Austin blind salamander habitat is at risk from hazardous material spills that could contaminate groundwater. There is potential for a catastrophic spill in the Barton Springs Segment of the Edwards Aquifer, due to the presence of the Longhorn pipeline (Turner and O'Donnell 2004, pp. 2–3). Although a number of mitigation measures were employed to reduce the risk of a leak or spill from the Longhorn pipeline, such a spill could enter the aquifer and result in the contamination of salamander habitat at Barton Springs (EPA 2000, pp. 9–29–9–30).

A contaminant spill could travel quickly through the aquifer to Barton Springs, where it could impact Austin blind salamander populations. Depending on water levels in the aquifer, groundwater flow rates through the Barton Springs Segment of the Edwards Aquifer can range from 0.6 mi (1 km) per day to over 4 mi (6 km) per day. The relatively rapid movement of groundwater under any flow conditions provides little time for mitigation efforts to reduce potential damage from a hazardous spill anywhere within the Barton Springs Segment of the Edwards Aquifer (Turner and O'Donnell 2004, pp. 11–13).

The threat of water quality degradation from energy pipelines could by itself cause irreversible declines, extirpation, or significant declines in habitat quality of the Austin blind salamander with only one exposure event. Because the Austin blind salamander is found only at one location and can be extirpated by one catastrophic energy pipeline leak, we consider this to be an ongoing threat of high impact that will likely continue in the future. However, we are unaware of any information that indicates energy pipelines are located within the range of the Jollyville Plateau salamander and, therefore, do not consider this to be a threat for this species at this time.

Water and Sewage Lines

Multiple municipality water lines also run through the surrounding areas of Barton Springs. A water line break could potentially flow directly into Barton Springs, exposing salamanders to chlorine concentrations that are potentially toxic (Herrington and Turner 2009, pp. 5, 6). Sewage spills are the most common type of spill within the Barton Springs watershed and represent a potential catastrophic threat (Turner and O'Donnell 2004, p. 27). Sewage spills often include contaminants such as nutrients, polycyclic aromatic hydrocarbons (PAHs), metals, pesticides, pharmaceuticals, and high levels of fecal coliform bacteria. Increased ammonia levels and reduced dissolved oxygen are the most likely impacts of a sewage spill that could cause rapid mortality of large numbers of salamanders (Turner and O'Donnell 2004, p. 27). Fecal coliform bacteria cause diseases in salamanders and their prey base (Turner and O'Donnell 2004, p. 27). Approximately 7,600 wastewater main pipelines totaling 349 mi (561.6 km) are present in the Barton Springs Segment of the Edwards Aquifer (Herrington *et al.* 2010, p. 16). In addition, there are 9,470 known septic facilities in the Barton Springs Segment as of 2010 (Herrington *et al.* 2010, p. 5), up from 4,806 septic systems in 1995 (COA 1995, pp. 3–13). In one COA survey of these septic systems, over 7 percent were identified as failing (no longer functioning properly, causing water from the septic tank to leak) (COA 1995, pp. 3–18).

Sewage spills from pipelines also have been documented in watersheds supporting Jollyville Plateau salamander populations (COA 2001, pp. 16, 21, 74). For example, in 2007, a sewage line overflowed an estimated 50,000 gallons (190,000 liters) of raw sewage into the Stillhouse Hollow drainage area of Bull Creek (COA 2007c, pp. 1–3). Because the location of the spill was a short distance downstream of currently known salamander locations, no salamanders were thought to be affected.

The threat of water quality degradation from water and sewage lines could by itself cause irreversible declines or extirpation in local populations or significant declines in habitat quality of the Austin blind and Jollyville Plateau salamanders with only one exposure event. We consider this to be an ongoing threat of high impact to the Austin blind and Jollyville Plateau salamanders that is likely to increase in the future as urbanization expands within the ranges of these species.

Swimming Pools

If water from swimming pools is drained into waterways or storm drains without dechlorination, impacts to *Eurycea* salamanders could occur (COA 2001, p. 130). This is due to the concentrations of chlorine commonly used in residential swimming pools, which far exceed the lethal concentrations observed in experiments with the San Marcos salamander (*Eurycea nana*) (COA 2001, p. 130). Saltwater pools have also grown in popularity and pose a similar risk to water quality, because saltwater can be harmful to freshwater organisms (Duellman and Trueb 1986, p. 165; Ingersoll *et al.* 1992, pp. 507–508; Bendik 2012, COA, pers. comm.). Residential swimming pools can be found throughout the watersheds of

several Jollyville Plateau salamander sites and may pose a risk to the salamanders if discharged into the storm drain system or waterways.

Water quality degradation from swimming pools in combination with other impacts could contribute to significant declines in habitat quality. Although swimming pools occur throughout the range of the Jollyville Plateau salamander, using 2012 Google Earth aerial images we identified only two sites for this species (Krienke Spring and Long Hog Hollow Tributary) with swimming pools located within 50 m (164 ft). We did not identify any other swimming pools within 50 m (164 ft) of any other salamander site. Therefore, we do not consider this to be an ongoing threat to the Austin blind or Jollyville Plateau salamanders at this time.

Construction Activities

Short-term increases in pollutants, particularly sediments, can occur during construction in areas of new development. When vegetation is removed and rain falls on unprotected soils, large discharges of suspended sediments can erode from newly exposed areas resulting in increased sedimentation in downstream drainage channels (Schueler 1987, pp. 1–4; Turner 2003, p. 24; O'Donnell *et al.* 2005, p. 15). This increased sedimentation from construction activities has been linked to declines in Jollyville Plateau salamander counts at multiple sites (Turner 2003, p. 24; O'Donnell *et al.* 2006, p. 34).

Cave sites are also impacted by construction, as Testudo Tube Cave (Jollyville Plateau salamander habitat) showed an increase in nickel, calcium, nitrates, and nitrites after nearby road construction (Richter 2009, pp. 6–7). Barton Springs (Austin blind salamander habitat) is also under the threat of pollutant loading due to its proximity to construction activities and the spring's location at the downstream side of the watershed (COA 1997, p. 237). The COA (1995, pp. 3–11) estimated that construction-related sediment and in-channel erosion accounted for approximately 80 percent of the average annual sediment load in the Barton Springs watershed. In addition, the COA (1995, pp. 3–10) estimated that total suspended sediment loads have increased 270 percent over predevelopment loadings within the Barton Springs Segment of the Edwards Aquifer. Construction is intermittent and temporary, but it affects both surface and subsurface habitats. Therefore, we have determined that this threat is ongoing and will continue to affect the Austin blind and Jollyville Plateau salamanders and their habitats.

Also, the physical construction of pipelines, shafts, wells, and similar structures that penetrate the subsurface has the potential to negatively affect subsurface habitat for salamander species. It is known that these salamanders inhabit the subsurface environment and that water flows through the subsurface to the surface habitat. Tunneling for underground pipelines can destroy potential habitat by removing subsurface material, thereby destroying subsurface spaces/conduits in which salamanders can live, grow, forage, and reproduce. Additional material can become dislodged and result in increased sediment loading into the aquifer and associated spring systems. In addition, disruption of water flow to springs inhabited by salamanders can occur through the construction of tunnels and vertical shafts to access them. Because of the complexity of the aquifer and subsurface structure and because detailed maps of the underground conduits that feed springs in the Edwards Aquifer are not available, tunnels and shafts have the possibility of intercepting and severing those conduits (COA 2010b, p. 28). Affected springs could rapidly become dry and would not support salamander populations. The closer a shaft or tunnel location is to a spring, the more likely that the construction will impact a spring (COA 2010b, p. 28). Even small shafts pose a threat to nearby spring systems. We consider subsurface construction to be a threat to the surface and subsurface habitat of the Austin blind and Jollyville Plateau salamanders.

Examples of recent subsurface construction activities that had the potential to pose a threat to salamander surface and subsurface habitat are the Water Treatment Plant No. 4 pipeline and shaft construction and the Barton Springs Pool bypass tunnel repairs. In 2011, construction began on the Jollyville Transmission Main (JTM), a tunnel designed to transport treated drinking water from Water Treatment Plant No. 4 to the Jollyville Reservoir. The project also includes four working shafts along the tunnel route (COA 2010b, p. 1) that provide access points from the surface down to the tunnel. While this type of project has the potential to impact salamanders and their habitat, the COA took the salamanders into consideration and designed measures to avoid or minimize impacts. Because the tunnel is being constructed below the Edwards Aquifer and below the permeable portion of the Glen Rose formation (COA 2010b, p. 42; Toohey 2011, p. 1; COA 2011c, pp. 36, 46), the threat to the salamander from this particular tunnel is considered low.

Of the four Water Treatment Plant No. 4 shafts, only the one at the Four Points location appeared to be a potential threat to any Jollyville Plateau salamanders. However, construction on this shaft is now completed, and there have been no observed impacts to any springs or other downstream Jollyville Plateau habitat (COA 2012, pers. comm.). Within 1 mi (1.6 km) of the Four Points shaft location are 8 of 92 known Jollyville Plateau salamander sites. The closest locations (Spring 21 and Spring 24) are about 2,000 ft (610 m) or greater from the shaft. Best management practices designed to protect groundwater resources have been implemented into the design and construction of the Jollyville Transmission Main shafts. These practices include, but are not limited to: monitoring groundwater quality and spring flow, minimizing sediment discharges during construction, developing a groundwater impact contingency plan, locating working shafts in areas where the chance of encountering conduits to salamander springs is reduced, relocating the treatment plant from its original location near Jollyville Plateau salamander sites to within an area that has no known Jollyville Plateau salamander sites, dedicating 102 ac (41 ha) that was originally purchased for the Water Treatment Plant No. 4 project as conservation land in perpetuity as part of the Balcones Canyonlands Preserve system, creating contingency plans for unexpectedly high groundwater inflow to the shafts during their construction, and rerouting conduit flow paths around the shaft if encountered (COA 2010b, pp. 51–55).

In 2012, the COA began construction in Barton Springs Pool to repair and stabilize a bypass tunnel that allows both normal flow from Barton Creek and frequent small floods to bypass the swimming area to protect water quality within the pool. This project had the potential to affect both Barton Springs and Austin blind salamanders by directly injuring individuals found within the construction area, drying out areas of habitat during pool drawdowns, and subjecting them to potentially harmful chemicals and sediment (Service 2011, p. 27). However, the COA took the Barton Springs and Austin blind salamanders into careful consideration when planning this project and ultimately implemented a variety of protective measures to minimize threats to these species. Some

of these measures included, but are not limited to: (1) Regular monitoring of water depth, water quality and temperature, discharge of the Barton Springs complex, and salamander habitat; (2) limiting drawdown to only 2 ft (0.6 m) under conditions of 40 cfs or greater; (3) daily surveying for salamanders to ensure none were present in an area where construction activities would be conducted; (4) relocating salamanders found during these surveys to undisturbed habitat areas; (5) carefully evaluating the types of materials used during construction and choosing those that were the least toxic to the aquatic ecosystem; and (6) using sediment and pollution control measures, such as silt fences, containment booms, and turbidity curtains (Service 2011, pp. 14–18). Because the COA implemented these protective measures, impacts to the Barton Springs and Austin blind salamanders were minimized.

The threat of water quality degradation from construction activities could by itself cause irreversible declines or extirpation in local populations or significant declines in habitat quality of the Austin blind and Jollyville Plateau salamanders with only one exposure event (if subsurface flows were interrupted or severed) or with repeated exposure over a relatively short timespan. From information available in our files and provided to us during the peer review and public comment period for the proposed rule, we found that all of the Austin blind salamander sites have been known to have had construction on their perimeters. Likewise, we are aware of physical habitat modification from construction activities at one of the known Jollyville Plateau surface sites. Therefore, we consider construction activities to be an ongoing threat of medium impact to the Austin blind salamander and low impact to Jollyville Plateau salamanders given their low exposure risk.

Quarries

Construction activities within rock quarries can permanently alter the geology and groundwater hydrology of the immediate area and adversely affect springs that are hydrologically connected to impacted sites (Ekmekci 1990, p. 4; van Beynan and Townsend 2005, p. 104; Humphreys 2011, p. 295). Limestone rock is an important raw material that is mined in quarries all over the world due to its popularity as a building material and its use in the manufacture of cement (Vermeulen and Whitten 1999, p. 1). The potential environmental impacts of quarries include destruction of springs or collapse of karst caverns, as well as impacts to water quality through siltation and sedimentation, and impacts to water quantity through water diversion, dewatering, and reduced flows (Ekmekci 1990, p. 4; van Beynan and Townsend 2005, p. 104). The mobilization of fine materials from quarries can lead to the occlusion of voids and the smothering of surface habitats for aquatic species downstream (Humphreys 2011, p. 295). Quarry activities can also generate pollution in the aquatic ecosystem through leaks or spills of waste materials from mining operations (such as petroleum products) (Humphreys 2011, p. 295). For example, in 2000, a spill of almost 3,000 gallons (11,356 liters) of diesel from an above-ground storage tank occurred on a limestone quarry in New Braunfels, Texas (about 4.5-mi (7.2 km) from Comal Springs in the Southern Segment of the Edwards Aquifer) (Ross *et al.* 2005, p. 14).

Quarrying of limestone is another activity that has considerable potential to negatively affect the physical environments where salamanders are known to occur. Quarrying and mineral extractions are known to cause the downstream mobilization of sediment (Humphreys 2011, p. 295), which can occlude the interstitial spaces that salamanders use for protective cover. Quarrying can alter landforms, reduce spring discharge, cause drawdown of the water table, produce sinkholes, and destroy caves (van Beynen and Townsend 2005, p. 104). As quarries continue to expand, the risk of impacting salamander habitat increases. One quarry occurs in one of the surface watersheds (Brushy Creek Spring) where Jollyville Plateau salamanders are known to occur. This assessment was based on examining Google Earth 2012 aerial photos of each site from the surface drainage basins (surface watersheds) of each surface site. There may be additional avenues of potential impacts to the springs or cave sites through subsurface drainage basins that were not documented through this analysis.

The threat of physical modification of surface habitat from quarrying by itself could cause irreversible declines in population sizes or habitat quality at any of the Austin blind or Jollyville Plateau salamander sites. It could also work in combination with other threats to contribute to significant declines of salamander populations or habitat quality. Currently quarries are located in the surface watersheds of 1 of the 106 assessed Jollyville Plateau salamander surface sites. Therefore, we consider this an ongoing threat of low impact given the low exposure risk to the Jollyville Plateau salamander that could increase in the future. Physical modification of surface habitat from quarries is not considered an ongoing threat to the Austin blind salamander at this time. The Austin blind salamander's range is located in downtown Austin, and there are no active limestone quarries within the species' range or in its surface watershed.

Contaminants and Pollutants

Contaminants and pollutants are stressors that can affect individual salamanders or their habitats or their prey. These stressors find their way into aquatic habitat through a variety of ways, including stormwater runoff, point (a single identifiable source) and non-point (coming from many diffuse sources) discharges, and hazardous material spills (Coles *et al.* 2012, p. 21). For example, sediments eroded from soil surfaces can concentrate and transport contaminants (Mahler and Lynch 1999, p. 165). The Austin blind and Jollyville Plateau salamanders and their prey species are directly exposed to sediment-borne contaminants present within the aquifer and discharging through the spring outlets. For example, in addition to sediment, trace metals such as arsenic, cadmium, copper, lead, nickel, and zinc were found in Barton Springs in the early 1990s (COA 1997, pp. 229, 231–232). Such contaminants associated with sediments are known to negatively affect survival and growth of an amphipod species, which are part of the prey base of the Austin blind and Jollyville Plateau salamanders (Ingersoll *et al.* 1996, pp. 607–608; Coles *et al.* 2012, p. 50). As a karst aquifer system, the Edwards Aquifer is more vulnerable to the effects of contamination due to: (1) A large number of conduits that offer no filtering capacity, (2) high groundwater flow velocities, and (3) the relatively short amount of time that water is inside the aquifer system (Ford and Williams 1989, pp. 518–519). These characteristics of the aquifer allow contaminants entering the watershed to enter and move through the aquifer more easily, thus reaching salamander habitat within spring sites more quickly than other types of aquifer systems. Various industrial and municipal activities result in the discharge of treated wastewater or unintentional release of industrial contaminants as point source pollution. Urban environments are host to a variety of human activities that generate many types of sources for contaminants and pollutants. These substances, especially when combined, often degrade nearby

waterways and aquatic resources within the watershed (Coles *et al.* 2012, pp. 44–53).

Amphibians, especially their eggs and larvae (which are usually restricted to a small area within an aquatic environment), are sensitive to many different aquatic pollutants (Harfenist *et al.* 1989, pp. 4–57). Contaminants found in aquatic environments, even at sublethal concentrations, may interfere with a salamander's ability to develop, grow, or reproduce (Burton and Ingersoll 1994, pp. 120, 125). Central Texas salamanders are particularly vulnerable to contaminants, because they have evolved under very stable environmental conditions, remain aquatic throughout their entire life cycle, have highly permeable skin, have severely restricted ranges, and cannot escape contaminants in their environment (Turner and O'Donnell 2004, p. 5). In addition, macroinvertebrates, such as small freshwater crustaceans (amphipods and copepods), that aquatic salamanders feed on are especially sensitive to water pollution (Phipps *et al.* 1995, p. 282; Miller *et al.* 2007, p. 74; Coles *et al.* 2012, pp. 64–65). Studies in the Bull Creek watershed in Austin, Texas, found a loss of some sensitive macroinvertebrate species, potentially due to contaminants of nutrient enrichment and sediment accumulation (COA 2001, p. 15; COA 2010a, p. 16). Below, we discuss specific contaminants and pollutants that may be impacting the Austin blind and Jollyville Plateau salamanders.

Petroleum Aromatic Hydrocarbons

Polycyclic aromatic hydrocarbons (PAHs) are a common form of aquatic contaminants in urbanized areas that could affect salamanders, their habitat, or their prey. This form of pollution can originate from petroleum products, such as oil or grease, or from atmospheric deposition as a byproduct of combustion (for example, vehicular combustion). These pollutants accumulate over time on impervious cover, contaminating water supplies through urban and highway runoff (Van Metre *et al.* 2000, p. 4,067; Albers 2003, pp. 345–346). The main source of PAH loading in Austin-area streams is parking lots with coal tar emulsion sealant, even though this type of lot only covers 1 to 2 percent of the watersheds (Mahler *et al.* 2005, p. 5,565). A recent analysis of the rate of wear on coal tar lots revealed that the sealcoat wears off relatively quickly and contributes more to PAH loading than previously thought (Scoggins *et al.* 2009, p. 4,914).

Petroleum and petroleum byproducts can adversely affect living organisms by causing direct toxic action, altering water chemistry, reducing light, and decreasing food availability (Albers 2003, p. 349). Exposure to PAHs at levels found within the Jollyville Plateau salamander's range can cause impaired reproduction, reduced growth and development, and tumors or cancer in species of amphibians, reptiles, and other organisms (Albers 2003, p. 354). Coal tar pavement sealant slowed hatching, growth, and development of a frog (*Xenopus laevis*) in a laboratory setting (Bryer *et al.* 2006, pp. 244–245). High concentrations of PAHs from coal tar sealant negatively affected the righting ability (amount of time needed to flip over after being placed on back) of adult eastern newts (*Notophthalmus viridescens*) and may have also damaged the newt's liver (Sparling *et al.* 2009, pp. 18–20). For juvenile spotted salamanders (*Ambystoma maculatum*), PAHs reduced growth in the lab (Sparling *et al.* 2009, p. 28). In a lab study using the same coal tar sealant once used by the COA, Bommarito *et al.* (2010, pp. 1,151–1,152) found that spotted salamanders displayed slower growth rates and diminished swimming ability when exposed to PAHs. These contaminants are also known to cause death, reduced survival, altered physiological function, inhibited reproduction, and changes in community composition of freshwater invertebrates (Albers 2003, p. 352). Due to their similar life histories, it is reasonable to assume that effects of PAHs on other species of amphibians, reptiles, and other organisms could also occur in Austin blind and Jollyville Plateau salamanders.

Limited sampling by the COA has detected PAHs at concentrations of concern at multiple sites within the range of the Jollyville Plateau salamander. Most notable were the levels of nine different PAH compounds at the Spicewood Springs site in the Shoal Creek drainage area, which were above concentrations known to adversely affect aquatic organisms (O'Donnell *et al.* 2005, pp. 16–17). The Spicewood Springs site is located within an area with greater than 30 percent impervious cover and down gradient from a commercial business that changes vehicle oil. This is also one of the sites where salamanders have shown declines in abundance (from an average of 12 individuals per visit in 1997 to an average of 2 individuals in 2005) during the COA's long-term monitoring studies (O'Donnell *et al.* 2006, p. 47). Another study found several PAH compounds in seven Austin-area streams, including Barton, Bull, and Walnut Creeks, downstream of coal tar sealant parking lots (Scoggins *et al.* 2007, p. 697). Sites with high concentrations of PAHs (located in Barton and Walnut Creeks) had fewer macroinvertebrate species and lower macroinvertebrate density (Scoggins *et al.* 2007, p. 700). This form of contamination has also been detected at Barton Springs, which is the Austin blind salamander's habitat (COA 1997, p. 10).

The threat of water quality degradation from PAH exposure could by itself cause irreversible declines or extirpation in local populations or significant declines in habitat quality of the Austin blind and Jollyville Plateau salamanders with continuous or repeated exposure. In some instances, exposure to PAH contamination could negatively impact a salamander population in combination with exposure to other sources of water quality degradation, resulting in significant habitat declines or other significant negative impacts (such as loss of invertebrate prey species). We consider this to be a threat of high impact to the Austin blind and Jollyville Plateau salamanders now and in the future as urbanization increases within these species' surface watersheds.

Pesticides

Pesticides (including herbicides and insecticides) are also associated with urban areas. Sources of pesticides include lawns, road rights-of-way, and managed turf areas, such as golf courses, parks, and ballfields. Pesticide application is also common in residential, recreational, and agricultural areas. Pesticides have the potential to leach into groundwater through the soil or be washed into streams by stormwater runoff.

Some of the most widely used pesticides in the United States—atrazine, carbaryl, diazinon, and simazine (Mahler and Van Metre 2000, p. 1)—were documented within the Austin blind salamander's habitat (Barton Springs Pool and Eliza Springs) in water samples taken at Barton Springs during and after a 2-day storm event (Mahler and Van Metre 2000, pp. 1, 6, 8). They were found at levels below criteria set in the aquatic life protection section of the Texas Surface Water Quality Standards (Mahler and Van Metre 2000, p. 4). In addition, elevated concentrations of organochlorine pesticides were found in Barton Springs sediments (Ingersoll *et al.* 2001, p. 7). A later water quality study at Barton Springs from 2003 to 2005 detected

several pesticides (atrazine, simazine, prometon, and deethylatrazine) in low concentrations (Mahler *et al.* 2006, p. 63). The presence of these contaminants in Barton Springs indicates the vulnerability of salamander habitat to contamination.

Another study by the USGS detected insecticides (diazinon and malathion) and herbicides (atrazine, prometone, and simazine) in several Austin-area streams, most often at sites with urban and partly urban watersheds (Veenhuis and Slade 1990, pp. 45–47). Twenty-two of the 42 selected synthetic organic compounds analyzed in this study were detected more often and in larger concentrations at sites with more urban watersheds compared to undeveloped watersheds (Veenhuis and Slade 1990, p. 61). Other pesticides (dichlorodiphenyltrichloroethane, chlordane, hexachlorobenzene, and dieldrin) have been detected at multiple Jollyville Plateau salamander sites (COA 2001, p. 130).

While pesticides have been detected at Austin blind salamander and Jollyville Plateau salamander sites, we do not know the extent to which pesticides and other waterborne contaminants have affected salamander survival, development, and reproduction, or their prey. However, pesticides are known to impact amphibian species in a number of ways. For example, Reylea (2009, p. 370) demonstrated that diazinon reduces growth and development in larval amphibians. Another pesticide, carbaryl, causes mortality and deformities in larval streamside salamanders (*Ambystoma barbouri*) (Rohr *et al.* 2003, p. 2,391). The Environmental Protection Agency (EPA) (2007, p. 9) also found that carbaryl is likely to adversely affect the Barton Springs salamander both directly and indirectly through reduction of prey. Additionally, atrazine has been shown to impair sexual development in male amphibians (clawed frogs (*Xenopus laevis*)) at concentrations as low as 0.1 parts per billion (Hayes 2002, p. 5,477). Atrazine levels were found to be greater than 0.44 parts per billion after rainfall in Barton Springs Pool (Mahler and Van Mere 2000, pp. 4, 12).

We acknowledge that in 2007 a Scientific Advisory Panel (SAP) of the Environmental Protection Agency (EPA) reviewed the available information on atrazine effects on amphibians and concluded that atrazine concentrations less than 100 µg/L had no effects on clawed frogs. However, the 2012 SAP is currently reexamining the conclusions of the 2007 SAP using a meta-analysis of published studies along with additional studies on more species (EPA 2012, p. 35). The 2012 SAP expressed concern that some studies were discounted in the 2007 SAP analysis, including studies like Hayes (2002) that indicated that atrazine is linked to endocrine (hormone) disruption in amphibians (EPA 2012, p. 35). In addition, the 2007 SAP noted that their results on clawed frogs are insufficient to make global conclusions about the effects of atrazine on all amphibian species (EPA 2012, p. 33). Accordingly, the 2012 SAP has recommended further testing on at least three amphibian species before a conclusion can be reached that atrazine has no effect on amphibians at concentrations less than 100 µg/L (EPA 2012, p. 33). Due to potential differences in species sensitivity, exposure scenarios that may include dozens of chemical stressors simultaneously, and multigenerational effects that are not fully understood, we continue to view pesticides, including carbaryl, atrazine, and many others to which aquatic organisms may be exposed, as a potential threat to water quality, salamander health, and the health of aquatic organisms that comprise the diet of salamanders.

The threat of water quality degradation from pesticide exposure could by itself cause irreversible declines or extirpation in local populations or significant declines in habitat quality of the Austin blind and Jollyville Plateau salamanders with continuous or repeated exposure. In some instances, exposure to pesticide contamination could negatively impact a salamander population in combination with exposure to other sources of water quality degradation, resulting in significant habitat declines or other significant negative impacts (such as loss of invertebrate prey species). We consider this an ongoing threat of high impact for the Austin blind salamander because this species occurs only in one location. For the Jollyville Plateau salamanders, this is currently a threat of low impact that is likely to increase in the future.

Nutrients

Nutrient input (such as phosphorus and nitrogen) to watershed drainages, which often results in abnormally high organic growth in aquatic ecosystems, can originate from multiple sources, such as human and animal wastes, industrial pollutants, and fertilizers (from lawns, golf courses, or croplands) (Garner and Mahler 2007, p. 29). As the human population grows and subsequent urbanization occurs within the ranges of the Austin blind and Jollyville Plateau salamanders, they likely become more susceptible to the effects of excessive nutrients within their habitats because their exposure increases. To illustrate, an estimated 102,262 domestic dogs and cats (pet waste is a potential source of excessive nutrients) were known to occur within the Barton Springs Segment of the Edwards Aquifer in 2010 (Herrington *et al.* 2010, p. 15). Their distributions were correlated with human population density (Herrington *et al.* 2010, p. 15). Feral hogs have also been cited as a source of elevated bacteria, nitrates, and phosphorus in streams in the Austin area (Timmons *et al.* 2011, pp. 1–2). Finally, livestock grazing near streams can negatively affect stream systems by influencing nutrients, bacteria, and aquatic species diversity (COA 1995, pp. 3–62).

Various residential properties and golf courses are known to use fertilizers to maintain turf grass within watersheds where Jollyville Plateau salamander populations are known to occur (COA 2003, pp. 1–7). Analysis of water quality attributes conducted by the COA (1997, pp. 8–9) showed significant differences in nitrate, ammonia, total dissolved solids, total suspended solids, and turbidity concentrations between watersheds dominated by golf courses, residential land, and rural land. Golf course tributaries were found to have higher concentrations of these constituents than residential tributaries, and both golf course and residential tributaries had substantially higher concentrations for these five water quality attributes than rural tributaries (COA 1997, pp. 8–9).

Residential irrigation of wastewater effluent is another source leading to excessive nutrient input into the recharge and contributing zones of the Barton Springs Segment of the Edwards Aquifer (Ross 2011, pp. 11–18; Mahler *et al.* 2011, pp. 16–23). Wastewater effluent permits do not require treatment to remove metals, pharmaceutical chemicals, or the wide range of chemicals found in body care products, soaps, detergents, pesticides, or other cleaning products (Ross 2011, p. 6). These chemicals remaining in treated wastewater effluent can enter streams and the aquifer and alter water quality within salamander habitat. A USGS study found nitrate concentrations in Barton Springs and the five streams that provide most of its recharge much higher during 2008 to 2010 than before 2008 (Mahler *et al.* 2011, pp. 1–4). Additionally, nitrate levels in water samples collected between 2003 and 2010 from Barton Creek tributaries exceeded TCEQ screening levels and were identified as

screening level concerns (TCEQ 2012b, p. 344). The rapid development over the Barton Springs contributing zone since 2000 was associated with an increase in the generation of wastewater (Mahler *et al.* 2011, p. 29). Septic systems and land-applied treated wastewater effluent are likely sources contributing nitrate to the recharging streams (Mahler *et al.* 2011, p. 29). As of November 2010, the permitted volume of irrigated flow in the contributing zone of the Barton Springs Segment of the Edwards Aquifer was 3,300,000 gallons (12,491 kiloliters) per day. About 95 percent of that volume was permitted during 2005 to 2010 (Mahler *et al.* 2011, p. 30).

Excessive nutrient input into aquatic systems can increase plant growth (including algae blooms), which pulls more oxygen out of the water when the dead plant matter decomposes, resulting in less oxygen being available in the water for salamanders to breathe (Schueler 1987, pp. 1.5–1.6; Ross 2011, p. 7). A reduction in dissolved oxygen concentrations could not only affect respiration in salamander species, but also lead to decreased metabolic functioning and growth in juveniles (Woods *et al.* 2010, p. 544), or death (Ross 2011, p. 6). Excessive plant material can also reduce stream velocities and increase sediment deposition (Ross 2011, p. 7). When the interstitial spaces become compacted or filled with fine sediment, the amount of available foraging habitat and protective cover is reduced (Welsh and Ollivier 1998, p. 1,128). Studies in the Bull Creek watershed found a loss of some sensitive macroinvertebrate species, potentially due to nutrient enrichment and sediment accumulation (COA 2001b, p. 15).

Increased nitrate levels have been known to affect amphibians by altering feeding activity and causing disequilibrium and physical abnormalities (Marco *et al.* 1999, p. 2,837). Poor water quality, particularly elevated nitrates, may also be a cause of morphological deformities in individual Jollyville Plateau salamanders. The COA has documented very high levels of nitrates (averaging over 6 milligrams per liter (mg L^{-1}) with some samples exceeding 10 mg L^{-1}) and high conductivity at two monitoring sites in the Stillhouse Hollow drainage area (O'Donnell *et al.* 2006, pp. 26, 37). Additionally, as reported in the 2012 Texas Integrated Report of Surface Water Quality, nitrate levels in water samples collected between 2003 and 2010 from Stillhouse Hollow, Barrow Preserve, and Spicewood stream segments exceeded TCEQ screening levels and were identified as screening level concerns (TCEQ 2012b, p. 38, 41). For comparison, nitrate levels in undeveloped Edwards Aquifer springs (watersheds without high levels of urbanization) are typically close to 1 mg L^{-1} (O'Donnell *et al.* 2006, p. 26). The source of the nitrates in Stillhouse Hollow is thought to be lawn fertilizers (Turner 2005b, p. 11). Salamanders observed at the Stillhouse Hollow monitoring sites have shown high incidences of deformities, such as curved spines, missing eyes, missing limbs or digits, and eye injuries (O'Donnell *et al.* 2006, p. 26). These deformities often result in the salamander's inability to feed, reproduce, or survive. The Stillhouse Hollow location was also cited as having the highest observation of dead salamanders (COA 2001, p. 88). Although no statistical correlations were found between the number of deformities and nitrate concentrations (O'Donnell *et al.* 2006, p. 26), environmental toxins are the suspected cause of salamander deformities (O'Donnell *et al.* 2006, p. 25). Nitrate toxicity studies have indicated that salamanders and other amphibians are sensitive to these pollutants (Marco *et al.* 1999, p. 2,837). Some studies have indicated that concentrations of nitrate between 1.0 and 3.6 mg/L can be toxic to aquatic organisms (Rouse 1999, p. 802; Camargo *et al.* 2005, p. 1,264; Hickey and Martin 2009, pp. ii, 17–18).

The threat of water quality degradation from excessive nutrient exposure could by itself cause irreversible declines or extirpation in local populations or significant declines in habitat quality of the Austin blind and Jollyville Plateau salamanders with continuous or repeated exposure. At least five surface watersheds of the known Jollyville Plateau salamander's surface sites contain golf courses that could be contributing to excessive nutrient loads. In some instances, exposure to excessive nutrient exposure could negatively impact a salamander population in combination with exposure to other sources of water quality degradation, resulting in significant habitat declines or other significant negative impacts (such as loss of morphological deformities). We consider this an ongoing threat of medium impact for the Austin blind salamander and low impact for the Jollyville Plateau salamanders that will likely increase in the future.

Changes in Water Chemistry

Conductivity

Conductivity is a measure of the ability of water to carry an electrical current and can be used to approximate the concentration of dissolved inorganic solids in water that can alter the internal water balance in aquatic organisms, affecting the Austin blind and Jollyville Plateau salamanders' survival. Conductivity levels in the Edwards Aquifer are naturally low, ranging from approximately 550 to 700 micro Siemens per centimeter ($\mu S\ cm^{-1}$) (derived from several conductivity measurements in two references: Turner 2005a, pp. 8–9; O'Donnell *et al.* 2006, p. 29). As ion concentrations such as chlorides, sodium, sulfates, and nitrates rise, conductivity will increase. These compounds are the chemical products, or byproducts, of many common pollutants that originate from urban environments (Menzer and Nelson 1980, p. 633), which are often transported to streams via stormwater runoff from impervious cover. This, combined with the stability of the measured ions, makes conductivity an excellent monitoring tool for assessing the impacts of urbanization to overall water quality. Measurements by the COA between 1997 and 2006 found that conductivity averaged between 550 and 650 $\mu S\ cm^{-1}$ at rural springs with low or no development and averaged between 900 and 1000 $\mu S\ cm^{-1}$ at monitoring sites in watersheds with urban development (O'Donnell *et al.* 2006, p. 37).

Conductivity can be influenced by weather. Rainfall serves to dilute ions and lower conductivity while drought has the opposite effect. The trends of increasing conductivity in urban watersheds were evident under baseflow conditions and during a period when precipitation was above average in all but 3 years, so drought was not a factor (NOAA 2013, pp. 1–7). The COA also monitored water quality as impervious cover increased in several subdivisions with known Jollyville Plateau salamander sites between 1996 and 2007. They found increasing ions (calcium, magnesium, and bicarbonate) and nitrates with increasing impervious cover at four Jollyville Plateau salamander sites and as a general trend during the course of the study from 1997 to 2006 (Herrington *et al.* 2007, pp. 13–14). These results indicate that developed watersheds can alter the water chemistry within salamander habitats.

High conductivity has been associated with declining salamander abundance. For example, three of the four sites with statistically significant declining Jollyville Plateau salamander counts from 1997 to 2006 are cited as having high conductivity readings (O'Donnell *et al.* 2006, p. 37). Similar correlations

were shown in studies comparing developed and undeveloped sites from 1996 to 1998 (Bowles *et al.* 2006, pp. 117–118). This analysis found significantly lower numbers of salamanders and significantly higher measures of specific conductance at developed sites as compared to undeveloped sites (Bowles *et al.* 2006, pp. 117–118). Tributary 5 of Bull Creek has had an increase in conductivity, chloride, and sodium and a decrease in invertebrate diversity from 1996 to 2008 (COA 2010a, p. 16). Only one Jollyville Plateau salamander has been observed here from 2009 to 2010 in quarterly surveys (Bendik 2011a, p. 16). A separate analysis found that ions such as chloride and sulfate increased in Barton Creek despite the enactment of city-wide water quality control ordinances (Turner 2007, p. 7). Poor water quality, as measured by high specific conductance and elevated levels of ion concentrations, is cited as one of the likely factors leading to statistically significant declines in salamander counts at the COA's long-term monitoring sites (O'Donnell *et al.* 2006, p. 46).

The threat of water quality degradation from high conductivity could by itself cause irreversible declines or extirpation in local populations or significant declines in habitat quality of the Austin blind and Jollyville Plateau salamanders with continuous or repeated exposure. In some instances, exposure to high conductivity could negatively impact a salamander population in combination with exposure to other sources of water quality degradation, resulting in significant habitat declines. We consider this an ongoing threat of high impact for the Jollyville Plateau salamander that is likely to increase in the future. Although we are unaware of any information that indicates increased conductivity is occurring within the ranges of the Austin blind salamander, we expect this to become a significant threat in the future for this species as urbanization continues to expand within its surface watersheds.

Salinity

As groundwater levels decline, a decrease in hydrostatic pressure occurs and saline water is able to move into groundwater flow paths of the aquifer (Pavlicek *et al.* 1987, p. 2). Water quality in the Barton Springs Segment of the Edwards Aquifer has been degraded in the past due to saline water encroachment (Slade *et al.* 1986, p. 62). This water quality degradation occurred when Barton Springs discharge was less than 30 cfs (Slade *et al.* 1986, p. 64). An analysis of more recent data found similar declines in water quality as the flow of Barton Springs dropped into the 20 to 30 cfs range (Johns 2006, pp. 6–7). As mentioned earlier, reduced groundwater levels would also increase the concentration of pollutants in the aquifer. Flows at Barton Springs dropped below 17 cfs as recently as mid-November 2011 (Barton Springs/Edwards Aquifer Conservation District 2011, p. 1), and no Austin blind salamanders were observed during surveys at any of their three known locations during this time.

This saline water encroachment is detrimental to the freshwater biota in the springs and the aquifer, including the Austin blind and Jollyville Plateau salamanders and their prey. Most amphibian larvae cannot survive saline conditions (Duellman and Trueb 1986, p. 165). Ingersoll *et al.* (1992, pp. 507–508) found that increased salinity caused mortality in amphipods and some freshwater fish species. Saline conditions in the Edwards Aquifer could, therefore, pose a risk to the salamanders and their prey species.

The threat of water quality degradation from saline water encroachments could by itself cause irreversible declines or extirpation in local populations or significant declines in habitat quality of the Austin blind and Jollyville Plateau salamanders with continuous or repeated exposure. In some instances, exposure to saline conditions could negatively impact a salamander population in combination with exposure to other sources of water quality degradation, resulting in significant habitat declines or another significant negative impact (such as loss of prey species). We consider this an ongoing threat of high impact for the Austin blind salamander that will continue in the future. At this time, we are unaware of any information that indicates low saline water encroachment is occurring within the range of the Jollyville Plateau salamander.

Dissolved Oxygen

In an analysis performed by the COA (Turner 2005a, p. 6), significant changes over time were reported for several chemical constituents and physical parameters in Barton Springs Pool, which could be attributed to impacts from watershed urbanization. Conductivity, turbidity, sulfates, and total organic carbon increased over a 20- to 25-year time period while the concentration of dissolved oxygen decreased (Turner 2005a, pp. 8–17). A similar analysis by Herrington and Hiers (2010, p. 2) examined water quality at Barton Springs Pool and other Barton Springs outlets where Austin blind salamanders are found (Sunken Gardens and Eliza Springs) over a general period of the mid-1990s to the summer of 2009. Herrington and Hiers (2010, pp. 41–42) found that dissolved oxygen decreased over time in the Barton Springs Pool, while conductivity and nitrogen increased. However, this decline in water quality was not seen in Sunken Gardens Spring or Eliza Spring (Herrington 2010, p. 42).

Low dissolved oxygen can affect salamanders and other amphibians by reducing respiratory efficiency, metabolic energy, reproductive rate, and ultimately survival (Norris *et al.* 1963, p. 532; Hillman and Withers 1979, p. 2,104; Boutilier *et al.* 1992, pp. 81–82). The screening level for dissolved oxygen (5.0 mg/L) that is used by TCEQ for their analysis of water quality samples is similar to that recommended by the Service in 2006 to be protective of federally listed salamanders (White *et al.* 2006, p. 51). In 2012, the TCEQ reported that stream segments located within watersheds occupied by the Austin blind (Barton Spring pool) and Jollyville Plateau (Bull Creek) salamanders had depressed dissolved oxygen levels that were not meeting screening level criteria (TCEQ 2012b, pp. 35–36; 2012c, p. 733).

The threat of water quality degradation from low dissolved oxygen could by itself cause irreversible declines or extirpation in local populations or significant declines in habitat quality of the Austin blind and Jollyville Plateau salamanders with continuous or repeated exposure. In some instances, exposure to low dissolved oxygen could negatively impact a salamander population in combination with exposure to other sources of water quality degradation, resulting in significant habitat declines. We consider this an ongoing threat of high impact for the Austin blind salamander due to their limited range. However, we consider this to be a threat of low impact to the Jollyville Plateau salamanders given the low risk of exposure.

Water Quantity Degradation

Water quantity decreases and spring flow declines are considered threats to *Eurycea* salamanders (Corn *et al.* 2003, p. 36; Bowles *et al.* 2006, p. 111), because drying spring habitats can cause salamanders to be stranded, resulting in death of individuals (O'Donnell *et al.* 2006, p. 16). It is also known that prey availability for carnivores is low underground due to the lack of primary production (Hobbs and Culver 2009, p.

392). Therefore, relying entirely on subsurface habitat during dry conditions on the surface may negatively impact the salamanders' feeding abilities and slow individual and population growth, which can exacerbate the risk of extirpation in the face of other threats occurring at the site.

Urbanization

Increased urbanization in the watershed has been cited as one factor, particularly in combination with drought that causes declines in spring flows (COA 2006, pp. 46–47; TPWD 2011, pp. 4–5). This is partly due to reductions in baseflow due to impervious cover. Urbanization removes the ability of a watershed to allow slow filtration of water through soils following rain events. Instead rainfall runs off impervious surfaces and into stream channels at higher rates, increasing downstream ''flash'' flows and decreasing groundwater recharge and subsequent baseflows from springs (Miller *et al.* 2007, p. 74; Coles *et al.* 2012, pp. 2, 19). Urbanization can also impact water quantity by increasing groundwater pumping and altering the natural flow regime of streams. These stressors are discussed in more detail below.

Urbanization can also result in increased groundwater pumping, which has a direct impact on spring flows, particularly under drought conditions. Groundwater availability models demonstrate that 1 cfs of pumping will diminish Barton Springs flow by 1 cfs under drought-of-record (1950s drought) conditions (Smith and Hunt 2004, pp. 24, 36). Under the same conditions, these models suggest that present-day pumping rates will temporarily cease Barton Springs flow for at least a 4-month period under a repeat of drought-of-record conditions (Smith and Hunt 2004, pp. 24, 36).

From 1980 to 2000, groundwater pumping in the Northern Segment of the Edwards Aquifer nearly doubled (TWDB 2003, pp. 32–33). Total water use for Williamson County where the Jollyville Plateau salamander occurs was 82,382 acre feet (ac ft) in 2010, and is projected to increase to 109,368 ac ft by 2020, and to 234,936 ac ft by 2060, representing a 185 percent increase over the 50-year period (TWDB 2011, p. 78). Similarly, a 91 percent increase in total groundwater use over the same 50-year period is expected in Travis County (TWDB 2011, pp. 5, 72).

While the demand for water is expected to increase with human population growth, one prediction of future groundwater use in this area suggests a large drop in pumping as municipalities convert from groundwater to surface water supplies (TWDB 2003, p. 65). To meet the increasing water demand, the 2012 State Water Plan recommends more reliance on surface water, including existing and new reservoirs, rather than groundwater (TWDB 2012, p. 190). For example, one recommended project conveys water from Lake Travis to Williamson County (TWDB 2012, pp. 192–193). Another recommendation would augment the surface water of Lake Granger in Williamson County with groundwater from Burleson County and the Carrizo-Wilcox Aquifer (TWDB 2012, pp. 164, 192–193). However, it is unknown if this reduction in groundwater use will occur, and if it does, how that will affect spring flows for salamanders.

The COA found a negative correlation between urbanization and spring flows at Jollyville Plateau salamander sites (Turner 2003, p. 11). Field studies have also shown that a number of springs that support Jollyville Plateau salamanders have already gone dry periodically and that spring waters resurface following rain events (O'Donnell *et al.* 2006, pp. 46–47). Through a site-by-site assessment from information available in our files and provided during the peer review and public comment period for the proposed rule, we found that 51 out of the 106 Jollyville Plateau salamander surface sites have gone dry for some period of time. Because we lack flow data for some of the spring sites, it is possible that even more sites have gone dry for a period of time as well.

Flow is a major determining factor of physical habitat in streams, which in turn, is a major determining factor of aquatic species composition within streams (Bunn and Arthington 2002, p. 492). Various land-use practices, such as urbanization, conversion of forested or prairie habitat to agricultural lands, excessive wetland draining, and overgrazing can reduce water retention within watersheds by routing rainfall quickly downstream, increasing the size and frequency of flood events and reducing baseflow levels during dry periods (Poff *et al.* 1997, pp. 772–773). Over time, these practices can degrade in-channel habitat for aquatic species (Poff *et al.* 1997, p. 773).

Baseflow is defined as that portion of streamflow that originates from shallow, subsurface groundwater sources, which provide flow to streams in periods of little rainfall (Poff *et al.* 1997, p. 771). The land-use practices mentioned above can cause streamflow to shift from predominately baseflow, which is derived from natural filtration processes, to predominately stormwater runoff. With increasing stormwater runoff, the amount of baseflow available to sustain water supplies during drought cycles is diminished and the frequency and severity of flooding increases (Poff *et al.* 1997, p. 773). The increased quantity and velocity of runoff increases erosion and streambank destabilization, which in turn, leads to increased sediment loadings, channel widening, and detrimental changes in the morphology and aquatic ecology of the affected stream system (Hammer 1972, pp. 1,535–1,536, 1,540; Booth 1990, pp. 407–409, 412–414; Booth and Reinelt 1993, pp. 548–550; Schueler 1994, pp. 106–108; Pizzuto *et al.* 2000, p. 82; Center for Watershed Protection 2003, pp. 41–48; Coles *et al.* 2012, pp. 37–38).

Changes in flow regime can have a direct impact on salamander populations. For example, Barrett *et al.* (2010, pp. 2,002–2,003) observed that the density of aquatic southern two-lined salamanders (*Eurycea cirrigera*) declined more drastically in streams with urbanized watersheds compared to streams with forested or pastured watersheds. A statistical analysis indicated that this decline in urban streams was due to an increase in flooding frequency from stormwater runoff. Barrett *et al.* (2010, p. 2,003) also used artificial stream experiments to demonstrate that salamander larvae were flushed from sand-based sediments at significantly lower velocities, as compared to gravel, pebble, or cobble-based sediments. Sand-based substrates are common to urban streams due to high sedimentation rates (see ''Sedimentation'' section above). The combined effects of increased sand-based substrates due to high sedimentation rates and increased flow velocities from impervious cover result in effectively flushing salamander larvae from their habitat.

The Service has determined that impervious cover due to urbanization in the salamanders' watersheds causes streamflow to shift from predominately baseflow to predominately stormwater runoff. For example, an examination of 24 stream sites in the Austin area revealed that increasing impervious cover in the watersheds resulted in decreased base flow, increased high-flow events of shorter duration, and more rapid rises and falls of the stream flow (Glick *et al.* 2009, p. 9). Increases in impervious cover within the Walnut Creek watershed (Jollyville Plateau salamander habitat) have likely caused a shift to more rapid rises and falls of that stream flow (Herrington 2010, p. 11).

The threat of water quantity degradation from urbanization could by itself cause irreversible declines in population sizes or habitat quality for the Austin blind and Jollyville Plateau salamanders. Also, it could by itself cause irreversible declines or the extirpation of a salamander population at a site with continuous exposure. We consider this to be an ongoing threat of high impact for the Austin blind and Jollyville Plateau salamanders that is likely to increase in the future.

Drought

Drought conditions cause lowered groundwater tables and reduced spring flows. The Northern Segment of the Edwards Aquifer, which supplies water to the Jollyville Plateau salamander's habitat, is vulnerable to drought (Chippindale *et al.* 2000, p. 36). In particular, the portion of the Edwards Aquifer underlying the Jollyville Plateau is relatively shallow with a high elevation, thus being unlikely to sustain spring flows during periods of drought (Cole 1995, pp. 26–27). Drought has been cited as causing declines in spring flows within Jollyville Plateau and Austin blind salamander habitat (O'Donnell *et al.* 2006, pp. 46–47; Bendik 2011a, p. 31; Hunt *et al.* 2012, pp. 190, 195). A drought lasting from 2008 to 2009 was considered one of the worst droughts in central Texas history and caused numerous Jollyville Plateau salamander sites to go dry (Bendik 2011a, p. 31). An even more pronounced drought throughout Texas began in 2010, with the period from October 2010 through September 2011 being the driest 12-month period in Texas since rainfall records began (Hunt *et al.* 2012, p. 195). Rainfall in early 2012 lessened the intensity of drought conditions, but 2012 monthly summer temperatures continued to be higher than average (NOAA 2013, p. 6). Moderate to extreme drought conditions have continued into 2013 in the central Texas region (LCRA 2013, p. 1). Weather forecasts call for near to slightly less than normal rainfall across Texas through August, but not enough rain to break the drought is expected (LCRA 2013, p. 1).

Low flow conditions during drought also have negative impacts to the Austin blind salamander and its ecosystem in the Edwards Aquifer and at Barton Springs. The long-term average flow at the Barton Springs outlets is approximately 53 cfs (1.5 cubic meters per second) (COA 1998, p. 13; Smith and Hunt 2004, p. 10; Hunt *et al.* 2012, p. 194). The lowest flow recorded at Barton Springs was about 10 cfs (0.2 cubic meters per second) during a record, multiyear drought in the 1950s (COA 1998, p. 13). During the 2011 drought, 10-day average flows at Barton Springs reached 20 cfs (0.5 cubic meters per second) (Hunt *et al.* 2012, pp. 190, 195). Discharge at Barton Springs decreases as water levels in the Barton Springs Segment of the Edwards Aquifer drop. Decreased discharge is associated with increases in water temperature, decreases in spring flow velocity, and increases in sedimentation (COA 2011d, pp. 19, 24, 27).

The specific effects of low flow on central Texas salamanders can be inferred by examining studies on the Barton Springs salamander. Drought decreases spring flow and dissolved oxygen levels and increases temperature in Barton Springs (Turner 2004, p. 2; Turner 2009, p. 14). Low dissolved oxygen levels decrease reproduction in Barton Springs salamanders (Turner 2004, p. 6; 2009, p. 14). Turner (2009, p. 14) also found that Barton Springs salamander counts decline with decreasing discharge. The number of Barton Springs salamanders observed during surveys decreased during a prolonged drought from June 2008 through September 2009 (COA 2011d, pp. 19, 24, 27). The drought in 2011 also resulted in dissolved oxygen concentrations so low that COA used an aeration system to maintain oxygenated water in Eliza and Sunken Gardens Springs (Dries 2011, COA, pers. comm.). Drought also lowered water quality in Barton Springs due to saline water encroachments in the Barton Springs Segment of the Edwards Aquifer (Slade *et al.* 1986, p. 62; Johns 2006, p. 8).

The Austin blind and Jollyville Plateau salamanders may be able to persist through temporary surface habitat degradation because of their ability to retreat to subsurface habitat. Drought conditions are common to the region, and the ability to retreat underground may be an evolutionary adaptation to such natural conditions (Bendik 2011a, pp. 31–32). However, it is important to note that, although salamanders may survive a drought by retreating underground, this does not necessarily mean they are resilient to long-term drought conditions (particularly because sites may already be affected by other, significant stressors, such as water quality declines).

Drought may also affect surface habitats that are important for prey availability as well as individual and population growth. Therefore, sites with suitable surface flow and adequate prey availability are likely able to support larger population densities (Bendik 2012, COA, pers. comm.). Prey availability for carnivores, such as these salamanders, is low underground due to the lack of sunlight and primary production (Hobbs and Culver 2009, p. 392). Complete loss of surface habitat may lead to the extirpation of predominately subterranean populations that depend on surface flows for biomass input (Bendik 2012, COA, pers. comm.). In addition, length measurements taken during a COA mark-recapture study at Lanier Spring demonstrated that individual Jollyville Plateau salamanders exhibited negative growth (shrinkage) during a 10-month period of retreating to the subsurface from 2008 to 2009 (Bendik 2011b, COA, pers. comm.; Bendik and Gluesenkamp 2012, pp. 3–4). The authors of this study hypothesized that the negative growth could be the result of soft tissue contraction and/or bone loss, but more research is needed to determine the physical mechanism with which the shrinkage occurs (Bendik and Gluesenkamp 2012, p. 5). Although this shrinkage in body length was followed by positive growth when normal spring flow returned, the long-term consequences of catch-up growth are unknown for these salamanders (Bendik and Gluesenkamp 2012, pp. 4–5). Therefore, threats to surface habitat at a given site may not extirpate populations of these salamander species in the short term, but this type of habitat degradation may severely limit population growth and increase a population's overall risk of extirpation from other stressors occurring in the surface watershed.

The threat of water quantity degradation from drought by itself could cause irreversible declines in population sizes or habitat quality for the Austin blind and Jollyville Plateau salamanders. Also, it could negatively impact salamander populations in combination with other threats and contribute to significant declines in the size of the populations or habitat quality. For example, changes in water quantity will have direct impacts on the quality of that water, in terms of concentrations of contaminants and pollutants. Therefore, we consider this to be a threat of high impact for the Austin blind and Jollyville Plateau salamanders now and in the future.

Climate Change

The effects of climate change could potentially lead to detrimental impacts on aquifer-dependent species, especially coupled with other threats on water quality and quantity. Recharge, pumping, natural discharge, and saline intrusion of groundwater systems could all be affected by climate change (Mace

and Wade 2008, p. 657). According to the Intergovernmental Panel on Climate Change (IPCC 2007, p. 1), ''warming of the climate system is unequivocal, as is now evident from observations of increases in global averages of air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level.'' Localized projections suggest the southwestern United States may experience the greatest temperature increase of any area in the lower 48 States (IPCC 2007, p. 8), with warming increases in southwestern States greatest in the summer. The IPCC also predicts hot extremes, heat waves, and heavy precipitation will increase in frequency (IPCC 2007, p. 8). Evidence of climate change has been observed in Texas, such as the record-setting drought of 2011, with extreme droughts becoming much more probable than they were 40 to 50 years ago (Rupp *et al.* 2012, pp. 1053–1054).

Climate change could compound the threat of decreased water quantity at salamander spring sites. An increased risk of drought could occur if evaporation exceeds precipitation levels in a particular region due to increased greenhouse gases in the atmosphere (CH2M HILL 2007, p. 18). The Edwards Aquifer is also predicted to experience additional stress from climate change that could lead to decreased recharge (Loáiciga *et al.* 2000, pp. 192–193). CH2M HILL (2007, pp. 22–23) identified possible effects of climate change on water resources within the Lower Colorado River Watershed (which contributes recharge to Barton Springs). A reduction of recharge to aquifers and a greater likelihood for more extreme droughts, such as the droughts of 2008 to 2009 and 2011 mentioned above, were identified as potential impacts to water resources (CH2M HILL 2007, p. 23).

Furthermore, climate change could affect rainfall and ambient temperatures, which are factors that may limit salamander populations. Different ambient temperatures in the season that rainfall occurs can influence spring water temperature if aquifers have fast transmission of rainfall to springs (Martin and Dean 1999, p. 238). Gillespie (2011, p. 24) found that reproductive success and juvenile survivorship in the Barton Springs salamander, which occurs at the three spring sites where the Austin blind salamander is known to occur, may be significantly influenced by fluctuations in mean monthly water temperature. This study also found that groundwater temperature is influenced by the season in which rainfall events occur over the recharge zone of the aquifer. When recharging rainfall events occur in winter when ambient temperature is low, mean monthly water temperature at Barton Springs and Eliza Spring can drop as low as 65.5 °F (18.6 °C) and remain below the annual average temperature of 70.1 °F (21.2 °C) for several months (Gillespie 2011, p. 24).

The threat of water quantity degradation from climate change could negatively impact a population of any of the Austin blind and Jollyville Plateau salamanders in combination with other threats and contribute to significant declines in population sizes or habitat quality. We consider this to be a threat of moderate impact for the Austin blind and Jollyville Plateau salamanders now and in the future.

Physical Modification of Surface Habitat

The Austin blind and Jollyville Plateau salamanders are sensitive to direct physical modification of surface habitat from sedimentation, impoundments, flooding, feral hogs, livestock, and human activities. Direct mortality to salamanders can also occur as a result of these threats, such as being crushed by feral hogs, livestock, or humans.

Sedimentation

Elevated mobilization of sediment (mixture of silt, sand, clay, and organic debris) is a stressor that occurs as a result of increased velocity of water running off impervious surfaces (Schram 1995, p. 88; Arnold and Gibbons 1996, pp. 244–245). Increased rates of stormwater runoff also cause increased erosion through scouring in headwater areas and sediment deposition in downstream channels (Booth 1991, pp. 93, 102–105; Schram 1995, p. 88). Waterways are adversely affected in urban areas, where impervious cover levels are high, by sediment loads that are washed into streams or aquifers during storm events. Sediments are either deposited into layers or become suspended in the water column (Ford and Williams 1989, p. 537; Mahler and Lynch 1999, p. 177). Sediment derived from soil erosion has been cited as the greatest single source of pollution of surface waters by volume (Menzer and Nelson 1980, p. 632).

Excessive sediment from stormwater runoff is a threat to the physical habitat of salamanders because it can cover substrates (Geismar 2005, p. 2). Sediments suspended in water can clog gill structures in aquatic animals, which can impair breathing and reduce their ability to avoid predators or locate food sources due to decreased visibility (Schueler 1987, p. 1.5). Excessive deposition of sediment in streams can physically reduce the amount of available habitat and protective cover for aquatic organisms, by filling the interstitial spaces of gravel and rocks where they could otherwise hide. As an example, a California study found that densities of two salamander species were significantly lower in streams that experienced a large infusion of sediment from road construction after a storm event (Welsh and Ollivier 1998, pp. 1,118–1,132). The vulnerability of the salamander species in this California study was attributed to their reliance on interstitial spaces in the streambed habitats (Welsh and Ollivier 1998, p. 1,128).

Excessive sedimentation has contributed to declines in Jollyville Plateau salamander populations in the past. Monitoring by the COA found that, as sediment deposition increased at several sites, salamander abundances significantly decreased (COA 2001, pp. 101, 126). Additionally, the COA found that sediment deposition rates have increased significantly along one of the long-term monitoring sites (Bull Creek Tributary 5) as a result of construction activities upstream (O'Donnell *et al.* 2006, p. 34). This site has had significant declines in salamander abundance, based on 10 years of monitoring, and the COA attributes this decline to the increases in sedimentation (O'Donnell *et al.* 2006, pp. 34–35). The location of this monitoring site is within a large preserved tract. However, the headwaters of this drainage are outside the preserve and the development in this area increased sedimentation downstream and impacted salamander habitat within the preserved tract.

Effects of sedimentation on the Austin blind salamander is expected to be similar to the effects on the Jollyville Plateau salamander based on similarities in their ecology and life history needs. Analogies can also be drawn from data on the Barton Springs salamander. Barton Spring salamander population numbers are adversely affected by high turbidity and sedimentation (COA 1997, p. 13). Sediments discharge through Barton Springs, even during baseflow conditions (not related to a storm event) (Geismar 2005, p. 12). Storms can increase sedimentation rates substantially (Geismar 2005, p. 12). Areas in the immediate vicinity of the spring outflows lack sediment, but the remaining bedrock is sometimes covered with a layer of sediment several inches thick (Geismar 2005, p. 5). Sedimentation is a direct threat for the Austin blind salamander because its

surface habitat in Barton Springs would fill with sediment if it were not for regular maintenance and removal (Geismar 2005, p. 12). Further development in the Barton Creek watershed, which contributes recharge to Barton Springs, will most likely be associated with diminished water clarity and a reduction in biodiversity of flora (COA 1997, p. 7). Additional threats from sediments as a source of contaminants were discussed in the ''Contaminants and Pollutants'' under the ''Water Quality Degradation'' section above.

The threat of physical modification of surface habitat from sedimentation by itself could cause irreversible declines in population sizes or habitat quality for any of the Austin blind and Jollyville Plateau salamanders' populations. It could also negatively impact the species in combination with other threats to contribute to significant declines. We consider this to be an ongoing threat of high impact for the Austin blind and Jollyville Plateau salamanders that is likely to increase in the future.

Impoundments

Impoundments can alter the salamanders' physical habitat in a variety of ways that are detrimental. They can alter the natural flow regime of streams, increase siltation, and support larger, predatory fish (Bendik 2011b, COA, pers. comm.), leading to a variety of impacts to the salamanders and their surface habitats. For example, a low-water crossing on a tributary of Bull Creek occupied by the Jollyville Plateau salamander resulted in sediment buildup above the impoundment and a scour hole below the impoundment that supported predaceous fish (Bendik 2011b, COA, pers. comm.). As a result, Jollyville Plateau salamanders were not found in this degraded habitat after the impoundment was constructed. When the crossing was removed in October 2008, the sediment buildup was removed, the scour hole was filled, and salamanders were later observed (Bendik 2011b, COA, pers. comm.). Many low-water crossings are present near other Jollyville Plateau salamander sites (Bendik 2011b, COA, pers. comm.).

All spring sites for the Austin blind salamander (Main, Eliza, and Sunken Garden Springs) have been impounded for recreational use. These sites were impounded in the early to mid-1900s. For example, a circular, stone amphitheater was built around Eliza Springs in the early 1900s. A concrete bottom was installed over the natural substrate at this site in the 1960s. It now discharges from 7 openings (each 1 ft (0.3 m) in diameter) in the concrete floor and 13 rectangular vents along the edges of the concrete, which were created by the COA to help restore flow. While the manmade structures help retain water in the spring pools during low flows, they have altered the salamander's natural environment. The impoundments have changed the Barton Springs ecosystem from a stream-like system to a more lentic (still water) environment, thereby reducing the water system's ability to flush sediments downstream and out of salamander habitat. Although a natural surface flow connection between Sunken Gardens Spring and Barton Creek has been restored recently (COA 2007a, p. 6), the Barton Springs system as a whole remains highly modified.

The threat of physical modification of surface habitat from impoundments by itself may not be likely to cause significant population declines, but it could negatively impact the species in combination with other threats and contribute to significant declines in the population size or habitat quality. We consider impoundments to be an ongoing threat of moderate impact to the Austin blind and Jollyville Plateau salamanders and their surface habitats that will likely continue in the future.

Flooding

Flooding as a result of rainfall events can considerably alter the substrate and hydrology of salamander habitat. Extreme flood events have occurred in the Austin blind and Jollyville Plateau salamander's surface habitats (Pierce 2011a, p. 10; TPWD 2011, p. 6; Turner 2009, p. 11; O'Donnell *et al.* 2005, p. 15). The increased flow rate from flooding causes unusually high dissolved oxygen concentrations, which may exert direct or indirect, sublethal effects (reduced reproduction or foraging success) on salamanders (Turner 2009, p. 11). Salamanders also may be flushed from the surface habitat by strong flows during flooding. Bowles *et al.* (2006, p. 117) observed no Jollyville Plateau salamanders in riffle habitat at one site during high water velocities and hypothesized that individual salamanders were either flushed downstream or retreated to the subsurface.

An increase in the frequency of flood events causes streambank and streambed erosion (Coles *et al.* 2012, p. 19), which can deposit sediment into salamander habitat. For example, Geismar (2005, p. 2) found that flooding increases contaminants and sediments in Barton Springs. In 2007, flooding resulted in repeated accumulation of sediment in the Barton Springs Pool that was so rapid that cleaning by COA staff was not frequent enough to keep the surface habitat from becoming embedded (COA 2007a, p. 4).

Flooding can alter the surface salamander habitat by deepening stream channels, which may increase habitat for predaceous fish. Much of the Austin blind and Jollyville Plateau salamanders' surface habitat is characterized by shallow water depth (COA 2001, p. 128; Pierce 2011a, p. 3), with the exception of the Austin blind salamander at Main and Sunken Garden Springs. However, deep pools are sometimes formed within stream channels from the scouring of floods. Tumlison *et al.* (1990, p. 172) found that the abundance of one *Eurycea* species decreased as water depth increased. This relationship may be caused by an increase in predation pressure, as deeper water supports predaceous fish populations. However, several central Texas *Eurycea* species are able to survive in deep water environments in the presence of many predators. For example, San Marcos salamander in Spring Lake, *Eurycea* sp. in Landa Lake, and Barton Springs salamander in Barton Springs Pool. All of these sites have vegetative cover, which may allow salamanders to avoid predation. Anti-predator behaviors may allow these species to co-exist with predaceous fish, but the effectiveness of these behaviors may be species-specific (reviewed in Pierce and Wall 2011, pp. 18–19) and many of the shallow, surface habitats of the Jollyville Plateau salamander do not have much vegetative cover.

The threat of physical modification of surface habitat from flooding by itself may not be likely to cause significant population declines, but it could negatively impact the species in combination with other threats and contribute to significant declines in the population size or habitat quality. We consider this to be a threat of moderate impact to the Austin blind and Jollyville Plateau salamanders that may increase in the future as urbanization and impervious cover increases within the surface watersheds of these species, causing more frequent and more intense streamflow flash flooding (see discussion in the ''Urbanization'' section under ''Water Quality Degradation'' above).

Feral Hogs

There are between 1.8 and 3.4 million feral hogs (*Sus scrofa*) in Texas (Texas A&M University (TAMU) 2011, p. 2), which is another source of physical habitat disturbance to salamander surface sites. They prefer to live around moist areas, including riparian areas near streams, where they can dig into the soft ground for food and wallow in

mud to keep cool (Mapson 2004, pp. 11, 14–15). Feral hogs disrupt these ecosystems by decreasing plant species diversity, increasing invasive species abundance, increasing soil nitrogen, and exposing bare ground (TAMU 2012, p. 4). Feral hogs negatively impact surface salamander habitat by digging and wallowing in spring heads, which increases sedimentation downstream (O'Donnell *et al.* 2006, pp. 34, 46). This activity can also result in direct mortality of amphibians (Bull 2009, p. 243).

Feral hogs have become abundant in some areas where the Jollyville Plateau salamander occurs. O'Donnell *et al.* (2006, p. 34) noted that feral hog activity was increasing in the Bull and Cypress Creeks watersheds. Fortunately, feral hogs cannot access Austin blind salamander sites due to fencing and their location in downtown Austin.

The threat of physical modification of surface habitat from feral hogs by itself may not be likely to cause significant population declines, but it could negatively impact the species in combination with other threats and contribute to significant declines in the population size or habitat quality. We consider this to be an ongoing threat of moderate impact to the Jollyville Plateau salamander that will likely continue in the future. We do not consider physical habitat modification from feral hogs to be a threat to the Austin blind salamander at this time or in the future.

Livestock

Similar to feral hogs, livestock can negatively impact surface salamander habitat by disturbing the substrate and increasing sedimentation in the spring run where salamanders are often found. Poorly managed livestock grazing results in changes in vegetation (from grass-dominated to brush-dominated), which leads to increased erosion of the soil profile along stream banks (COA 1995, pp. 3–59) and sediment in salamander habitat. However, the Austin blind salamander's habitat is inside a COA park, and livestock are not allowed in the spring areas. Also, much of the Jollyville Plateau salamander habitat is in suburban areas, and we are not aware of livestock access to or damage in those areas. Therefore, we do not consider physical habitat modification from livestock to be a threat to the Austin blind or Jollyville Plateau salamanders at this time or in the future.

Other Human Activities

Some sites of the Austin blind and Jollyville Plateau salamanders have been directly modified by human-related activities. Frequent human visitation of sites occupied by the Austin blind and Jollyville Plateau salamanders may negatively affect the species and their habitat. Documentation from the COA of disturbed vegetation, vandalism, and the destruction of travertine deposits (fragile rock formations formed by deposit of calcium carbonate on stream bottoms) by foot traffic has been documented at one of their Jollyville Plateau salamander monitoring sites in the Bull Creek watershed (COA 2001, p. 21) and may have resulted in direct destruction of small amounts of the salamander's habitat. Other Jollyville Plateau salamander sites have also been impacted. Both Stillhouse Hollow Spring and Balcones District Park regularly receive visitors that modify the available cover habitat (by removing or arranging substrates). Balcones District Park is also regularly disturbed by off-leash dog traffic (Bendik 2012, COA, pers. comm.). Eliza Spring and Sunken Garden Spring, two of the three locations of the Austin blind salamander, also experience vandalism, despite the presence of fencing and signage (Dries 2011, COA, pers. comm.). The deep water of the third location (Parthenia Springs) likely protects the Austin blind salamander's surface habitat from damage from frequent human recreation. All of these activities can reduce the amount of cover available for salamander breeding, feeding, and sheltering.

The threat of physical modification of surface habitat from human visitation, recreation, and alteration by itself may not be likely to cause significant population declines, but it could negatively impact the species in combination with other threats and contribute to significant declines in the population size or habitat quality. We consider this to be an ongoing threat of moderate impact to the Austin blind and Jollyville Plateau salamanders that will likely continue in the future.

Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment of Its Range

When considering the listing determination of species, it is important to consider conservation efforts that have been made to reduce or remove threats, such as the threats to the Austin blind and Jollyville Plateau Texas salamanders' habitat. A number of efforts have aimed at minimizing the habitat destruction, modification, or curtailment of the salamanders' ranges.

In a separate undertaking, and with the help of a grant funded through section 6 of the Act, the WCCF developed the Williamson County Regional HCP to obtain a section 10(a)(1)(B) permit for incidental take of federally listed endangered species in Williamson County, Texas. This HCP became final in October 2008. Although Jollyville Plateau salamanders present in southern Williamson County are likely influenced by the Edwards Aquifer Recharge Zone in northern Williamson County, the Williamson County Regional HCP does not include considerations for this species. However, in 2012, the WCCF began contracting to gather information on the Jollyville Plateau salamander in Williamson County.

Travis County and COA also have a regional HCP (the Balcones Canyonlands Conservation Plan) and section 10(a)(1)(B) permit that covers incidental take of federally listed species in Travis County. While the Jollyville Plateau salamander is not a covered species under that permit, the Balcones Canyonlands Preserve system offers some benefits to the Jollyville Plateau salamander in portions of the Bull Creek, Brushy Creek, Cypress Creek, and Long Hollow Creek drainages through preservation of open space (Service 1996, pp. 2–28, 2–29). Sixty-seven of 106 surface sites for the Jollyville Plateau salamander are within Balcones Canyonlands Preserves. However, eight of the nine COA monitoring sites occupied by the Jollyville Plateau salamander within the Balcones Canyonlands Preserve have experienced water quality degradation from disturbances occurring upstream and outside of the preserved tracts (O'Donnell *et al.* 2006, pp. 29, 34, 37, 49; COA 1999, pp. 6–11; Travis County 2007, p. 4).

Additionally, the Buttercup Creek HCP was established to avoid, minimize, and mitigate for the potential negative effects of construction and operation of single and multifamily residences and a school near and adjacent to currently occupied habitat of the endangered Tooth Cave ground beetle (*Rhadine persephone*) and other rare cave and karst species, including the Jollyville Plateau salamander, and to contribute to conservation of the listed and non-listed cave or karst fauna. The Buttercup HCP authorizes incidental take of endangered karst invertebrates, if encountered during construction. Under the Buttercup HCP, mitigation for take of the karst invertebrates was implemented by setting aside 12 separate cave preserves (130 ac (53 ha), 37 caves) and two greenbelt flood plains (33 ac (13 ha)) for a total of 163 ac (66 ha), which remain in a natural

undisturbed condition and are preserved in perpetuity for the benefit of the listed and non-listed species. There are 21 occupied endangered karst invertebrate caves and 10 Jollyville Plateau salamander caves in the preserves. The shape and size of each preserve was designed to include surface drainage basins for all caves, the subsurface extent of all caves, and connectivity between nearby caves and features. Additionally, for those more sensitive cave preserves, particularly with regard to recharge, 7 of the 12 preserves are to be fenced off to restrict access for only maintenance, monitoring, and research. All preserves are regularly monitored, fences and gates are checked and repaired, and red imported fire ants (*Solenopsis invicta*) controlled. Surface water drainage from streets and parking areas will be diverted by permanent diversion structures to treatment systems and detention ponds or will discharge down-gradient of the cave preserves. An additional 3 to 4 in (76 to 102 mm) of topsoil are added in yards and landscaped areas for additional filtration and absorption of fertilizers, pesticides, and other common constituents, and an education and outreach program informs homeowners about the proper use of fertilizers and pesticides, the benefits of native landscaping, and the disposal of household hazardous waste.

In addition, several individual 10(a)(1)(B) permit holders in Travis County have established preserves and included provisions that are expected to benefit the Jollyville Plateau salamander. Twelve of the 16 known caves for the Jollyville Plateau salamander are located within preserves. Similar to the Williamson County Regional HCP and Balcones Canyonlands Conservation Plan, there is potential for adverse effects to salamander sites from land use activities outside the covered areas under the HCPs.

Furthermore, the COA is implementing the Barton Springs Pool HCP to avoid, minimize, and mitigate incidental take of the Barton Springs salamander resulting from the continued operation and maintenance of Barton Springs Pool and adjacent springs (COA 1998, pp. 1–53). Many of the provisions of the plan also benefit the Austin blind salamander. These provisions include: (1) Training lifeguard and maintenance staff to protect salamander habitat, (2) controlling erosion and preventing surface runoff from entering the springs, (3) ecological enhancement and restoration, (4) monthly monitoring of salamander numbers, (5) public outreach and education, and (6) establishment and maintenance of a captive-breeding program, which includes the Austin blind salamander. As part of this HCP, the COA completed habitat restoration of Eliza Spring and the main pool of Barton Springs in 2003 and 2004. A more natural flow regime was reconstructed in these habitats by removing large obstructions to flow. This HCP has recently been proposed for revision to include coverage for the Austin blind salamander and to extend the COA's permit for another 20 years (78 FR 23780, April 22, 2013).

Although these conservation efforts likely contribute water quality benefits to surface flow, surface habitats can be influenced by land use throughout the recharge zone of the aquifer that supplies its spring flow. Furthermore, the surface areas influencing subsurface water quality (that is draining the surface and flowing to the subsurface habitat) is not clearly delineated for many of the sites (springs or caves) for the Austin blind or Jollyville Plateau salamanders. Because we are not able to precisely assess additional pathways for negative impacts to these salamanders to occur, many of their sites may be affected by threats that cannot be mitigated through the conservation efforts that are currently ongoing.

Conclusion of Factor A

Degradation of habitat, in the form of reduced water quality and quantity and disturbance of spring sites (physical modification of surface habitat), is the primary threat to the Austin blind and Jollyville Plateau salamanders. This threat may affect only the surface habitat, only the subsurface habitat, or both habitat types. In consideration of the stressors currently impacting the salamander species and their habitats along with their risk of exposure to potential sources of this threat, we have found the threat of habitat destruction and modification within the ranges of the Austin blind and Jollyville Plateau salamanders to have severe impacts on these species, and we expect this threat to continue into the future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

There is little available information regarding overutilization of the Austin blind and Jollyville Plateau salamanders for commercial, recreational, scientific, or educational purposes, although we are aware that some individuals of these species have been collected from their natural habitat for a variety of purposes. Collecting individuals from populations that are already small enough to experience reduced reproduction and survival due to inbreeding depression or become extirpated due to environmental or demographic stochasticity and other catastrophic events (see the discussion on small population sizes under *Factor E—Other Natural or Manmade Factors Affecting Its Continued Existence* below) can pose a risk to the continued existence of these populations. Additionally, there are no regulations currently in place to prevent or restrict the collections of salamanders from their habitat in the wild for scientific or other purposes, and we know of no plans within the scientific community to limit the amount or frequency of collections at known salamander locations. We recognize the importance of collecting for scientific purposes, such as for research, captive assurance programs, taxonomic analyses, and museum collections. However, removing individuals from small, localized populations in the wild, without any proposed plans or regulations to restrict these activities, could increase the population's vulnerability and decrease its resiliency and ability to withstand stochastic events.

Currently, we do not consider overutilization from collecting salamanders in the wild to be a threat by itself, but it may contribute to significant population declines, and could negatively impact the species in combination with other threats.

C. Disease or Predation

Chytridiomycosis (chytrid fungus) is a fungal disease that is responsible for killing amphibians worldwide (Daszak *et al.* 2000, p. 445). The chytrid fungus has been documented on the feet of Jollyville Plateau salamanders from 15 different sites in the wild (O'Donnell *et al.* 2006, pp. 22–23; Gaertner *et al.* 2009, pp. 22–23) and on Austin blind salamanders in captivity (Chamberlain 2011, COA, pers. comm.). However, the salamanders are not displaying any noticeable health effects (O'Donnell *et al.* 2006, p. 23). We do not consider chytridiomycosis to be a threat to the Austin blind and Jollyville Plateau salamanders at this time. We have no data to indicate that impacts from this disease may increase or decrease in the future.

A condition affecting Barton Springs salamanders may also affect the Austin blind salamander. In 2002, 19 Barton Springs salamanders, which co-occur with the Austin blind salamander, were found at Barton Springs with bubbles of gas occurring throughout their bodies (Chamberlain and O'Donnell 2003, p.

17). Three similarly affected Barton Springs salamanders also were found in 2003 (Chamberlain and O'Donnell 2003, pp. 17–18). Of the 19 salamanders affected in 2002, 12 were found dead or died shortly after they were found. Both adult and juvenile Barton Springs salamanders have been affected (Chamberlain and O'Donnell 2003, pp. 10, 17).

The incidence of gas bubbles in salamanders at Barton Springs is consistent with a disorder known as gas bubble disease, or gas bubble trauma, as described by Weitkamp and Katz (1980, pp. 664–671). In animals with gas bubble trauma, bubbles below the surface of the body and inside the cardiovascular system produce lesions and dead tissue that can lead to secondary infections (Weitkamp and Katz 1980, p. 670). Death from gas bubble trauma is apparently related to an accumulation of internal bubbles in the cardiovascular system (Weitkamp and Katz 1980, p. 668). Pathology reports on affected animals at Barton Springs found that the symptoms were consistent with gas bubble trauma (Chamberlain and O'Donnell 2003, pp. 17–18). The cause of gas bubble trauma is unknown, but its incidence has been correlated with water temperature. Gas bubble trauma has been observed in wild Barton Springs salamanders only on rare occasions (Chamberlain, unpublished data) and has been observed in Austin blind salamanders in captivity only when exposed to water temperatures approaching 80 °F (26.7 °C) (Chamberlain 2011, COA, pers. comm.). Given these limited observations, we do not consider gas bubble trauma to be a threat to the Austin blind salamander now or in the future.

To our knowledge, gas bubble trauma has not been observed in Jollyville Plateau salamanders. However, if an increase in water temperature is a causative factor, this species may also be at risk during droughts or other environmental stressors that result in increases in water temperature.

Regarding predation, COA biologists found Jollyville Plateau salamander abundances were negatively correlated with the abundance of predatory centrarchid fish (carnivorous freshwater fish belonging to the sunfish family), such as black bass (*Micropterus* spp.) and sunfish (*Lepomis* spp.) (COA 2001, p. 102). Predation of a Jollyville Plateau salamander by a centrarchid fish was observed during a May 2006 field survey (O'Donnell *et al.* 2006, p. 38). However, Bowles *et al.* (2006, pp. 117–118) rarely observed these predators in Jollyville Plateau salamander habitat. Centrarchid fish are currently present in two of three Austin blind salamander sites (Gillespie 2011, p. 87). Crayfish (another predator) occur in much of the habitat occupied by Jollyville Plateau salamanders. Both the Austin blind and Jollyville Plateau salamanders have been observed retreating into gravel substrate after cover was moved, suggesting these salamanders display antipredation behavior (Bowles *et al.* 2006, p. 117). Another study found that San Marcos salamanders (*Eurycea nana*) have the ability to recognize and show antipredator response to the chemical cues of introduced and native centrarchid fish predators (Epp and Gabor 2008, p. 612). However, we do not have enough data to indicate whether predation is a significant limiting factor for the Austin blind and Jollyville Plateau salamanders.

In summary, while disease and predation may be affecting individuals of these salamander species, these are not significant factors affecting the species' continued existence in healthy, natural ecosystems. Neither disease nor predation is occurring at a level that we consider to be a threat to the continued existence of the Austin blind and Jollyville Plateau salamanders now or in the future.

D. The Inadequacy of Existing Regulatory Mechanisms

The primary threats to the Austin blind and Jollyville Plateau salamanders are habitat degradation related to a reduction of water quality and quantity and disturbance at spring sites (see discussion under Factor A above). Therefore, regulatory mechanisms that protect water from the Trinity and Edwards Aquifers are crucial to the future survival of these species. Federal, State, and local laws and regulations have been insufficient to prevent past and ongoing impacts to the Austin blind and Jollyville Plateau salamanders and their habitats from water quality degradation, reduction in water quantity, and surface disturbance of spring sites, and are unlikely to prevent further impacts to the species in the future.

State and Federal Regulations

Laws and regulations pertaining to endangered or threatened animal species in the State of Texas are contained in Chapters 67 and 68 of the Texas Parks and Wildlife Department (TPWD) Code and Sections 65.171–65.176 of Title 31 of the Texas Administrative Code (T.A.C.). TPWD regulations prohibit the taking, possession, transportation, or sale of any of the animal species designated by State law as endangered or threatened without the issuance of a permit. The Austin blind and Jollyville Plateau salamanders are not listed on the Texas State List of Endangered or Threatened Species (TPWD 2013, p. 3). Even if they were, State threatened and endangered species laws do not contain protective provisions for habitat. At this time, these species are receiving no direct protection from State of Texas regulations.

Under authority of the T.A.C. (Title 30, Chapter 213), the TCEQ regulates activities having the potential for polluting the Edwards Aquifer and hydrologically connected surface streams through the Edwards Aquifer Protection Program or ''Edwards Rules.'' The Edwards Rules require a number of water quality protection measures for new development occurring in the recharge, transition, and contributing zones of the Edwards Aquifer. The Edwards Rules were enacted to protect existing and potential uses of groundwater and maintain Texas Surface Water Quality Standards. Specifically, a water pollution abatement plan (WPAP) must be submitted to the TCEQ in order to conduct any construction-related or post-construction activities on the recharge zone. The WPAP must include a description of the site and location maps, a geologic assessment conducted by a geologist, and a technical report describing, among other things, temporary and permanent best management practices (BMPs).

However, the permanent BMPs and measures identified in the WPAP are designed, constructed, operated, and maintained to remove 80 percent of the incremental increase in annual mass loading of total suspended solids from the site caused by the regulated activity. This necessarily results in some level of water quality degradation since up to 20 percent of total suspended solids are ultimately discharged from the site into receiving waterways. Separate Edwards Aquifer protection plans are required for organized sewage collection systems, underground storage tank facilities, and aboveground storage tank facilities. Regulated activities exempt from the requirements of the Edwards Rules are: (1) The installation of natural gas lines; (2) the installation of telephone lines; (3) the installation of electric lines; (4) the installation of water lines; and (5) the installation of other utility lines that are not designed to carry and will not carry pollutants, storm water runoff, sewage effluent, or treated effluent from a wastewater treatment facility.

Temporary erosion and sedimentation controls are required to be installed and

maintained for any exempted activities located on the recharge zone. Individual land owners who seek to construct single-family residences on sites are exempt from the Edwards Aquifer protection plan application requirements provided the plans do not exceed 20 percent impervious cover. Similarly, the Executive Director of the TCEQ may waive the requirements for permanent BMPs for multifamily residential subdivisions, schools, or small businesses when 20 percent or less impervious cover is used at the site.

The best available science indicates that measurable degradation of stream habitat and loss of biotic integrity occurs at levels of impervious cover within a watershed much less than this (see Factor A discussion above). The single known location of the Austin blind salamander and half of the known Jollyville Plateau salamander locations occur within those portions of the Edwards Aquifer regulated by the TCEQ. The TCEQ regulations do not address land use, impervious cover limitations, some nonpoint-source pollution, or application of fertilizers and pesticides over the recharge zone (30 TAC 213.3). In addition, these regulations were not intended or designed specifically to be protective of the salamanders. We are unaware of any water quality ordinances more restrictive than the TCEQ's Edwards Rules in Travis or Williamson Counties outside the COA.

Texas has an extensive program for the management and protection of water that operates under State statutes and the Federal Clean Water Act (CWA). It includes regulatory programs such as the following: Texas Pollutant Discharge Elimination System, Texas Surface Water Quality Standards, and Total Maximum Daily Load Program (under Section 303(d) of the CWA).

In 1998, the State of Texas assumed the authority from the Environmental Protection Agency (EPA) to administer the National Pollutant Discharge Elimination System. As a result, the TCEQ's TPDES program has regulatory authority over discharges of pollutants to Texas surface water, with the exception of discharges associated with oil, gas, and geothermal exploration and development activities, which are regulated by the Railroad Commission of Texas. In addition, stormwater discharges as a result of agricultural activities are not subject to TPDES permitting requirements. The TCEQ issues two general permits that authorize the discharge of stormwater and non-stormwater to surface waters in the State associated with: (1) small municipal separate storm sewer systems (MS4) (TPDES General Permit #TXR040000) and (2) construction sites (TPDES General Permit #TXR150000). The MS4 permit covers small municipal separate storm sewer systems that were fully or partially located within an urbanized area, as determined by the 2000 Decennial Census by the U.S. Census Bureau, and the construction general permit covers discharges of storm water runoff from small and large construction activities impacting greater than 1 acre of land. In addition, both of these permits require new discharges to meet the requirements of the Edwards Rules.

To be covered under the MS4 general permit, a municipality must submit a Notice of Intent (NOI) and a copy of their Storm Water Management Program (SWMP) to TCEQ. The SWMP must include a description of how that municipality is implementing the seven minimum control measures, which include the following: (1) Public education and outreach; (2) public involvement and participation; (3) detection and elimination of illicit discharges; (4) construction site stormwater runoff control (when greater than 1 ac (0.4 ha) is disturbed); (5) post-construction stormwater management; (6) pollution prevention and good housekeeping for municipal operations; and (7) authorization for municipal construction activities (optional). Municipalities located within the range of the Austin blind and Jollyville Plateau salamanders that are covered under the MS4 general permit include the Cities of Cedar Park, Round Rock, Austin, Leander, and Pflugerville, as well as Travis and Williamson Counties.

To be covered under the construction general permit, an applicant must prepare a stormwater pollution and prevention plan (SWP3) that describes the implementation of practices that will be used to minimize, to the extent practicable, the discharge of pollutants in stormwater associated with construction activity and non-stormwater discharges. For activities that disturb greater than 5 ac (2 ha), the applicant must submit an NOI to TCEQ as part of the approval process. As stated above, the two general permits issued by the TCEQ do not address discharge of pollutants to surface waters from oil, gas, and geothermal exploration and geothermal development activities, stormwater discharges associated with agricultural activities, and from activities disturbing less than 5 acres (2 ha) of land. Despite the significant value the TPDES program has in regulating point-source pollution discharged to surface waters in Texas, it does not adequately address all sources of water quality degradation, including nonpoint-source pollution and the exceptions mentioned above, that have the potential to negatively impact the Austin blind and Jollyville Plateau salamanders.

In reviewing the 2010 and 2012 Texas Water Quality Integrated Reports prepared by the TCEQ, the Service identified 14 of 28 (50 percent) stream segments located within surface watersheds occupied by the Austin blind and Jollyville Plateau salamanders where parameters within water samples exceeded screening level criteria (TCEQ 2010a, pp. 546–624; TCEQ 2010b, pp. 34–68; TCEQ 2012b, pp. 35–70; TCEQ 2012c, pp. 646–736). Four of these 28 (14 percent) stream segments have been identified as impaired waters as required under sections 303(d) and 304(a) of the Clean Water Act ''. . .for which effluent limitations are not stringent enough to implement water quality standards'' (TCEQ 2010c, pp. 77, 82–83; TCEQ 2012d, pp. 67, 73). The analysis of surface water quality monitoring data collected by TCEQ indicated ''screening level concerns'' for nitrate, dissolved oxygen, impaired benthic communities, sediment toxicity, and bacteria. The TCEQ screening level for nitrate (1.95 mg/L) is within the range of concentrations (1.0 to 3.6 mg/L) above which the scientific literature indicates may be toxic to aquatic organisms (Camargo *et al.* 2005, p. 1,264; Hickey and Martin 2009, pp. ii, 17–18; Rouse 1999, p. 802). In addition, the TCEQ screening level for dissolved oxygen (5.0 mg/L) is similar to that recommended by the Service in 2006 to be protective of federally listed salamanders (White *et al.* 2006, p. 51). Therefore, water quality data collected and summarized by the TCEQ supports our concerns with the adequacy of existing regulations to protect the Austin blind and Jollyville Plateau salamanders from the effects of water quality degradation.

To discharge effluent onto the land, the TCEQ requires wastewater treatment systems within the Barton Springs Segment of the Edwards Aquifer recharge and contributing zones to obtain Texas Land Application Permits (TLAP) (Ross 2011, p. 7). Although these permits are designed to protect the surface waters and underground aquifer, studies have demonstrated reduced water quality downstream of TLAP sites (Mahler *et al.* 2011, pp. 34–35; Ross 2011, pp. 11–18). Ross (2011, pp. 18–21) attributes this to the TCEQ's failure to conduct regular soil monitoring for nutrient accumulation on TLAP sites and the failure to conduct in-depth reviews of TLAP applications. A study

by the U.S. Geological Survey concluded that baseline water quality in the Barton Springs Segment of the Edwards Aquifer, which is occupied by the Austin blind salamander, in terms of nitrate had shifted upward between 2001 and 2010 and was at least partially the result of an increase in the land application of treated wastewater (Mahler *et al.* 2011, pp. 34–35).

Local Ordinances and Regulations

The COA's water quality ordinances (COA Code, Title 25, Chapter 8) provide some water quality regulatory protection to the Austin blind and Jollyville Plateau salamander's habitat within Travis County. Some of the protections include buffers around critical environmental features and waterways (up to 400 ft (122 m)), permanent water quality control structures (sedimentation and filtration ponds), wastewater system restrictions, and impervious cover limitations (COA Code, title 25, Chapter 8; Turner 2007, pp. 1–2). The ordinances range from relatively strict controls in its Drinking Water Protection Zones to lesser controls in its Desired Development Zones. For example, a 15 percent impervious cover limit is in place for new developments within portions of the Barton Springs Zone, one of the Drinking Water Protection Zones, while up to 90 percent impervious cover is permitted within the Suburban City Limits Zone, one of the Desired Development Zones.

In the period after the COA passed water quality ordinances in 1986 and 1991, sedimentation and nutrients decreased in the five major Austin-area creeks (Turner 2007, p. 7). Peak storm flows were also lower after the enactment of the ordinances, which may explain the decrease in sedimentation (Turner 2007, p. 10). Likewise, a separate study on the water quality of Walnut Creek (Jollyville Plateau salamander habitat) from 1996 to 2008 found that water quality has either remained the same or improved (Scoggins 2010, p. 15). These trends in water quality occurred despite a drastic increase in construction and impervious cover during the same time period (Turner 2007, pp. 7–8; Scoggins 2010, p. 4), indicating that the ordinances are effective at mitigating some of the impacts of development on water quality. Another study in the Austin area compared 18 sites with stormwater controls (retention ponds) in their watersheds to 20 sites without stormwater controls (Maxted and Scoggins 2004, p. 8). In sites with more than 40 percent impervious cover, more contaminant-sensitive macroinvertebrate species were found at sites with stormwater controls than at sites without controls (Maxted and Scoggins 2004, p. 11).

Local ordinances have not been completely effective at protecting water quality to the extent that sedimentation, contaminants, pollution, and changes in water chemistry no longer impact salamander habitat (see ''Stressors and Sources of Water Quality Degradation'' discussion under Factor A above). A study conducted by the COA of four Jollyville Plateau salamander spring sites within two subdivisions found that stricter water quality controls (wet ponds instead of standard sedimentation/filtration ponds) did not necessarily translate into improved groundwater quality (Herrington *et al.* 2007, pp. 13–14). In addition, water quality data analyzed by the COA showed significant increases in conductivity, nitrate, and sodium between 1997 and 2005 at two Jollyville Plateau salamander long-term monitoring sites, which also had significant declines in salamander counts (O'Donnell *et al.* 2006, p. 12).

In addition, Title 7, Chapter 245 of the Texas Local Government Code permits ''grandfathering'' of certain local regulations. Grandfathering allows developments to be exempted from new requirements for water quality controls and impervious cover limits if the developments were planned prior to the implementation of such regulations. However, these developments are still obligated to comply with regulations that were applicable at the time when project applications for development were first filed (Title 7, Chapter 245 of the Texas Local Government Code, p. 1).

On January 1, 2006, the COA banned the use of coal tar sealant (Scoggins *et al.* 2009, p. 4909), which has been shown to be the main source of PAHs in Austin-area streams (Mahler *et al.* 2005, p. 5,565). However, historically applied coal tar sealant lasts for several years and can remain a source of PAHs to aquatic systems (DeMott *et al.* 2010, p. 372). A study that examined PAH concentrations in Austin streams before the ban and 2 years after the ban found no difference, indicating that either more time is needed to see the impact of the coal tar ban, or that other sources (for example, airborne and automotive) are contributing more to PAH loadings (DeMott *et al.* 2010, pp. 375–377). Furthermore, coal tar sealant is still legal outside of the COA's jurisdiction and may be contributing PAH loads to northern portions of the Jollyville Plateau salamander's habitat.

The LCRA Highland Lakes Watershed Ordinance applies to lands located within the Lake Travis watershed in northwestern Travis County, as well as portions of Burnet and Llano Counties. This ordinance was implemented by LCRA beginning in 2006 to protect water quality in the Highland Lakes region. There are 14 Jollyville Plateau salamander sites located within the northwestern portion of Travis County covered by this ordinance. Development in this area is required to protect water quality by: (1) Providing water quality volume based on the 1-year storm runoff in approved best management practices (BMPs) (practices that effectively manage stormwater runoff quality and volume), (2) providing buffer zones around creeks that remain free of most construction activities, (3) installing temporary erosion and sediment control, (4) conducting water quality education, and (5) requiring water quality performance monitoring of certain BMPs. However, as with TPDES permitting discussed above, agricultural activities are exempt from the water quality requirements contained in the Highland Lakes Watershed Ordinance (LCRA 2005, pp. 8–21).

The Cities of Cedar Park and Round Rock, and Travis and Williamson Counties have some jurisdiction within watersheds occupied by either the Austin blind or Jollyville Plateau salamanders. The Service has reviewed ordinances administered by each of these municipalities to determine if they contain measures protective of salamanders above and beyond those already required through other regulatory mechanisms (Clean Water Act, T.A.C., etc.). Each of the cities has implemented their own ordinances that contain requirements for erosion control and the management of the volume of stormwater discharged from developments within their jurisdictions. However, as discussed above under Factor A, measurable degradation of stream habitat and loss of biotic integrity can occur at low levels of impervious cover within a watershed, and there are no impervious cover limit restrictions in Travis or Williamson Counties or for development within the municipalities of Cedar Park and Round Rock where the Jollyville Plateau salamander occurs.

Groundwater Conservation Districts

The Barton Springs/Edwards Aquifer Conservation District permits and regulates most wells on the Barton Springs segment of the Edwards Aquifer, subject to the limits of the State of Texas law. They have established two desired future conditions for the Freshwater Edwards Aquifer within the Northern Subdivision of Groundwater

Management Area 10: (1) An extreme drought desired future condition of 6.5 cubic feet per second (cfs) (0.18 cubic meter per second (cms)) measured at Barton Springs, and (2) an ''all-conditions'' desired future condition of 49.7 cfs (1.41 cms) measured at Barton Springs. These desired future conditions are meant to assure an adequate supply of freshwater for well users and adequate flow for endangered species. There are no groundwater conservation districts in northern Travis or southern Williamson Counties, so groundwater pumping continues to be unregulated in these areas (TPWD 2011, p. 7).

Conclusion of Factor D

Surface water quality data collected by TCEQ and COA indicates that water quality degradation is occurring within many of the surface watersheds occupied by the Austin blind and Jollyville Plateau salamanders despite the existence of numerous State and local regulatory mechanisms to manage stormwater and protect water quality (Turner 2005a, pp. 8–17, O'Donnell *et al.* 2006, p. 29, TCEQ 2010a, pp. 546–624; TCEQ 2010b, pp. 34–68; TCEQ 2010c, pp. 77, 82–83; TCEQ 2012b, pp. 35–70; TCEQ 2012c, pp. 646–736; TCEQ 2012d, pp. 67, 73). No regulatory mechanisms are in place to manage groundwater withdrawals in northern Travis or southern Williamson Counties. Human population growth and urbanization in Travis and Williamson Counties are projected to continue into the future as well as the associated impacts to water quality and quantity (see Factor A discussion above). Therefore, we conclude that the existing regulatory mechanisms are not providing adequate protection for the Austin blind and Jollyville Plateau salamanders or their habitats either now or in the future.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

Small Population Size and Stochastic Events

The Austin blind and Jollyville Plateau salamanders may be more susceptible to threats and impacts from stochastic events because of their small population sizes (Van Dyke 2008, p. 218). The risk of extinction for any species is known to be highly inversely correlated with population size (O'Grady *et al.* 2004, pp. 516, 518; Pimm *et al.* 1988, pp. 774–775). In other words, the smaller the population, the greater the overall risk of extinction. Population size estimates that take into account detection probability have not been generated at most sites for these species, but mark–recapture studies at some of the highest quality sites for Jollyville Plateau salamanders estimated surface populations as low as 78 and as high as 1,024 (O'Donnell *et al.* 2008, pp. 44–45).

At small population levels, the effects of demographic stochasticity (the variability in population growth rates arising from random differences among individuals in survival and reproduction within a season) alone greatly increase the risk of local extinctions (Van Dyke 2008, p. 218). Although it remains a complex field of study, conservation genetics research has demonstrated that long-term inbreeding depression (a pattern of reduced reproduction and survival as a result of genetic relatedness) can occur within populations with effective sizes of 50 to 500 individuals and may also occur within larger populations as well (Frankham 1995, pp. 305–327; Latter *et al.* 1995, pp. 287–297; Van Dyke 2008, pp. 155–156).

Current evidence from integrated work on population dynamics shows that setting conservation thresholds at only a few hundred individuals does not properly account for the synergistic impacts of multiple threats facing a population (Traill *et al.* 2010, p. 32). Studies across taxonomic groups have found both the evolutionary and demographic constraints on populations require sizes of at least 5,000 adult individuals to ensure long-term persistence (Traill *et al.* 2010, p. 30). Only one site for the Jollyville Plateau salamanders at Wheless Spring has an average population estimate of greater than 500 individuals based on results of a mark–recapture study (O'Donnell *et al.* 2008, p. 46).

Through a review of survey information available in our files and provided to us during the peer review and public comment period for the proposed rule, we noted the highest number of individuals counted during survey events that have occurred over the last 10 years. We used these survey counts as an index of salamander population health and relative abundance. We recognize these counts do not represent true population counts or estimates because they are reflective of only the number of salamanders observed in the surface habitat at a specific point in time. However, the data provide the best available information to consider relative population sizes of salamanders.

Through this assessment, we determined that surveys at many sites have never yielded as many as 50 individuals. In fact, 33 of the 106 (31 percent) Jollyville Plateau salamander surface sites have not yielded as many as 5 individuals at any one time in the last 10 years. Furthermore, surveys or salamander counts of only 8 of the 106 (8 percent) Jollyville Plateau salamander surface sites have resulted in more than 50 individuals at a time over the last 10 years. We also found that many of the salamander population counts have been low or unknown.

For the Austin blind salamander, the highest count observed at a single site over the last 10 years was 34 individuals; however, numbers this high are very rare for this species. Counts of three individuals or less have been reported most frequently since 1995. Because most of the sites occupied by the Austin blind and Jollyville Plateau salamanders are not known to have many individuals, any of the threats described in this final rule or even stochastic events that would not otherwise be considered a threat could extirpate populations. As populations are extirpated, the overall risk of extinction of the species is increased.

Small population sizes can also act synergistically with other traits (such as being a habitat specialist and having limited distribution, as is the case with the Austin blind and Jollyville Plateau salamanders) to greatly increase risk of extinction (Davies *et al.* 2004, p. 270). Stochastic events from either environmental factors (random events such as severe weather) or demographic factors (random causes of births and deaths of individuals) may also heighten the effect of other threats to the salamander species because of their limited range and small population sizes (Melbourne and Hastings 2008, p. 100).

In conclusion, we do not consider small population size to be a threat in and of itself to the Austin blind or Jollyville Plateau salamanders, but their small population sizes make them more vulnerable to extinction from other existing or potential threats, such as a major stochastic event. We consider the level of impacts from stochastic events to be moderate for the Jollyville Plateau salamander, because this species has more populations over a broader range. On the other hand, recolonization following a stochastic event is not likely for the Austin blind salamander due to its limited distribution and low numbers. Therefore, the impact from a stochastic event for the Austin blind salamander is a significant threat.

Ultraviolet Radiation

Increased levels of ultraviolet-B (UV–B) radiation, due to depletion of the stratospheric ozone layers, may lead to declines in amphibian populations

(Blaustein and Kiesecker 2002, pp. 598–600). For example, research has demonstrated that UV–B radiation causes significant mortality and deformities in developing long-toed salamanders (*Ambystoma macrodactylum*) (Blaustein *et al.* 1997, p. 13,735). Exposure to UV–B radiation reduces growth in clawed frogs (*Xenopus laevis*) (Hatch and Burton, 1998, p. 1,783) and lowers hatching success in Cascades frogs (*Rana cascadae*) and western toads (*Bufo boreas*) (Kiesecker and Blaustein 1995, pp. 11,050–11,051). In lab experiments with spotted salamanders, UV–B radiation diminished their swimming ability (Bommarito *et al.* 2010, p. 1151). Additionally, UV–B radiation may act synergistically (the total effect is greater than the sum of the individual effects) with other factors (for example, contaminants, pH, pathogens) to cause declines in amphibians (Alford and Richards 1999, p. 141; see ''Synergistic and Additive Interactions among Stressors'' below). Some researchers have indicated that future increases in UV–B radiation will have significant detrimental impacts on amphibians that are sensitive to this radiation (Blaustein and Belden 2003, p. 95).

The effect of increased UV–B radiation on the Austin blind and Jollyville Plateau salamanders is unknown. It is unlikely the few cave populations of Jollyville Plateau salamanders that are restricted entirely to the subsurface are exposed to UV–B radiation. In addition, exposure of the Austin blind salamander may be limited because they largely reside underground. Surface populations of these species may receive some protection from UV–B radiation through shading from trees or from hiding under rocks at some spring sites. Substrate alteration may put these species at greater risk of UV–B exposure and impacts. Because eggs are likely deposited underground (Bendik 2011b, COA, pers. comm.), UV–B radiation may have no impact on the hatching success of these species.

In conclusion, the effect of increased UV–B radiation has the potential to cause deformities or developmental problems to individuals, but we do not consider this stressor to significantly contribute to the risk of extinction of the Austin blind and Jollyville Plateau salamanders at this time. However, UV–B radiation could negatively affect any of the Austin blind and Jollyville Plateau salamanders' surface populations in combination with other threats (such as water quality or water quantity degradation) and contribute to significant declines in population sizes.

Deformities in Jollyville Plateau Salamanders

Jollyville Plateau salamanders observed at the Stillhouse Hollow monitoring sites have shown high incidences of deformities, such as curved spines, missing eyes, missing limbs or digits, and eye injuries (O'Donnell *et al.* 2006, p. 26). The Stillhouse Hollow location was also cited as having the highest observation of dead Jollyville Plateau salamanders (COA 2001, p. 88). Although water quality is relatively low in the Stillhouse Hollow drainage (O'Donnell *et al.* 2006, pp. 26, 37), no statistical correlations were found between the number of deformities and nitrate concentrations (O'Donnell *et al.* 2006, p. 26). Environmental toxins are the suspected cause of salamander deformities (COA 2001, pp. 70–74; O'Donnell *et al.* 2006, p. 25), but deformities in amphibians can also be the result of genetic mutations, parasitic infections, UV–B radiation, or the lack of an essential nutrient. More research is needed to elucidate the cause of these deformities. We consider deformities to be a low-level impact to the Jollyville Plateau salamander at this time because this stressor is an issue at only one site, is not affecting the entire population there, and does not appear to be an issue for the other salamander species.

Other Natural Factors

The highly restricted ranges of the salamanders and entirely aquatic environment make them extremely vulnerable to threats such as decreases in water quality and quantity. This is especially true for the Austin blind salamander, which is found in only one locality comprising three hydrologically connected springs of Barton Springs. Due to its limited distribution, the Austin blind salamander is sensitive to stochastic incidences, such as storm events (which can dramatically affect dissolved oxygen levels), catastrophic contaminant spills, and leaks of harmful substances. One catastrophic spill event in Barton Springs could potentially cause the extinction of the Austin blind salamander in the wild.

Although rare, catastrophic events pose a significant threat to small populations because they have the potential to eliminate all individuals in a small group (Van Dyke 2008, p. 218). In the proposed rule, we discussed that the presence of several locations of Jollyville Plateau salamanders close to each other provides some possibility for natural recolonization for populations of these species if any of these factors resulted in a local extirpation event (Fagan *et al.* 2002, p. 3,255). Although it may be possible for *Eurycea* salamanders to travel through aquifer conduits from one surface population to another, or that two individuals from different populations could breed in subsurface habitat, there is no direct evidence that they currently migrate from one surface population to another on a regular basis. Just because there is detectable gene flow between two populations does not necessarily mean that there is current or routine dispersal between populations that could allow for recolonization of a site should the population be extirpated by a catastrophic event (Gillespie 2012, University of Texas, pers. comm.).

In conclusion, restricted ranges could negatively affect any of the Austin blind and Jollyville Plateau salamanders' populations in combination with other threats (such as water quality or water quantity degradation) and lead to the species being at a higher risk of extinction. We consider the level of impacts from stochastic events to be moderate for the Jollyville Plateau salamander, because even though this species has more populations over a broader range, the range is still restricted and the species' continued existence could be compromised by a common event. On the other hand, recolonization following a stochastic event is less likely for the Austin blind salamander due to its limited distribution and low numbers. Therefore, the impact from a stochastic event for the Austin blind salamander is a significant threat.

Synergistic and Additive Interactions Among Stressors

The interactions among multiple stressors (contaminants, UV–B radiation, pathogens) may be contributing to amphibian population declines (Blaustein and Kiesecker 2002, p. 598). Multiple stressors may act additively or synergistically to have greater detrimental impacts on amphibians compared to a single stressor alone. Kiesecker and Blaustein (1995, p. 11,051) found a synergistic effect between UV–B radiation and a pathogen in Cascades frogs and western toads. Researchers demonstrated that reduced pH levels and increased levels of UV–B radiation independently had no effect on leopard frog (*Rana pipiens*) larvae; however, when combined, these two caused significant mortality (Long *et al.* 1995, p. 1,302). Additionally, researchers demonstrated that UV–B radiation increases the toxicity of PAHs, which can cause mortality and deformities on developing amphibians (Hatch and Burton 1998, pp. 1,780–

1,783). Beattie *et al.* (1992, p. 566) demonstrated that aluminum becomes toxic to amphibians at low pH levels. Also, disease outbreaks may occur only when there are contaminants or other stressors in the environment that reduce immunity (Alford and Richards 1999, p. 141). For example, Christin *et al.* (2003, pp. 1,129–1,132) demonstrated that mixtures of pesticides reduced the immunity to parasitic infections in leopard frogs.

Currently, the effect of synergistic stressors on the Austin blind and Jollyville Plateau salamanders is not fully known. Furthermore, different species of amphibians differ in their reactions to stressors and combinations of stressors (Kiesecker and Blaustein 1995, p. 11,051; Relyea *et al.* 2009, pp. 367–368; Rohr *et al.* 2003, pp. 2,387–2,390). Studies that examine the effects of interactions among multiple stressors on the Austin blind and Jollyville Plateau salamanders are lacking. However, based on the number of examples in other amphibians, the possibility of synergistic effects on these salamanders cannot be discounted.

Conclusion of Factor E

The effect of increased UV–B radiation is an unstudied stressor to the Austin blind and Jollyville Plateau salamanders that has the potential to cause deformities or development problems. The effect of this stressor is low at this time. Deformities have been documented in the Jollyville Plateau salamander, but at only one location (Stillhouse Hollow). We do not know what causes these deformities, and there is no evidence that the incidence rate is increasing or spreading. Therefore, the effect of UV–B radiation is low. Finally, small population sizes at most of the sites for the salamanders increases the risk of local extirpation events. We do not necessarily consider small population size to be a threat in and of itself to the Austin blind and Jollyville Plateau salamanders, but their small population sizes make them more vulnerable to extirpation from other existing or potential threats, such as stochastic events. Thus, we consider the level of impacts from stochastic events to be moderate for the Jollyville Plateau salamander and high for the Austin blind salamanders due to its more limited distribution and low numbers.

Conservation Efforts To Reduce Other Natural or Manmade Factors Affecting Its Continued Existence

We have no information on any conservation efforts currently under way to reduce the effects of UV–B radiation, deformities, small population sizes, or limited ranges on the Austin blind and Jollyville Plateau salamanders.

Cumulative Impacts

Cumulative Effects From Factors A Through E

Some of the threats discussed in this finding could work in concert with one another to cumulatively create situations that impact the Austin blind and Jollyville Plateau salamanders. Some threats to the species may seem to be of low significance by themselves, but when considered with other threats that are occurring at each site, such as small population sizes, the risk of extirpation is increased. Furthermore, we have no direct evidence that salamanders currently migrate from one population to another on a regular basis, and many of the populations are situated in a way (that is, they are isolated from one another) where recolonization of extirpated sites is very unlikely. Cumulatively, as threats to the species increase over time in tandem with increasing urbanization within the surface watersheds of these species, more and more populations will be lost, which will increase the species' risk of extinction.

Overall Threats Summary

The primary factor threatening the Austin blind and Jollyville Plateau salamanders is the present or threatened destruction, modification, or curtailment of its habitat or range (Factor A). Degradation of habitat, in the form of reduced water quality and quantity and disturbance of spring sites (surface habitat), is the primary threat to the Austin blind and Jollyville Plateau salamanders. Reductions in water quality occur primarily as a result of urbanization, which increases the amount of impervious cover in the watershed and exposes the salamanders to more hazardous material sources. Impervious cover increases storm flow, erosion, and sedimentation. Impervious cover also changes natural flow regimes within watersheds and increases the transport of contaminants common in urban environments, such as oils, metals, and pesticides. Expanding urbanization results in an increase of contaminants, such as fertilizers and pesticides, within the watershed, which degrades water quality at salamander spring sites. Additionally, urbanization increases nutrient loads at spring sites, which can lead to decreases in dissolved oxygen levels. Construction activities are a threat to both water quality and quantity because they can increase sedimentation and exposure to contaminants, as well as dewater springs by intercepting aquifer conduits.

Various other threats to habitat exist for the Austin blind and Jollyville Plateau salamanders as well. Drought, which may be compounded by the effects of global climate change, also degrades water quantity and reduces available habitat for the salamanders. Water quantity can also be reduced by groundwater pumping and decreases in baseflow due to increases in impervious cover. Flood events contribute to the salamanders' risks of extinction by degrading water quality through increased contaminants levels and sedimentation, which may damage or alter substrates, and by removing rocky substrates or washing salamanders out of suitable habitat. Impoundments are also a threat to the Austin blind and Jollyville Plateau salamanders. Feral hogs are a threat to Jollyville Plateau salamanders, because they can physically alter their surface habitat and increase nutrients. Additionally, catastrophic spills and leaks remain a threat for many salamander locations. All of these threats are projected to increase in the future as the human population and development increases within watersheds that provide habitat for these salamanders. Some of these threats are moderated, in part, by ongoing conservation efforts, such as HCPs, preserves, and other programs in place to protect land from the effects of urbanization and to gather water quality data that would be helpful in designing conservation strategies for the salamander species. Overall, we consider the combined threats of Factor A to be ongoing and with a high degree of impact to the Austin blind and Jollyville Plateau salamanders and their habitats.

Another factor affecting these salamander species is Factor D, the inadequacy of existing regulatory mechanisms. Surface water quality data collected by TCEQ indicates that water quality degradation is occurring within many of the surface watersheds occupied by the Austin blind and Jollyville Plateau salamanders despite the existence of numerous State and local regulatory mechanisms to manage stormwater and protect water quality. Human population growth and urbanization in Travis and Williamson Counties are projected to continue into the future as well as the associated impacts to water quality and quantity (see Factor A discussion above). Because existing regulations are not providing adequate protection for the salamanders or their habitats, we consider the existing regulatory mechanisms inadequate to protect the

Austin blind and Jollyville Plateau salamanders now and in the future.

Under Factor E we identified several stressors that could negatively impact the Austin blind and Jollyville Plateau salamanders, including the increased risk of local extirpation events due to small population sizes, UV–B radiation, and deformities. Although none of these stressors rose to the level of being considered a threat by itself, small population sizes and restricted ranges make the Austin blind and Jollyville Plateau salamanders more vulnerable to extirpation from other existing or potential threats, such as stochastic events. Thus, we consider the level of impacts from stochastic events to be high for the Austin blind and Jollyville Plateau salamanders due to their low numbers, and especially high for the Austin blind salamander due to its limited distributions.

Determination

Standard for Review

Section 4 of the Act, and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(b)(1)(a), the Secretary is to make threatened or endangered determinations required by subsection 4(a)(1) solely on the basis of the best scientific and commercial data available to her after conducting a review of the status of the species and after taking into account conservation efforts by States or foreign nations. The standards for determining whether a species is threatened or endangered are provided in section 3 of the Act. An endangered species is any species that is ''in danger of extinction throughout all or a significant portion of its range.'' A threatened species is any species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Per section 4(a)(1) of the Act, in reviewing the status of the species to determine if it meets the definitions of threatened or endangered, we determine whether any species is an endangered species or a threatened species because of any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence.

We evaluated whether the Austin blind and Jollyville Plateau salamanders are in danger of extinction now (that is, an endangered species) or are likely to become in danger of extinction in the foreseeable future (that is, a threatened species). The foreseeable future refers to the extent to which the Secretary can reasonably rely on predictions about the future in making determinations about the future conservation status of the species. A key statutory difference between a threatened species and an endangered species is the timing of when a species may be in danger of extinction, either now (endangered species) or in the foreseeable future (threatened species).

Listing Status Determination for the Austin Blind Salamander

Based on our review of the best available scientific and commercial information, we conclude that the Austin blind salamander is in danger of extinction now throughout all of its range and, therefore, meets the definition of an endangered species. This finding, explained below, is based on our conclusions that this species has only one known population that occurs at three spring outlets in Barton Springs, the habitat of this population has experienced impacts from threats, and these threats are expected to increase in the future. We find the Austin blind salamander is at an elevated risk of extinction now, and no data indicate that the situation will improve without significant additional conservation intervention. We, therefore, find that the Austin blind salamander warrants an endangered species listing status determination.

Present and future degradation of habitat (Factor A) is the primary threat to the Austin blind salamander. This threat has primarily occurred in the form of reduced water quality from introduced and concentrated contaminants (for example, PAHs, pesticides, nutrients, and trace metals), increased sedimentation, and altered stream flow regimes. These stressors are primarily the result of human population growth and subsequent urbanization within the watershed and recharge and contributing zones of the Barton Springs Segment of the Edwards Aquifer. Urbanization is currently having impacts on Austin blind salamander habitat. For example, a study by the U.S. Geological Survey concluded that baseline water quality in the Barton Springs Segment of the Edwards Aquifer, in terms of nitrate, had shifted upward between 2001 and 2010 and was at least partially the result of an increase in the land application of treated wastewater (Mahler *et al.* 2011, pp. 34–35). Based on our analysis of impervious cover, the surface watershed and groundwater recharge and contributing zones of Barton Springs have levels of impervious cover that are likely causing habitat degradation. As a result, the best available information indicates that habitat degradation from urbanization is causing a decline in the Austin blind salamander population throughout the species' range now and will cause population declines in the future, putting this population at an elevated risk of extirpation.

Further degradation of water quality within the Austin blind salamander's habitat is expected to continue into the future, primarily as a result of an increase in urbanization. Substantial human population growth is ongoing within this species' range, indicating that the urbanization and its effects on Austin blind salamander habitat will increase in the future. The Texas State Data Center (2012, pp. 496–497) has reported a population increase of 94 percent for Travis County, Texas, from the year 2010 to 2050. Data indicate that water quality degradation at Barton Springs continues to occur despite the existence of current regulatory mechanisms in place to protect water quality; therefore, these mechanisms are not adequate to protect this species and its habitat now, nor do we anticipate them to sufficiently protect the species in the future (Factor D).

An additional threat to the Austin blind salamander is hazardous materials that could be spilled or leaked potentially resulting in the contamination of both surface and groundwater resources. For example, a number of point-sources of pollutants exist within the Austin blind salamander's range, including 7,600 wastewater mains and 9,470 known septic facilities in the Barton Springs Segment of the Edwards Aquifer as of 2010 (Herrington *et al.* 2010, pp. 5, 16). Because this species occurs in only one population in Barton Springs, a single but significant hazardous materials spill within stream drainages of the Austin blind salamander has the potential to cause this species to go extinct.

In addition, construction activities resulting from urban development may negatively impact both water quality and quantity because they can increase sedimentation and dewater springs by intercepting aquifer conduits. It has been estimated that total suspended sediment loads have increased 270 percent over predevelopment loadings within the Barton Springs Segment of the Edwards Aquifer (COA 1995, pp. 3–10). The risk of a hazardous material spill and effects from construction activities will increase as urbanization

within the range of the Austin blind salamander increases.

The habitat of Austin blind salamanders is sensitive to direct physical habitat modification, particularly due to human vandalism of the springs and the Barton Springs impoundments. Eliza Spring and Sunken Garden Spring, two of the three spring outlets of the Austin blind salamander, experience vandalism, despite the presence of fencing and signage (Dries 2011, COA, pers. comm.). Also, the impoundments have changed the Barton Springs ecosystem from a stream-like system to a more lentic (still-water) environment, thereby reducing the water system's ability to flush sediments downstream and out of salamander habitat. In combination with the increased threat from urbanization, these threats are likely driving the Austin blind salamander to the brink of extinction now.

Future climate change could also affect water quantity and spring flow for the Austin blind salamander. Climate change could compound the threat of decreased water quantity at salamander spring sites by decreasing precipitation, increasing evaporation, and increasing the likelihood of extreme drought events. The Edwards Aquifer is projected to experience additional stress from climate change that could lead to decreased recharge and low or ceased spring flows given increasing pumping demands (Loáiciga *et al.* 2000, pp. 192–193). Evidence of climate change has been observed in Texas, such as the record-setting drought of 2011, with extreme droughts becoming much more probable than they were 40 to 50 years ago (Rupp *et al.* 2012, pp. 1053–1054). Drought lowers water quality in Barton Springs due to saline water encroachments in the Barton Springs Segment of the Edwards Aquifer (Slade *et al.* 1986, p. 62; Johns 2006, p. 8). Recent droughts have negatively impacted Austin blind salamander abundance (Dries 2012, pp. 16–18), reducing the resiliency of the sole population. Therefore, climate change is an ongoing threat to this species and contributes to the likelihood of the Austin blind salamander becoming extinct now.

Other natural or manmade factors (Factor E) affecting the Austin blind salamander population include UV–B radiation, small population sizes, stochastic events (such as floods or droughts), and synergistic and additive interactions among the stressors mentioned above. While these factors are not threats to the existence of the Austin blind salamander in and of themselves, in combination with the threats summarized above, these factors make the Austin blind salamander population less resilient and more vulnerable to extinction now.

Because of the fact-specific nature of listing determinations, there is no single metric for determining if a species is ''in danger of extinction'' now. In the case of the Austin blind salamander, the best available information indicates that habitat degradation has occurred throughout the only known Austin blind salamander population. The threat of urbanization indicates that this Austin blind salamander population is currently at an elevated risk of extinction now and will continue to be at an elevated risk in the future. These impacts are expected to increase in severity and scope as urbanization within the range of the species increases. Also, the combined result of increased impacts to habitat quality and inadequate regulatory mechanisms leads us to the conclusion that Austin blind salamanders are in danger of extinction now. This Austin blind salamander population has become degraded from urbanization, low resiliency and is subsequently at an elevated risk from climate change impacts and catastrophic events (for example, drought, floods, hazardous material spills). Therefore, because the only known Austin blind salamander population is at an elevated risk of extinction, the Austin blind salamander is in danger of extinction throughout all of its range now, and appropriately meets the definition of an endangered species (that is, in danger of extinction now).

Under the Act and our implementing regulations, a species may warrant listing if it is threatened or endangered throughout all or a significant portion of its range. The threats to the survival of this species occur throughout its range and are not restricted to any particular significant portion of its range. Accordingly, our assessments and determinations apply to this species throughout its entire range.

In conclusion, as described above, the Austin blind salamander is subject to significant threats now, and these threats will continue to become more severe in the future. After a review of the best available scientific information as it relates to the status of the species and the five listing factors, we find the Austin blind salamander is currently on the brink of extinction. Therefore, on the basis of the best available scientific and commercial information, we list the Austin blind salamander as an endangered species in accordance with section 3(6) of the Act. We find that a threatened species status is not appropriate for the Austin blind salamander because the overall risk of extinction is high at this time. The one existing population is not sufficiently resilient or redundant to withstand present and future threats, putting this species in danger of extinction now.

Listing Determination for the Jollyville Plateau Salamander

In the proposed rule (77 FR 50768, August 22, 2012), the Jollyville Plateau salamander species was proposed as endangered, rather than threatened, because at that time, we determined the threats to be imminent, and their potential impacts to the species would be catastrophic given the very limited range of the species. For this final determination, we took into account data that was made available after the proposed rule published, information provided by commenters on the proposed rule, and further discussions within the Service to determine whether the Jollyville Plateau salamander should be classified as endangered or threatened. Based on our review of the best available scientific and commercial information, we conclude that the Jollyville Plateau salamander is likely to become in danger of extinction in the foreseeable future throughout all of its range and, therefore, meets the definition of a threatened species, rather than endangered. This finding, explained below, is based on our conclusions that many populations of the species have begun to experience impacts from threats to its habitat, and these threats are expected to increase in the future. As the threats increase, we expect Jollyville Plateau salamander populations to be extirpated, reducing the overall representation and redundancy across the species' range and increasing the species' risk of extinction. We find the Jollyville Plateau salamander will be at an elevated risk of extinction in the future, and no data indicate that the situation will improve without significant additional conservation intervention. We, therefore, find that the Jollyville Plateau salamander warrants a threatened species listing status determination.

Present and future degradation of habitat (Factor A) is the primary threat to the Jollyville Plateau salamander. This threat has primarily occurred in the form of reduced water quality from introduced and concentrated contaminants (for example, PAHs, pesticides, nutrients, and trace metals), increased sedimentation, and altered stream flow regimes. These stressors are primarily the result of human population growth and subsequent urbanization within the watersheds and

recharge and contributing zones of the groundwater supporting spring and cave sites. Urbanization affects both surface and subsurface habitat and is currently having impacts on Jollyville Plateau salamander counts. For example, Bendik (2011a, pp. 26–27) demonstrated that declining trends in counts are correlated with high levels of impervious cover. Based on our analysis of impervious cover (which we use as a proxy for urbanization) throughout the range of the Jollyville Plateau salamander, 81 of the 93 surface watersheds occupied by Jollyville Plateau salamanders have levels of impervious cover that are likely causing habitat degradation. As a result, the best available information indicates that habitat degradation from urbanization is causing declines in Jollyville Plateau salamander populations throughout most of the species' range now or will cause population declines in the future, putting these populations at an elevated risk of extirpation.

Further degradation of water quality within the Jollyville Plateau salamander's habitat is expected to continue into the future, primarily as a result of an increase in urbanization. Substantial human population growth is ongoing within this species' range, indicating that the urbanization and its effects on Jollyville Plateau salamander habitat will increase in the future. The Texas State Data Center (2012, pp. 496–497, 509) has reported a population increase of 94 percent and 477 percent for Travis and Williamson Counties, Texas, respectively, from the year 2010 to 2050. Data indicate that water quality degradation in sites occupied by Jollyville Plateau salamanders continues to occur despite the existence of current regulatory mechanisms in place to protect water quality; therefore, these mechanisms are not adequate to protect this species and its habitat now, nor do we anticipate them to sufficiently protect the species in the future.

Adding to the likelihood of the Jollyville Plateau salamander becoming endangered in the future is the risk from hazardous materials that could be spilled or leaked, potentially resulting in the contamination of both surface and groundwater resources. For example, a number of point-sources of pollutants exist within the Jollyville Plateau salamander's range, including leaking underground storage tanks and sewage spills from pipelines (COA 2001, pp. 16, 21, 74). A significant hazardous materials spill within stream drainages of the Jollyville Plateau salamander has the potential to threaten the long-term survival and sustainability of multiple populations.

In addition, construction activities resulting from urban development may negatively impact both water quality and quantity because they can increase sedimentation and dewater springs by intercepting aquifer conduits. Increased sedimentation from construction activities has been linked to declines in Jollyville Plateau salamander counts at multiple sites (Turner 2003, p. 24; O'Donnell *et al.* 2006, p. 34). The risk of a hazardous material spill and effects from construction activities will increase as urbanization within the range of the Jollyville Plateau salamander increases.

The habitat of Jollyville Plateau salamanders is sensitive to direct physical habitat modification, such as those resulting from human recreational activities, impoundments, feral hogs, and livestock. Destruction of Jollyville Plateau salamander habitat has been attributed to vandalism (COA 2001, p. 21), human recreational use (COA 2001, p. 21), impoundments (O'Donnell *et al.* 2008, p. 1; Bendik 2011b, pers. comm.), and feral hog activity (O'Donnell *et al.* 2006, pp. 34, 46). Because these threats are impacting a limited number of sites, they are not causing the Jollyville Plateau salamander to be on the brink of extinction now. However, in combination with the increased threat from urbanization, these threats are likely to drive the Jollyville Plateau salamander to the brink of extinction in the foreseeable future.

Future climate change could also affect water quantity and spring flow for the Jollyville Plateau salamander. Climate change could compound the threat of decreased water quantity at salamander spring sites by decreasing precipitation, increasing evaporation, and increasing the likelihood of extreme drought events. The Edwards Aquifer is predicted to experience additional stress from climate change that could lead to decreased recharge and low or ceased spring flows given increasing pumping demands (Loáiciga *et al.* 2000, pp. 192–193). Climate change could cause spring sites with small amounts of discharge to go dry and no longer support salamanders, reducing the overall redundancy and representation for the species. Evidence of climate change has been observed in Texas, such as the record-setting drought of 2011, with extreme droughts becoming much more probable than they were 40 to 50 years ago (Rupp *et al.* 2012, p. 1,053–1,054). Therefore, climate change is an ongoing threat to this species and will add to the likelihood of the Jollyville Plateau salamander becoming endangered within the foreseeable future.

Other natural or manmade factors (Factor E) affecting all Jollyville Plateau salamander populations include UV–B radiation, small population sizes, stochastic events (such as floods or droughts), and synergistic and additive interactions among the stressors mentioned above. While these factors are not threats to the existence of the Jollyville Plateau salamander in and of themselves in combination with the threats summarized above, these factors make Jollyville Plateau salamander populations less resilient and more vulnerable to population extirpations in the foreseeable future.

Because of the fact-specific nature of listing determinations, there is no single metric for determining if a species is ''in danger of extinction'' now. In the case of the Jollyville Plateau salamander, the best available information indicates that habitat degradation has resulted in measureable impacts on salamander counts. But, given that there are 106 surface and 16 cave populations, it is unlikely that any of the current threats are severe enough to impact all of the sites and result in overall species extirpation in the near future. The Jollyville Plateau salamander's risk of extinction now is not high (it is not in danger of extinction now). However, the threat of urbanization will cause the Jollyville Plateau salamander to be at an elevated risk of extirpation in the future. Also, the combined result of increased impacts to habitat quality and inadequate regulatory mechanisms leads us to the conclusion that Jollyville Plateau salamanders will likely be in danger of extinction within the foreseeable future. As Jollyville Plateau salamander populations become more degraded, isolated, or extirpated from urbanization, the species will lose resiliency and be at an elevated risk from climate change impacts and catastrophic events, such as drought, floods, and hazardous material spills. These events will affect all known extant populations, putting the Jollyville Plateau salamander at a high risk of extinction. Therefore, because the resiliency of populations is expected to decrease in the foreseeable future, the Jollyville Plateau salamander will be danger of extinction throughout all of its range in the foreseeable future, and appropriately meets the definition of a threatened species (that is, in danger of extinction in the foreseeable future).

After a review of the best available scientific information as it relates to the status of the species and the five listing factors, we find the Jollyville Plateau salamander is not currently in danger of extinction, but will be in danger of extinction in the future throughout all of

its range. Therefore, on the basis of the best available scientific and commercial information, we are listing the Jollyville Plateau salamander as a threatened species, in accordance with section 3(6) of the Act. We find that an endangered species status is not appropriate for the Jollyville Plateau salamander because the species is not in danger of extinction at this time. While some threats to the Jollyville Plateau salamander are occurring now, the impacts from these threats are not yet at a level that puts this species in danger of extinction now. Habitat degradation and associated salamander count declines have been observed at urbanized sites. Furthermore, some Jollyville Plateau salamander sites are located within preserves and receive some protections from threats occurring to the species now. While the populations within preserves are not free from the impacts of urbanization, they are at a lower risk of extirpation because of the protections in place. Even so, with future urbanization outside of the preserves and the added effects of climate change, we expect habitat degradation to continue into the foreseeable future to the point where the species has an increased risk of extinction.

Under the Act and our implementing regulations, a species may warrant listing if it is threatened or endangered throughout all or a significant portion of its range. The threats to the survival of this species occur throughout its range and are not restricted to any particular significant portion of its range. Accordingly, our assessments and determinations apply to this species throughout its entire range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the decline in the species' status by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprising species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (for example, restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, tribal, and other lands.

Once these species are listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Texas will be eligible for Federal funds to implement management actions that promote the protection or recovery of the Austin blind and Jollyville Plateau salamanders. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions within the species habitat that may require conference or consultation or both as described in the preceding paragraph include management, construction, and any other activities with the possibility of altering aquatic habitats, groundwater flow paths, and natural flow regimes within the ranges of the Austin blind and Jollyville Plateau salamanders. Such consultations could be triggered through the issuance of section 404 Clean Water Act permits by the Army Corps of Engineers or other actions by the Service, U.S. Geological Survey, and Bureau of Reclamation; construction and maintenance of roads or highways by the Federal Highway Administration; landscape-altering activities on Federal lands administered by the Department of Defense; and construction and management of gas pipelines and power line rights-of-way by the Federal Energy Regulatory Commission.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply

to all endangered wildlife. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered wildlife, and at 50 CFR 17.32 for threatened wildlife. With regard to endangered wildlife, a permit must be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

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

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.gov* or upon request from the Field Supervisor, Austin Ecological Services Field Office (see **ADDRESSES**).

Author(s)

The primary author of this document is staff from the Austin Ecological Services Field Office (see **ADDRESSES**) with support from the Arlington, Texas, Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding entries for ''Salamander, Austin blind'' and ''Salamander, Jollyville Plateau'' in alphabetical order under AMPHIBIANS to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
AMPHIBIANS							
*	*	*	*	*	*	*	
Salamander, Austin blind.	*Eurycea waterlooensis.*	U.S.A. (TX)	Entire	E	817	17.95(d)	NA
*	*	*	*	*	*	*	
Salamander, Jollyville Plateau.	*Eurycea tonkawae*	U.S.A. (TX)	Entire	T	817	17.95(d)	NA
*	*	*	*	*	*	*	

* * * * *

Dated: August 5, 2013.

Dan Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–19715 Filed 8–19–13; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Austin Blind and Jollyville Plateau Salamanders; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2013–0001; 4500030113]

RIN 1018–AZ24

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Austin Blind and Jollyville Plateau Salamanders

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, designate critical habitat for the Austin blind salamander (*Eurycea waterlooensis*) and Jollyville Plateau salamander (*Eurycea tonkawae*) under the Endangered Species Act. In total, approximately 4,451 acres (ac) (1,801 hectares (ha)) in Travis and Williamson Counties, Texas, fall within the boundaries of the critical habitat designation. The effect of this regulation is to conserve the Austin blind and Jollyville Plateau salamanders' habitat under the Endangered Species Act.

DATES: This rule becomes effective on September 19, 2013.

ADDRESSES: This final rule and final economic analysis are available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/southwest/es/AustinTexas/* at Docket No. FWS–R2–ES–2013–0001. Comments and materials received, as well as supporting documentation used in preparing this final rule, are available for public inspection, by appointment, during normal business hours, at U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

The coordinates, plot points, or both, from which the maps are generated, are included in the administrative record for this critical habitat designation and are available at *http://www.fws.gov/southwest/es/AustinTexas/*, and *www.regulations.gov* at Docket No. FWS–R2–ES–2013–0001, and at the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the three locations stated above.

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Rd, Suite 200, Austin, TX 78758; by telephone 512–490–0057; or by facsimile 512–490–0974. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act, any species that is determined to be a threatened or endangered species requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule.

This rule will designate 4,451 ac (1,801 ha) of critical habitat for the Austin blind salamander and Jollyville Plateau salamander. The critical habitat is located across 33 units within Travis and Williamson Counties, Texas. We are designating the following amount of critical habitat for these two salamanders:

- Austin Blind salamander: 120 ac (49 ha) in 1 unit
- Jollyville Plateau salamander: 4,331 ac (1,753 ha) in 32 units

We have prepared an economic analysis of the designation of critical habitat. In order to consider economic impacts, we have prepared an analysis of the economic impacts of the critical habitat designations and related factors. We announced the availability of the draft economic analysis (DEA) in the **Federal Register** on January 15, 2013 (78 FR 5385), allowing the public to provide comments on our analysis. We have incorporated the comments and have completed the final economic analysis (FEA) concurrently with this final determination.

Peer review and public comment. We sought comments from independent specialists to ensure that our designation is based on scientifically sound data and analyses. We obtained opinions from 22 knowledgeable individuals with scientific expertise to review our technical assumptions, analysis, and whether or not we had used the best available information. These peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve this final rule. Information we received from peer review is incorporated in this final revised designation. We also considered all comments and information received during the comment periods.

Previous Federal Actions

These actions are described in the Previous Federal Actions section of the final listing rule published elsewhere in today's **Federal Register**.

Background

For background information on the biology, taxonomy, distribution, and habitat of the Austin blind and Jollyville Plateau salamanders, see the Background section of the final listing rule published on elsewhere in today's **Federal Register**.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the Austin blind salamander and Jollyville Plateau salamander during two comment periods. The first comment period associated with the publication of the proposed rule (77 FR 50768) opened on August 22, 2012, and closed on October 22, 2012. We also requested comments on the proposed critical habitat designation and associated draft economic analysis during a second comment period that opened January 25, 2013, and closed on March 11, 2013 (78 FR 5385). We held public meetings and hearings on September 5 and 6, 2012, in Round Rock and Austin, Texas, respectively. We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and draft economic analysis during these comment periods.

We received a total of approximately 416 comments during the public comment periods for the proposed listing rule, proposed critical habitat rule, and associated documents. All substantive information provided during the comment periods has either been incorporated directly into the final critical habitat rule or addressed below. Comments from peer reviewers and state agencies are grouped separately below. All other substantial public comments are grouped into general issues specifically relating to the proposed critical habitat designation for these two salamander species. Beyond the comments addressed below, several commenters submitted additional reports and references for our consideration, which were reviewed and incorporated into the critical habitat final rule as appropriate.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions

during the first comment period from 22 knowledgeable individuals with scientific expertise with the hydrology, taxonomy, and ecology that is important to these salamander species. We received responses from 13 of the peer reviewers.

During the first comment period, we received public comments that were in disagreement with our proposed rule, and we also developed new information related to the listing decision. Therefore, we conducted a second peer review on (1) salamander demographics and (2) urban development and stream habitat. During this second peer review, we solicited expert opinions from knowledgeable individuals with expertise in the two areas identified above. We received responses from eight peer reviewers.

Aside from the specific comments addressed below, peer reviewers from both comment periods generally agreed that the best available scientific information was used to develop the proposed rule and the U.S. Fish and Wildlife Service's (Service) analysis of the available information was scientifically sound.

Peer Reviewer Comments

(1) *Comment:* Several peer reviewers stated that there should be larger subsurface areas designated as critical habitat considering that these species heavily rely upon subterranean habitat. One suggested that more emphasis be placed on the Barton Springs and the Northern Edwards segments of the Edwards Aquifer because the recharge zones that allow water to enter these segments of the aquifer support habitat for these species. Another suggested that the recharge and contributing zones of the aquifers be included in critical habitat.

Our Response: In accordance with section 3(5)(A) of the Endangered Species Act (Act), we are designating critical habitat in specific areas within the geographic area occupied by the species at the time of listing that contain the physical and biological features essential for the conservation of the species and which may require special management. We acknowledge that the recharge zone of the aquifers supporting salamander locations is very important to the conservation of the species. However, our goal with this critical habitat designation is to delineate the habitat that is physically occupied and used by the species rather than delineate all land or aquatic areas that influence the species. There is no evidence to support that the entire recharge zone of the aquifers is occupied by the salamander species.

(2) *Comment:* One peer reviewer stated that the 984-foot (ft) (300-meter (m)) extent of salamander populations within the subsurface could be increased to 3,281 ft (1,000 m), because this is the distance that larval *Eurycea lucifiga* (a related species) were found from a cave entrance. Another reviewer stated this distance could be increased to 20,013 ft (6,100 m) because this is the distance across which *E. tridentifera* (another related species) were observed in the subsurface. Two reviewers stated that using one distance for all sites is flawed because this distance does not consider site-specific hydrogeological conditions and may greatly underestimate or overestimate the true amount of subsurface habitat. One reviewer stated that the Service should contract a basic hydrogeological study for each site. This study should include examination and analysis of hydrogeological factors such as lithology, fractures, morphologic features, related karst features, flow rates and behavior, cave maps, and the development of a conceptual model of the origin of each locality's groundwater drainage system. Additionally the results of any groundwater tracer studies should be included.

Our Response: The Northern Segment of the Edwards Aquifer is poorly studied and site-specific hydrogeological information does not exist for most of the salamander sites. However, we have reviewed the available hydrogeological information and determined that there is not enough information to modify our original 984-ft (300-m) circular subsurface designation without further long-term study. We acknowledge that related salamander species in Texas have subterranean populations that extend further than our designation. However, we are delineating the 984-ft (300-m) distance based upon the population extent of the Austin blind salamander. We believe this species is the best representation of the subterranean habits of the Jollyville Plateau salamander due to its genetic relatedness and geographic proximity to the Jollyville Plateau salamander. Due to time constraints and limited fiscal resources, we are not able to conduct a hydrogeological study for each site. Fully understanding all of the subsurface flow patterns and connections for every salamander site will require numerous years of research. In addition, peer reviewers agreed that it is acceptable to use and apply ecological information on closely related species if species-specific information is lacking. Therefore, as required by section 4(b)(2) of the Act, we used the best scientific data available to designate critical habitat. If additional data become available in the future, the Secretary can revise the designation under the authority of section 4(a)(3)(A)(ii) of the Act, as appropriate.

(3) *Comment:* One reviewer provided site-specific hydrologic information on Wheless Spring and Buttercup Creek-area caves that they believed should be considered when delineating subsurface critical habitat.

Our Response: We have reviewed the information and determined that there is not enough information to modify our original 984-ft (300-m) circular subsurface designation for these sites without further long-term study. For example, knowing a general groundwater flow path of Wheless Spring or Buttercup Creek caves does not preclude the flow of groundwater and movement of salamanders in other directions to and from the site, and our circular subsurface designation captures this possibility.

Comments From States

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' Comments received from the State regarding the proposal to designate critical habitat for the Austin blind and Jollyville Plateau salamanders are addressed below.

(4) *Comment:* State Representative Tony Dale, Texas Comptroller of Public Accounts Susan Combs, United States Senator John Cornyn, and United States Representative John Carter all stated that the draft economic analysis (DEA) underestimates the economic impact of the listing and critical habitat designation. These comments reference impacts including increased cost of development, increased cost of transportation projects, increased traffic congestion, and decreased tax revenue as being omitted from the DEA.

Our Response: As described in Chapter 2 of the DEA, the analysis qualitatively describes the baseline protections accorded the Austin blind and Jollyville Plateau salamanders absent critical habitat designation (including the listing of these species) and monetizes the potential incremental impacts precipitated specifically by the critical habitat designation. The Service does not anticipate requesting additional project modifications to avoid adverse modification of critical habitat beyond those requested to avoid jeopardy to the species. Therefore,

incremental impacts associated with the designation of critical habitat are expected to be limited to administrative costs of section 7 consultation and do not include impacts, such as increased cost of development, increased cost of transportation, and decreased tax revenue.

(5) *Comment:* The Texas Comptroller of Public Accounts stated that the DEA should consider the impact of regulatory uncertainty.

Our Response: Chapter 2 of the DEA notes that indirect impacts due to regulatory uncertainty may occur. The types of data necessary for quantifying costs associated with regulatory uncertainty, such as information linking public perceptions of regulation to economic choices, are unavailable. As a result, potential impacts due to regulatory uncertainty are described qualitatively but cannot be monetized in the DEA.

(6) *Comment:* The Texas Comptroller of Public Accounts stated that the DEA should use a lower discount rate to reflect changes in the economy over the last decade.

Our Response: In accordance with OMB Circular A–4, the DEA evaluates incremental impacts using two discount rates. The body of the report presents results using a 7 percent discount rate. Appendix B presents results using a 3 percent discount rate for comparison.

(7) *Comment:* The Texas Department of Transportation asserts that the DEA underestimates costs associated with future transportation projects within critical habitat. Projects that occur within critical habitat typically require significant engineering to avoid adverse modification of critical habitat. As an example, one 2008 project in Bexar County, Texas, resulted in incremental project modification costs of approximately $2.3 million for the construction of a 400-ft (122-m) section of road. The DEA does not estimate impacts associated with such costs.

Our Response: The Service does not anticipate requesting additional project modifications to avoid adverse modification of critical habitat above those to avoid jeopardy to these species. As a result, any project modification costs incurred for future transportation projects are assumed to occur in the baseline and are not quantified in the analysis. However, text has been added to Section 4.4 of the final economic analysis (FEA) noting the potential for large incremental costs if additional engineering is required to avoid adverse modification of critical habitat by transportation projects beyond that to avoid jeopardy.

(8) *Comment:* The Texas Comptroller of Public Accounts states that the DEA does not include a reasonable comparison of costs and benefits. The DEA should use existing studies and procedures to describe biological benefits in monetary terms.

Our Response: The primary purpose of this critical habitat designation is to support the conservation of the Austin blind and Jollyville Plateau salamander species. As described in Chapter 5 of the DEA, quantification and monetization of this conservation benefit requires information on the incremental change in the probability of conservation resulting from the critical habitat designation. Such information is not available, and as a result, monetization of the primary benefit of critical habitat designation is not possible.

(9) *Comment:* The Texas Comptroller of Public Accounts states that the DEA is unclear about whether the proposed critical habitat designation will result in any conservation benefit to the salamanders.

Our Response: The DEA discusses only economic benefits of the critical habitat designation. Conservation benefits of the critical habitat designation, such as Federal regulatory protection and public education, are described in the Exclusions section of this final critical habitat rule.

(10) *Comment:* The Texas Parks and Wildlife Department (TPWD) commented that the 984-ft (300-m) area proposed for subsurface critical habitat and the 164-ft (50-m) area proposed for surface habitat may not accurately represent the needs of the species. The methods of delineation described in the proposed rule may over-represent habitat in some case while under-representing it in others. Factors that must be appropriately considered include ground water recharge, drainage basins, flow routes, and springsheds directly relevant to salamanders' known life history. This analysis will likely require evaluation of information derived from GIS analysis of surface topography, potentiometric studies, dye tracing, and data from the Texas Speleological Survey database (primarily cave maps). Methods for the delineation of hydrogeologic areas in karst of the Edwards Aquifer can be found in Veni (2003).

Our Response: Due to time constraints and our limited fiscal resources, we are not able to conduct a hydrogeological evaluation for each site. Based on our review, the critical habitat areas constitute our best assessment at this time of areas that are within the geographical range occupied by at least one of the two salamander species and are considered to contain features essential to the conservation of these species. If additional data become available in the future, the Secretary can revise the designation under the authority of section 4(a)(3)(A)(ii) of the Act, as appropriate. Please see our response to Comment 2 above.

Public Comments

Critical Habitat Designation

(11) *Comment:* Salamander critical habitat is not determinable. The information sufficient to perform required analyses of the impacts of the designation is lacking and the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. The Service makes numerous admissions that it does not understand the surface and subsurface habitat needs of the salamanders, lacks specific ecological and hydrogeological data, fails to understand the biological needs of the species, and repeatedly requests information on how the critical habitat designation can be improved for the final rule. Also, the Service does not have enough species-specific information to determine what the needs of each of the salamanders are and improperly uses other salamanders, amphibians, and *Eurycea* species to determine critical habitat.

Our Response: While we recognize the uncertainty inherent in identifying subsurface habitat boundaries for these two salamander species, we used the best available scientific evidence at the time of this final rule to designate critical habitat, as required by the Act. Making a not determinable finding for critical habitat only delays the decision for 1 year, after which we still have to designate critical habitat, per the Act. Fully understanding all of the subsurface flow patterns and connections for every salamander site will require numerous years of research. In addition, peer reviewers agreed that it is acceptable to use and apply ecological information on closely related species if species-specific information is lacking.

(12) *Comment:* One commenter stated that because the Austin blind salamander is unlike the Jollyville Plateau salamander in its exclusive use of deep aquifer habitat it is inappropriate to use Austin blind salamander ecological habits for the delineation of all the proposed critical habitat units for the Jollyville Plateau salamander.

Our Response: We disagree that the Austin blind salamander is unlike the Jollyville Plateau salamander,

considering that this species has cave populations that live exclusively in subterranean habitats. Furthermore, peer reviewers agreed that it is acceptable to use and apply ecological information on closely related species if species-specific information is lacking.

(13) *Comment:* The Service has not demonstrated that salamanders actually occupy the entirety of critical habitat units. Except where the Service has actual data on downstream occupation, the only area it can designate as critical habitat is the occupied spring outlet. There is no evidence of the extent of occupied subterranean habitat. This approach is legally insufficient and arbitrary because it circumvents the Service's obligation to identify critical habitat that is occupied at the time a species is listed.

Our Response: We believe the proposed and final critical habitat rules are legally sufficient. Based on the best available scientific evidence at the time of this final rule, the surface critical habitat component was delineated by starting with the spring point locations that are occupied by the salamanders and extending a line upstream and downstream 262 ft (80 m), because this is the farthest a salamander has been observed from a spring outlet. The subsurface critical habitat was delineated based on evidence that suggests the salamander population can extend at least 984 ft (300 m) from the spring opening through underground conduits. We defined an area as occupied based upon the reliable observation of a salamander species by a knowledgeable scientist. Although we do not have data for every site indicating that a salamander was observed 262 ft (80 m) downstream, we believe it is reasonable to consider the downstream habitat occupied based on the dispersal capabilities observed in individuals of the same species or very similar species. See the *Criteria Used To Identify Critical Habitat* section in the final critical habitat rule for more information.

(14) *Comment:* The proposed rule does not name the scientist who identified salamanders at each site or the date that the observations were made.

Our Response: We do not believe that this level of detail is needed in the rulemaking. However, all materials used in preparation of this rule are available for inspection, by appointment, during normal business hours, at U.S. Fish and Wildlife Service, Austin Ecological Services Field Office,10711 Burnet Rd, Suite 200, Austin, TX 78758; by telephone 512–490–0057; or by facsimile 512–490–0974.

(15) *Comment:* It is improper and, in fact, damaging to both the Service and the Act for the Service to cast critical habitat designation over age-restricted, residential homes and then narratively state that those homes are excluded from critical habitat. If the Service does not intend to include improvements and developed areas in critical habitat, it should draw them out on properly scaled maps.

Our Response: Removing developed areas from our critical habitat maps is not practical with current mapping technologies. Because we are unable to delineate specific stream segments on the map due to the small size of the streams, we drew a circle with a 262-ft (80-m) radius representing the extent the surface critical habitat of the site exists upstream and downstream. Any such lands left inside surface critical habitat boundaries shown on the maps of this final rule have been excluded by text in the final rule and are not designated as critical habitat. Therefore, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the underground or surface critical habitat (see the *Application of the ''Adverse Modification'' Standard* section of the final critical habitat rule). In addition, most of our critical habitat is a subsurface designation and only includes the physical area beneath any buildings on the surface.

(16) *Comment:* A study by the City of Austin suggests that obvious, discrete spring orifices are not the sole habitat of the Jollyville Plateau salamander. These salamanders have been documented to move at least 262 ft (80 m) upstream and downstream from a spring opening, which is significantly farther than reported in the proposed rule. However, this 262-ft (80-m) distance is likely an underestimate of the dispersal capabilities of these salamanders.

Our Response: We have incorporated this new information into our final surface critical habitat designation. See the *Criteria Used To Identify Critical Habitat* section in the final critical habitat rule for more information.

Primary Constituent Elements (PCEs)

(17) *Comment:* The Service has improperly identified the physical or biological features essential to the conservation of the species. PCE 1 is meaningless and legally insufficient because there are no parameters describing what water quality levels actually exert lethal or sublethal effects on the salamanders. PCE 2 does not actually say what size rock is needed or how many such rocks are needed and in what configuration.

Our Response: Our description of the PCEs has been updated in the final critical habitat rule, and we believe that they are accurate and sufficiently detailed. While we have specified rock size needed by these species, the changes we made do not address what water quality levels actually exert lethal or sublethal effects on the salamanders or the number or configuration of rocks because this information is unknown.

(18) *Comment:* The proposed rule improperly designates critical habitat units in heavily developed areas that the Service acknowledges do not contain the necessary elements for the conservation of both salamanders. The Service acknowledges that some critical habitat units contain only some elements of the physical or biological features necessary to support Austin blind and Jollyville Plateau salamanders. It is legally improper for the Service to designate areas that do not contain the PCEs as critical habitat at time of designation.

Our Response: Occupied critical habitat always contains at least one or more of the physical or biological features that provide for some life-history needs of the listed species. However, an area of critical habitat may be in a degraded condition and not contain all physical and biological features or PCEs at the time it is designated, or those features or elements may be present but in a degraded or less than optimal condition. In the case of a highly urbanized salamander site, some PCEs such as rocky substrate and access to the subsurface habitat may be present, even if the water quality PCE is not. Salamander populations at degraded sites, such as these, have lower probabilities of persistence than undeveloped sites; however, their probabilities of persistence may increase where the ability exists to develop, restore, or improve functionality of certain PCEs. We consider these sites to meet the definition of critical habitat because they are occupied at the time of listing and contain those physical or biological features essential to the conservation of the species, which may require special management considerations or protections.

(19) *Comment:* By drawing a circle with a radius of 984 feet (300 m) around springs, the Service appears to be taking the position that urban areas that contain 55 percent or more impervious cover are beneficial and are essential for the conservation of the species. This is in direct conflict with the threats analysis performed by the Service. If a

highly urbanized area that has been developed for 30 to 40 years and has more than 55 percent impervious cover with no water quality controls is considered to contain features essential for the conservation of the Jollyville Plateau salamander, then it is pretty clear that this area does not require special management considerations or protection.

Our Response: Please see our response to Comment 18 above. Special management considerations or protection may be needed for highly urbanized areas in order to develop, restore, or improve functionality of certain PCEs.

(20) *Comment:* The proposed rule does not list or describe the PCEs for subterranean critical habitat. Further, it does not describe how subterranean critical habitat might be adversely modified or identify the potential threats to the subterranean critical habitat.

Our Response: The PCEs have been clarified in this final rule to reflect different PCEs for the surface and subsurface habitats. A description of how critical habitat may be adversely modified is found in the *Application of the ''Adverse Modification'' Standard* section of the final critical habitat rule. Regarding threats to the subsurface habitat, we described different scenarios under which subsurface habitat could be destroyed or degraded under *Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range* in the final listing rule that published elsewhere in today's **Federal Register**.

(21) *Comment:* The Jollyville Plateau salamander is not confined to springs discharging from only the Edwards formation. There is at least one significant Jollyville Plateau salamander site in a spring that discharges from the Walnut formation (Ribelin Spring), another in the Glen Rose (Pit Spring), and another that appears to be alluvial (Lanier Spring). Additionally, water from the Trinity aquifer and Blanco River contribute to the Barton Springs segment discharge (Johnson *et al.* 2012), highlighting the importance of these water sources as well. Tritium data documents that groundwater at the Edwards/Walnut contact is pre-modern in age (recharged prior to about 1950) whereas the springs and creeks generally contain modern water (recharged after about 1950). This suggests that many springs are not directly connected to the shallow groundwater table.

Our Response: We agree with this assessment and have edited the language accordingly in the final listing and critical habitat rules.

(22) *Comment:* Water temperatures for Jollyville Plateau salamander sites have a greater range than presented in the proposed rule. For example, one undeveloped Jollyville Plateau salamander spring (Cistern) has a temperature range from 66.4 to 73.4 degrees Fahrenheit (F) (19.1 to 23.0 degrees Celsius (C)).

Our Response: The PCEs for the Jollyville Plateau salamander have been updated to incorporate this broader temperature range.

(23) *Comment:* On pg. 50809, the proposed rule stipulates: ''During periods of drought or dewatering on the surface in and around spring sites, access to the subsurface water table must exist to provide shelter and protection.'' The Austin blind salamander is an almost entirely subterranean species so subterranean habitat is critically important, regardless of whether drought conditions exist or not. However, we also believe this to be true for all proposed species, that the subterranean habitat is a critical component necessary for survival of each species. All central Texas *Eurycea,* with the possible exception of Typholomolge (*E. rathbuni, E. waterlooensis, E. robusta;* Hillis *et al.* 2001), depend heavily on both surface and subsurface habitat. This dependency is evidenced by natural history observations such as (1) absence of eggs laid in surface habitat (Nathan Bendik and Laurie Dries, City of Austin, personal observation), (2) use of subterranean habitat as refugia (Bendik and Gluesenkamp 2012, entire), as well as the distribution of numerous ''surface'' species (i.e., have well-developed eyes and pigmentation) occurring in both springs and caves (Chippindale *et al.* 2000).

Our Response: These comments were incorporated in the final critical habitat rule.

Uniform Critical Habitat Designations

(24) *Comment:* Several commenters stated that we did not take site-specific hydrogeologic features into account when delineating critical habitat.

Our Response: Please see our response to Comment 2 above.

(25) *Comment:* Several commenters stated that our critical habitat designations were not sufficiently large enough to protect the species from threats that could impact habitat from outside critical habitat boundaries, such as urban development in the watershed.

Our Response: See our response to Comment 1 above. In addition, the purpose of designating critical habitat is not to remove threats for the species, but is instead to identify those areas occupied by the species at the time it is listed on which are found those physical or biological features essential to the conservation of the species and which may require special management or protection. While our designation of critical habitat does not remove the threat from urban development, for example, it does identify those areas that are critical to the conservation of the species, which provides awareness about occupied sites to nearby landowners and land managers, and it informs them that they should consider their impacts on those sites. A critical habitat designation does not signal that areas outside the designated area is unimportant or may not need to be managed or conserved for recovery of the species. We acknowledge that areas outside our critical habitat designations, such as the recharge zone of the aquifers supporting salamander locations, are very important to the conservation of the species. However, our goal with this critical habitat designation is to delineate the habitat that is physically occupied and used by the species rather than delineate all land or aquatic areas that influence the species.

(26) *Comment:* Some commenters pointed out that dye trace studies conducted by the City of Austin indicate subsurface flow in the Jollyville Plateau area is generally to the north, east, and northeast. Another dye trace study conducted by the City of Austin indicates that groundwater flow is strongly influenced by the regional dip. By the nature of water flow, elevations lower than the elevation of a spring outlet in this area cannot recharge the spring. Furthermore, no activities downgradient or downstream of a spring can adversely impact that spring. Therefore, critical habitat should not be designated below the elevation of a spring outlet.

Our Response: We are designating subsurface areas that may be occupied by the salamander species, and we assume salamanders are capable of moving upgradient (against subsurface flow) just as they move upstream on the surface. In general, we agree that it is less likely that downgradient activities would adversely change water quality or quantity in a spring compared to upgradient activities. However, because the subsurface is karst, the exact extent of groundwater recharge areas is difficult to predict without extensive long-term studies. In the absence of these types of studies, we cannot be certain that an area a short distance downgradient does not contain subsurface habitat connected to the

spring in some way. It is possible that activities downgradient of a spring could impact that spring. For example, a pumping well on one side of a drainage, if pumped long enough, or at a sufficiently high rate (or a combination of these), can draw down the water table causing a spring on the opposite side of a drainage to go dry or flow at a lower rate.

(27) *Comment:* Krienke Springs has an additional recharge feature located downstream, outside of the critical habitat Unit 1. We recommend extending Jollyville Plateau salamander critical habitat Unit 1 downstream to include this recharge feature.

Our Response: Please see our response to Comment 1 regarding why we are not designating critical habitat in areas that are both not occupied by the species and do not contain the physical and biological features essential for the conservation of the species.

Exclusions

(28) *Comment:* Several requests for exclusion and comments were made about specific habitat conservation plans (HCPs):

(1) Four Points has voluntarily addressed the Jollyville Plateau salamander in their HCP and employs measures to avoid, minimize, and mitigate for potential impacts to the Jollyville Plateau salamander that may occur on the property, thereby satisfying permit issuance criteria under section 10(a)(1)(B) of the Act if the species were to become listed in the future;

(2) the Buttercup Creek HCP is stated as not covering the Jollyville Plateau salamander when in fact it does and with ''no surprises'' assurances. Along with development of the Buttercup Creek HCP, the Service and Forestar entered into a *Permit Implementing and Preserve Management Agreement,* which fulfills the criteria in the proposed rule to ameliorate threats to the Jollyville Plateau salamander;

(3) the Grandview Hills HCP covers land within critical habitat Unit 14, which contains three springs that are occupied by the Jollyville Plateau salamander, which are covered under the Tomen-Parke Associates, LTD 10(a)(1)(B) permit with ''no surprises'' assurances for the Jollyville Plateau salamander; and

(4) Ribelin Ranch HCP covers a substantial portion of critical habitat Unit 17, and although the Jollyville Plateau salamander is not a covered species under this HCP, it does provide numerous conservation measures that significantly benefit the species. Requests for exclusion from critical habitat were made for Four Points, Buttercup Creek, Grandview Hills, and Ribelin Ranch HCPs by the HCP permit holders.

Our Response: See the *Exclusions Based on Other Relevant Impacts* section in the final critical habitat rule for our discussion related to areas excluded under the Four Points, Buttercup Creek, and Grandview Hills HCPs. Regarding the Ribelin Ranch HCP, the permittee permanently preserved golden-cheeked warbler (*Setophaga chrysoparia*) habitat onsite, which includes Jollyville Plateau salamander occupied springs. The permittee committed to xeriscaping and replanting developed areas with native vegetation, installing fences between developed areas and preserves, and restricting access to the preserves to authorized personnel only. However, the Ribelin Ranch HCP does not include the Jollyville Plateau salamander as a covered species and states that: (1) stormwater runoff from developed areas will enter Bull Creek and West Bull Creek (Section 3.5); (2) some degradation of water quality may occur due to runoff, which may negatively impact the salamander (Sections 5.1.1.2, 5.1.1.9, 5.1.2.7, 5.1.2.9); and (3) increased impervious cover may result in a decrease in spring flows in Bull and West Bull creek drainages (Section 5.1.1.7, 5.1.2.7). Additionally, the commenter stated that the high school upstream of the spring will be expanding in the future. Because the Jollyville Plateau salamander is not a covered species under the Ribelin Ranch HCP and the conservation measures do not significantly benefit the species, we determined that the benefits of excluding Ribelin Ranch from critical habitat do not outweigh the benefits of including this area.

(29) *Comment:* The Service ignores most HCPs already in place. Those areas protected by HCPs, management plans, and water quality programs do not require special management or protection because water quality programs and other HCPs within the area provide substantial management considerations and protection.

Our Response: In designating critical habitat, we identified areas, per the definition of critical habitat in the Act, occupied by one of these species of salamander on which are found physical or biological features (a) essential to their conservation, and (b) which may require special management considerations or protection. We did consider and exclude all HCPs that specifically covered the Austin blind or Jollyville Plateau salamanders in their HCP and for which the Service issued a permit and provided ''No Surprises'' coverage. For more on the weighing of the benefits of inclusion with the benefits of exclusion for these areas, see the Exclusions section in the final critical habitat rule.

(30) *Comment:* The City of Austin stated that there is no benefit to excluding critical habitat for the Austin blind salamander based on the plan area of the City of Austin's Barton Springs HCP.

Our Response: We agree with this assessment. At the time of the proposed rule, we proposed critical habitat for the Austin blind salamander in this area, but considered excluding lands under the Barton Springs HCP. However, in accordance with section 4(b)(2) of the Act, we have determined not to exclude lands under the Barton Springs HCP and to designate critical habitat for the Austin blind salamander in this area in the final critical habitat rule.

(31) *Comment:* One commenter requested exclusion of the Knox Tract in Jollyville Plateau salamander critical habitat Unit 30 because it is not essential to the conservation of the species due to the amount of development in the area, and the benefits of exclusion outweigh the benefits of inclusion. The benefits of exclusion include avoiding financial impacts to a small developer.

Our Response: We have evidence that some of the PCEs are present at this site, such as rocky substrate and access to subsurface habitat. Special management is needed to protect the PCEs that are present within this unit. Regarding whether or not Unit 30 is essential to the conservation of Jollyville Plateau salamanders, salamander populations at degraded sites such as these have lower probabilities of persistence than undeveloped sites. The commenter did not specify the benefits of including the unit in our critical habitat designation. We think those benefits include educational and regulatory benefits afforded to all of our critical habitat designations (see comment 28 above). We conducted a final economic analysis that considered how small businesses might be affected by the critical habitat designation. Based on the expected number of consultations, this analysis estimated the cost per small developer ranges from 0.05 to 0.09 percent of the annual revenue of the average small developer ($4.6 million). Therefore, we concluded that the final critical habitat rule would not result in a significant economic impact on small developers. More specifically, our analysis estimated the incremental impact to Unit 30 could be $940,000 over the next 23 years, due to the administrative cost of consultation (Industrial Economics

2013, p. 4–14). Furthermore, the designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7 consultation. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

(32) *Comment:* Several commenters requested exclusion of critical habitat units (Units 3, 14, 17, and 31 for the Jollyville Plateau salamander) due to significant economic impacts, stating that these economic costs will far exceed any limited educational and regulatory benefits.

Our Response: We have considered the economic impacts of designation to all parties through an economic analysis and have determined that this designation will not result in significant economic impacts. According to our draft economic analysis, the total economic cost of designating critical habitat Units 3 and 14 was estimated to be $3.4 million and $120,000, respectively, over the next 23 years. The total economic cost of designating critical habitat Unit 17 was estimated to be $380,000 over the next 23 years. The total economic cost of designating critical habitat Unit 31 was estimated to be $930,000 over the next 23 years. All of these costs are administrative in nature and result from the consideration of adverse modification in section 7 consultations (Industrial Economics 2013, Exhibit 4–5). In addition, we concluded that the critical habitat final rule would not result in a significant economic impact on a substantial number of small entities (see *Regulatory Flexibility Act (5 U.S.C. 601* et seq.) section in the final critical habitat rule).

(33) *Comment:* Clarify if a Four Points HCP exclusion includes the location of the Four Points shaft.

Our Response: The Four Points HCP exclusion does not include the Four Points shaft location because the shaft is not located within the area that was proposed as critical habitat.

Draft Economic Analysis (DEA)

(34) *Comment:* The DEA should have been published at the same time as the proposed rule.

Our Response: At the time the proposed rule was published for the four central Texas salamanders on August 22, 2012, we lacked the available economic information necessary to complete the draft economic analysis. However, upon completion of the draft economic analysis, we published a notice of availability of the draft economic analysis for the designation of critical habitat for these species on January 25, 2013 (78 FR 5385) and reopened the public comment period for the proposed designation. The draft economic analysis was available for public review and comment for 45 days, beginning on January 25, 2013, and ending on March 11, 2013.

Our current regulation at 50 CFR 424.19 states: ''The Secretary shall identify any significant activities that would either affect an area considered for designation as critical habitat or be likely to be affected by the designation, and shall, after proposing designation of such an area, consider the probable economic and other impacts of the designation upon proposed or ongoing activities.'' The Service interprets 'after proposing' to mean after publication of the proposed critical habitat rule. While we have proposed a revision to these regulations to change the timing of the economic analysis, we still follow our current practice until such regulation revision is finalized.

(35) *Comment:* Some commenters stated that the surface watersheds draining into critical habitat areas were not delineated correctly in the DEA. The DEA includes areas a great distance downgradient of salamander habitat that are extremely unlikely to impact habitat.

Our Response: As described in the proposed rule, activities occurring upstream of salamander habitat may result in increased flow rates, sedimentation, contamination, changes in stream morphology and water chemistry, and decreased groundwater recharge. Therefore, economic activity may affect proposed critical habitat for the salamanders even if the activity occurs beyond the boundary of the proposed designation. The identification of upstream areas requires detailed analysis of hydrologic and geographic information. This type of analysis is beyond the scope of the DEA. However, to avoid understating impacts, the DEA makes the simplifying assumption that activities occurring throughout the entire watershed associated with each proposed critical habitat unit may affect the salamanders and their habitat. This assumption may overstate impacts in cases where significant economic activity is forecast in areas downstream of proposed critical habitat. Text has been added to Chapter 4 of the FEA clarifying the uncertainty associated with this assumption.

For the purposes of assessing impacts to the sites from impervious cover, the Service did revise the surface watersheds that were presented in the proposed rule. The revised surface watersheds were delineated to capture only the area draining directly into the surface habitat of specific sites (Service 2013).

(36) *Comment:* One commenter believes that the DEA contradicts itself by first indicating that water management activities are not a threat to the Jollyville Plateau salamander but are a threat to the Austin blind salamander (paragraph 26 of the DEA), then stating that water management activities are a threat later (paragraph 135).

Our Response: Paragraph 26 of the DEA states that ''Construction of dams and impoundments alter the natural hydrological regime and may negatively affect salamander habitat. In particular, the entire range of the Austin blind salamander has been affected by the construction of impoundments for recreational purposes in the Barton Springs system.'' Providing this example for the Austin blind salamander was not meant to downplay the significance of water management as a threat to the Jollyville Plateau salamander. Clarifying language has been added to the FEA.

(37) *Comment:* One commenter states that the DEA does not correctly identify the watersheds associated with proposed critical habitat. In particular, the proposed unit for the Austin blind salamander should be associated with the Barton Creek watershed rather than the Lake Austin watershed.

Our Response: The DEA verifies information provided in the proposed rule using GIS data for HUC–12 watersheds. According to GIS data, the proposed unit for the Austin blind salamander is located within the Lake Austin HUC–12 watershed.

(38) *Comment:* One commenter notes that the DEA refers to the Town Lake watershed, which has since been renamed the Lady Bird Lake watershed.

Our Response: A footnote has been added to the FEA indicating that Town Lake was renamed Lady Bird Lake by the City of Austin City Council on July 26, 2007.

(39) *Comment:* One commenter notes that the DEA refers to the entire range of the Austin blind salamander as being affected by impoundment construction; however, the subterranean range is not

known. This comment suggests referring instead to ''the entire known range.''

Our Response: The text of the FEA has been changed as suggested.

(40) *Comment:* One commenter provides clarification that the City of Austin has submitted an amended Barton Springs HCP to the Service that includes the Austin blind salamander as a covered species.

Our Response: Chapters 2 and 3 of the DEA note that the Barton Springs Pool HCP is currently undergoing revision to add the Austin blind salamander as a covered species.

(41) *Comment:* One commenter provides new information about the Water Quality Protection Lands program overseen by the Wildlands Conservation Division of the Austin Water Utility. This program provides baseline protection to the Austin blind salamander by purchasing open space within the Barton Springs Zone.

Our Response: Text has been added to Chapter 3 of the FEA describing this conservation program.

(42) *Comment:* One commenter states that the DEA should not include costs to protect the Austin blind salamander and its habitat that result from protection of the co-occurring Barton Springs salamander under the Barton Springs Pool HCP.

Our Response: Costs associated with baseline conservation, such as that provided by the Barton Springs Pool HCP, are not quantified in the DEA. To clarify, the DEA estimates present-value incremental impacts of approximately $43,000 in the area currently covered by the Barton Springs Pool HCP. Of this cost, approximately $42,000 is associated with the ongoing programmatic reinitiation of consultation for the Barton Springs Pool HCP. The remainder of forecast impacts is associated with formal consultation on a small number of residential development projects.

(43) *Comment:* The DEA mistakenly referred to Schlumberger, Ltd. as the current permittee of the Concordia HCP.

Our Response: The most recent amendment to this HCP issued the permit to Concordia University Texas at Austin, as noted in the comment. The FEA has been revised accordingly.

(44) *Comment:* One commenter notes that the Edwards Aquifer Protection Program established by the Texas Commission on Environmental Quality does not cover the Jollyville Plateau salamander's entire habitat. In particular, the majority of the Bull Creek watershed is not protected by this program.

Our Response: The DEA states that conservation measures implemented as part of the Edwards Aquifer Protection Program may provide some benefit to the Jollyville Plateau salamander and its habitat. The information provided in the comment is consistent with this statement. Additional clarification has been added to the FEA to indicate that not all areas occupied by the Jollyville Plateau salamander will benefit from this program.

(45) *Comment:* One commenter states that the DEA incorrectly claims that the Jollyville Plateau salamander is not a covered species under the Buttercup Creek HCP.

Our Response: The Jollyville Plateau salamander is identified as ''*Eurycea* new species'' in the Buttercup Creek HCP and was later identified as the Jollyville Plateau salamander. This correction has been made in the description of baseline protections in the FEA.

(46) *Comment:* One commenter states that the claim made in paragraph 92 of the DEA that ''there are currently no known local statutes or regulations that directly protect the species'' is inaccurate and contradicted later in Section 3.3 of the DEA.

Our Response: This statement is meant to convey the fact that at the time the DEA was written, we were not aware of any statutes or regulations with the primary purpose of protecting the Austin blind or Jollyville Plateau salamanders. However, many local measures provide ancillary protection to the species. This sentence has been removed from the FEA.

(47) *Comment:* Multiple comments express concern that the DEA overstates incremental costs associated with critical habitat designation by forecasting reinitiations of section 7 consultations for existing HCPs.

Our Response: The DEA conservatively assumes that consultations on HCPs will be reinitiated to avoid underestimating costs associated with the proposed designation. In some cases, HCP permittees may not decide to amend their permits, thus not requiring the Service to reinitiate consultation to include coverage of the salamanders and their associated critical habitat. Language has been added to the FEA indicating this possibility.

(48) *Comment:* Multiple commenters state that the DEA understates the cost of section 7 consultation.

Our Response: The DEA relies on the best available information on administrative costs. As described in Exhibit 2–1 of the DEA, the consultation cost model is based on: data gathered from three Service field offices (including a review of consultation records and interviews with field office staff); telephone interviews with action agency staff (for example, the Bureau of Land Management, Forest Service, U.S. Army Corps of Engineers); and telephone interviews with private consultants who perform work in support of permittees. In the case of Service and other Federal agency contacts, we determined the typical level of effort (hours or days of work) required to complete several different types of consultations, as well as the typical Government Service (GS) level of the staff member performing this work. In the case of private consultants, we interviewed representatives of firms in California and New England to determine the typical cost charged to clients for these efforts (for example, biological survey, preparation of materials to support a Biological Assessment). The model is periodically updated with new information received in the course of data collection efforts supporting economic analyses and public comment on more recent critical habitat rules. In particular, the administrative costs used in the DEA were updated based on information provided in the Service's incremental memorandum, included as Appendix C of the DEA. In addition, the GS rates have been updated annually.

(49) *Comment:* One commenter states that formal section 7 consultations will take up to 4 years to complete and involve multiple rounds of project review and revision, resulting in higher consultation costs than those applied in the DEA.

Our Response: The length of the formal consultation process is specified under the Act. In particular, the Federal action agency has 180 days to complete the biological assessment, the Service has 90 days to formulate their biological opinion and incidental take statement, and both parties have 45 days to review and finalize the biological opinion. Therefore, in total we do not anticipate the formal consultation process lasting longer than approximately 11 months.

(50) *Comment:* One commenter asserts that the DEA underestimates the portion of the cost of section 7 consultation attributable to the designation of critical habitat (that is, the incremental cost). The commenter states that critical habitat designation will substantially increase the time and effort involved in section 7 consultation. The commenter bases this assertion on the fact that it is relatively simple to arrive at a non-jeopardy opinion for projects affecting salamanders at only one or two locations, but any action involving impacts to critical habitat

would likely result in a finding of adverse modification.

Our Response: While the comment is noted by the Service, we do not believe that the designation of critical habitat will substantially increase the time and effort involved in section 7 consultation. In particular, because the conditions under which jeopardy and adverse modification may occur are so similar and closely related, the Service does not expect the designation of critical habitat to substantially increase the cost of consultation.

(51) *Comment:* One commenter indicates that in the context of section 7 consultation on development activities, preparation of the biological assessment will most likely be paid for by the private developer or land owner. Assuming otherwise leads to an underestimate of impacts to third parties in the DEA and an underestimate of impacts to small businesses in the SBREFA analysis.

Our Response: In our FEA of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the Austin blind and Jollyville Plateau salamanders and the designation of critical habitat. The FEA has been modified to reflect the fact that preparation of the biological assessment will most likely be paid for by the third party participants to a consultation. This change leads to an increase in the impact on small businesses in the SBREFA analysis. The FEA estimates that 6,853 small developers across the study area will be affected by this rule. Based on the expected number of consultations, the cost per developer ranges from 0.05 to 0.09 percent of the annual revenue of the average small developer ($4.6 million). The FEA estimates that two small surface mining businesses will each incur $880 in administrative costs. This represents less than 0.01 percent of their average annual revenue ($10 million). Finally, the FEA estimates that nine small HCP permittees will be impacted by the rule at a cost of approximately $6,925 per permittee. This cost represents less than one percent of the annual revenues, assuming the average annual revenue is $1.1 million (Industrial Economics 2013, pp. A–6, A–7, A–8). Based on the above reasoning and currently available information, we concluded that this rule would not result in a significant economic impact on a substantial number of small entities.

(52) *Comment:* Two commenters note that the City of Cedar Park and the surrounding area are rapidly growing. The commenters are concerned that the designation of critical habitat will result in negative impacts to existing and future development through the imposition of burdensome Federal regulation. The commenters assert that these regulations could potentially reduce the number of homes and businesses built, increase the cost to own property, and decrease the city's tax base.

Our Response: In Section 4.2, the DEA acknowledges that the City of Cedar Park is rapidly growing and that potential effects on the regional real estate market may occur. However, these effects would be considered baseline impacts because conservation efforts recommended by the Service are assumed to occur due to the listing of the species and not the designation of critical habitat. The DEA focuses on the incremental impacts of the critical habitat designation and does not quantify impacts associated with the listing of the salamanders. As described in Chapter 2 of the DEA, incremental impacts of the critical habitat designation are limited to the administrative cost of section 7 consultation. These administrative costs are not considered high relative to real estate development value, and therefore, are not expected to have an effect on real estate markets.

(53) *Comment:* One comment states that the designation of critical habitat could significantly affect the planned Leander Transit Oriented Development by requiring low-density development to avoid adverse modification of critical habitat.

Our Response: The DEA addresses impacts to development in Section 4.2. Because the Service does not anticipate requesting additional project modifications to avoid adverse modification of critical habitat beyond those requested to avoid jeopardy to the species, any impacts resulting from restrictions on development density would occur in the baseline due to the listing of the species. Therefore, such impacts are not quantified in the DEA. Incremental impacts associated with the designation of critical habitat are expected to be limited to administrative costs of section 7 consultation.

(54) *Comment:* One commenter indicates that the assumption made in the DEA that only vacant land develops is invalid. The commenter explains that land currently classified for agriculture, ranch, and farm uses may also be developed in the future.

Our Response: The development analysis has been modified in the FEA to include agriculture, ranch, and farm land in addition to vacant land as potentially developable. This change results in a forecast that assumes more land being developed by 2035.

(55) *Comment:* One commenter takes issue with the use of the City of Austin's data on site plan cases in the development analysis. The commenter states that site plan cases are solely used for small, nonresidential development, and use of this data ignores, and, therefore, excludes all residential development from the analysis.

Our Response: As described in Section 4.2.3 of the DEA, the data on development site plan cases is used only to calculate average project size within the study area. This data is not used to limit the areas affected by the proposed critical habitat designation or the type of development affected by the proposed critical habitat designation. Because of the narrow focus of site plan cases (that is, small, nonresidential development), the FEA uses a modified assumption of average project size.

(56) *Comment:* One commenter states that the DEA does not estimate impacts associated with activities in upstream areas that may affect critical habitat. The commenter goes on to state that the analysis incorrectly excludes incremental impacts on over 90 percent of the lands included in the study area.

Our Response: As first described in paragraph 3 of the executive summary to the DEA, the study area for the analysis is defined as all lands within the watersheds containing areas proposed for critical habitat designation. This broad definition of the study area is meant to capture the effect that conditions in the areas surrounding the critical habitat units have on water quality and quantity in salamander habitat. Exhibit 4–4 in the DEA provides information on the projected acres of development within the watersheds outside of the proposed critical habitat units as context for the area of land that may be developed within the proposed designation. In the DEA, development is restricted to vacant parcels not currently preserved in perpetuity.

(57) *Comment:* One comment states that the DEA underestimates impacts to development activities by failing to consider the economic impact of restricting development.

Our Response: Section 4.2 of the DEA does consider the economic impact of restricting development. However, as described in this section, all conservation efforts recommended as part of section 7 consultation would be recommended absent critical habitat designation. These baseline conservation efforts may include restricting future development within certain areas and establishing protected preserves to offset water quality

impacts. The DEA focuses on quantifying the incremental impacts of the critical habitat designation and, therefore, does not quantify the economic impact of restricting development due to the listing of the species.

Other Comments

(58) *Comment:* The Service has not met its burden for identifying how the proposed critical habitat units may require special management. The Service makes the same generic statement regarding special management that it does for nearly all of the critical habitat units in the proposed rule: ''This critical habitat unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater.'' The Service does not identify the sources of potential groundwater pollution or the magnitude of this threat. This does not meet the burden under the *Cape Hatteras* or *Home Builders* case, which stated ''Rather than discuss how each identified PCE would need management protection, the Service lists activities that once resulted in consultation and makes a conclusory statement that dredging or shoreline management could result in permanent habitat loss.'' The Service's critical habitat designation is legally deficient without a more robust description as to why the particular area requires special management or protection.

Our Response: Although we did not list activities that identify the sources and magnitude of threats within each critical habitat unit, we believe that the level of detail provided in the unit descriptions is legally sufficient. The source and magnitude of threats for specific sites is often unknown. In our critical habitat designation, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection. Each unit description states whether or not the unit has the features that need special management. Please see *Special Management Considerations or Protections* section of the final critical habitat rule for particular management needs of the physical or biological features.

(59) *Comment:* It is unclear what the impact will be to activities outside of critical habitat that may impact water quality in critical habitat areas.

Our Response: A critical habitat designation does not signal that habitat outside the designated area is unimportant or may not to be managed or conserved for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects outside of designated critical habitat areas may still result in jeopardy or in adverse effects on areas within critical habitat, if those activities are affecting the critical habitat.

Summary of Changes From Proposed Rule

During the second comment period (January 25 to March 11, 2013), we notified the public of changes to the proposed critical habitat designation based on additional information we received during the first comment period (August 22 to October 22, 2012). On January 25, 2013 (78 FR 5385), we proposed to revise Units 3, 4, 5, 9, 10, 17, 22, 23, and 28 for the Jollyville Plateau salamander. At that time and along with numerous other changes, we combined proposed Units 3, 4, and 5 for the Jollyville Plateau salamander into one proposed critical habitat unit, Unit 3 (Buttercup Creek Unit) based on eight new locations. Please see the January 25, 2013, **Federal Register** document (78 FR 5385) for additional changes to the proposed rule.

Based on additional information we received during the second comment period regarding the source of water in Austin blind salamander and Jollyville Plateau salamander habitat, we refined our description of the primary constituent elements to more accurately reflect the habitat needs of these two species. We also separated the primary constituent elements into surface and subsurface habitat categories for both salamander species in order to clarify the needs of the species.

In the proposed rule, surface critical habitat was delineated by starting with the cave or spring point locations that are occupied by the salamanders and extending a line downstream 164 ft (50 m) because this was the farthest a salamander has been observed from a spring outlet. However, in this final rule, we revised surface critical habitat to include 262 ft (80 m) of stream habitat upstream and downstream from known salamander sites. This revision is based on a recent study completed by the City of Austin (Bendik 2013, pers. comm.) and is the farthest a Jollyville Plateau salamander has been observed from a spring outlet. Due to their similar life histories, this knowledge was applied to the Austin blind salamander. Because the surface designation is contained within the extent of the subsurface critical habitat, this expansion did not increase the total acreage of critical habitat.

Based on new information that we did not have at the time of publication of the proposed rule or the revised proposed rule and notice of availability on January 25, 2013, we made a number of changes to our critical habitat units. We moved the location of Brushy Creek Spring (Jollyville Plateau salamander critical habitat Unit 2) approximately 98 ft (30 m) to more accurately mark the location of this spring. We also removed several units, which has resulted in a discontinuous list of unit numbers for the Jollyville Plateau salamander (see TABLE 3 later in this document).

We removed Salamander Cave (Jollyville Plateau salamander critical habitat Unit 29) based on new information that suggests this cave opening had been filled about 20 years ago. Therefore, the exact location of the cave is currently unknown. Finally, we added two additional locations for the Jollyville Plateau salamander to critical habitat (Downstream of Small Sylvia Spring 1, Downstream of Small Sylvia Spring 2). These two new locations were within 213 ft (65 m) of two existing critical habitat units (Units 22 and 33) and resulted in the merging of those two units into a single unit (Unit 22). Total critical habitat acreage for Unit 22 is 439 ac (178 ha) as a result of this merging.

In response to comments, we conducted a weighing analysis of the Grandview Habitat Conservation Plan (HCP), Four Points HCP, and Buttercup Creek HCP and have excluded these areas from critical habitat. As a result of these exclusions, critical habitat unit 3 for the Jollyville Plateau salamander was split into five smaller subunits, and the size of critical habitat units 14 and 19 was reduced by 44 ac (18 ha) and 157 ac (64 ha), respectively.

Overall, the total amount of critical habitat designated decreased by 603 ac (244 ha) in this final rule compared to the proposed rule, including proposed changes announced in the January 25, 2013, **Federal Register** notice (78 FR

5385). A summary of the changes in critical habitat acreage are presented in Table 1.

TABLE 1—SUMMARY OF CHANGES IN CRITICAL HABITAT ACREAGE FOR THE JOLLYVILLE PLATEAU SALAMANDER SPECIES IN THE FINAL RULE

Critical habitat units that changed	Proposed critical habitat in acres (hectares)	Final critical habitat in acres (hectares)	Change in acres (hectares)
3. Buttercup Creek Unit	699 (283)	*323 (131)	−376 (−152)
14. Kretschmarr Unit	112 (45)	68 (28)	−44 (−18)
19. Bull Creek 3 Unit	254 (103)	97 (39)	−157 (−64)
22. Sylvia Spring Area Unit	238 (96)	439 (178)	+201 (+81)
29. Salamander Cave Unit	68 (28)	0 (0)	−68 (−28)
33. Tributary 4 Unit	159 (64)	0 (0)	−159 (−64)
Total of all units	5,054 (2,045)	4,451 (1,801)	−603 (−244)

*This represents the sum of the five subunits created from the exclusion.
Note: Area sizes may not sum due to rounding.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat our primary source of information is generally the information developed during the listing process for the

species. Additional information sources may include articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects outside the designated critical habitat areas may still result in adverse effects on areas within critical habitat, if those activities are affecting the critical habitat. In addition, federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of these species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical or biological features essential for the Austin blind and Jollyville Plateau salamanders from studies of these species' habitat, ecology, and life history as described in the Critical Habitat section of the proposed rule to designate critical habitat published in the **Federal Register** on August 22, 2012 (77 FR 50768), and in the information presented below. Additional information can be found in the final listing rule published elsewhere in today's **Federal Register**. We have determined that the Austin blind and Jollyville Plateau salamanders require the following physical or biological features:

Space for Individual and Population Growth and for Normal Behavior

Austin Blind Salamander

The Austin blind salamander has been found where water emerges from the ground as a spring. However, this species is rarely seen at the surface of the spring, so we assume that it is subterranean for most of its life (Hillis *et al.* 2001, p. 267). Supporting this assumption is the fact that the species' physiology is cave-adapted, with reduced eyes and pale coloration (Hillis *et al.* 2001, p. 267). Most individuals found on the surface near spring openings are juveniles (Hillis *et al.* 2001, p. 273), and it is unclear if this means adults are able to retreat back into the aquifer or if juveniles are more likely to be flushed to the surface habitat. Austin blind salamanders have been found in the streambed a short distance (about 33 ft (10 m)) downstream of Sunken Gardens Spring (Laurie Dries 2011, COA, pers. comm.). However, Jollyville Plateau salamanders, a closely related species, have been found farther from a spring opening in the Bull Creek drainage. A recent study using mark-recapture methods found marked individuals moved up to 262 ft (80 m) both upstream and downstream from the Lanier Spring outlet (Bendik 2013, pers. comm.). This study demonstrates that *Eurycea* salamanders can travel greater distances from a discrete spring opening than previously thought, including upstream areas, if suitable habitat is present. Therefore, based on the information above, we identify springs, associated streams, Barton Springs pool, and underground spaces within the Barton Springs Segment of the Edwards Aquifer to be the primary space essential for individual and population growth and for normal behavior.

Jollyville Plateau Salamander

The Jollyville Plateau salamander occurs in wetted caves and where water emerges from the ground as a spring-fed stream. Within the spring ecosystem, proximity to the springhead is presumed important because of the appropriate stable water chemistry and temperature, substrate, and flow regime. *Eurycea* salamanders are rarely found more than 66 ft (20 m) from a spring source (TPWD 2011, p. 3). However, Jollyville Plateau salamanders have been found farther from a spring opening in the Bull Creek drainage. A recent study using mark-recapture methods found marked individuals moved up to 262 ft (80 m) both upstream and downstream from the Lanier Spring outlet (Bendik 2013, pers. comm.). This study demonstrates that *Eurycea* salamanders can travel greater distances from a discrete spring opening than previously thought, including upstream areas, if suitable habitat is present. Jollyville Plateau salamanders are also known to retreat underground to wetted areas (such as the aquifer) for habitat when surface habitats go dry (Bendik 2011a, p. 31). We presume that these salamanders also use subsurface areas to some extent during normal flow conditions. Forms of Jollyville Plateau salamander with cave morphology have been found in several underground streams (Chippindale *et al.* 2000, pp. 36–37; TPWD 2011a, pp. 9–10). Therefore, based on the information above, we identify springs, associated streams, and underground spaces within the Trinity Aquifer, Northern Segment of the Edwards Aquifer, and local alluvial aquifers to be the primary space essential for individual and population growth and for normal behavior.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Austin Blind Salamander

No species-specific dietary study has been completed, but the diet of the Austin blind salamander is presumed to

be similar to other *Eurycea* species, consisting of small aquatic invertebrates such as amphipods, copepods, isopods, and insect larvae (reviewed in COA 2001, pp. 5–6). The feces of one wild-caught Austin blind salamander contained amphipods, ostracods, copepods, and plant material (Hillis *et al.* 2001, p. 273). In addition, flatworms were found to be the primary food source for the co-occurring Barton Springs salamander (*Eurycea sosorum*) (Gillespie 2013, p. 5), suggesting that flatworms may also contribute to the diet of the Austin blind salamander.

Austin blind salamanders are strictly aquatic and spend their entire lives submersed in water from the Barton Springs Segment of the Edwards Aquifer (Hillis *et al.* 2001, p. 273). Under drought conditions, Barton Springs (particularly Sunken Gardens/Old Mill Spring) also receives some recharge from the Blanco River (Johnson *et al.* 2012, p. 82), whose waters originate from the Trinity Aquifer. These salamanders, and the prey that they feed on, require water at sufficient flows (quantity) to meet all of their physiological requirements. Flows at Barton Springs have never gone dry during the worst droughts of Texas (Hauwert *et al.* 2005, p. 19). This water should be flowing and unchanged in chemistry, temperature, and volume from natural conditions. The average water temperature at Austin blind salamander sites in Barton Springs is between 67.8 and 72.3 °F (19.9 and 22.4 °C) (COA 2011, unpublished data). Concentrations of contaminants should be below levels that could exert direct lethal or sublethal effects (such as effects to reproduction, growth, development, or metabolic processes), or indirect effects (such as effects to the Austin blind salamander's prey base).

Edwards Aquifer *Eurycea* species are adapted to a lower ideal range of oxygen saturations compared to other salamanders (Turner 2009, p. 11). However, *Eurycea* salamanders need dissolved oxygen concentrations to be above a certain concentration, as the co-occurring Barton Springs salamander demonstrates declining abundance with declining dissolved oxygen levels (Turner 2009, p. 14). Woods *et al.* (2010, p. 544) observed a number of physiological effects to low dissolved oxygen concentrations (below 4.5 milligrams of oxygen per liter (mg L^{-1})) in the related San Marcos salamander (*Eurycea nana*), including decreased metabolic rates and decreased juvenile growth rates. Barton Springs salamander abundance is highest when dissolved oxygen is between 5 to 7 mg L^{-1} (Turner 2009, p. 12). Therefore, we assume that the dissolved oxygen level of water is important to the Austin blind salamander as well. The mean annual dissolved oxygen (from 2003 through 2011) at Main Spring, Eliza Spring, and Sunken Garden Spring was 6.36, 5.89, and 5.95 mg L^{-1}, respectively (COA 2011, unpublished data).

The conductivity of water is important to salamander physiology because it is related to the concentration of ions in the water. Increased conductivity is associated with increased water contamination and decreased *Eurycea* abundance (Willson and Dorcas 2003, pp. 766–768; Bowles *et al.* 2006, pp. 117–118). The lower limit of observed conductivity in developed Jollyville Plateau salamander sites where salamander densities were lower than undeveloped sites was 800 microsiemens per centimeter (µS cm^{-1}) (Bowles *et al.* 2006, p. 117). Salamanders were significantly more abundant at undeveloped sites where water conductivity averaged 600 µS cm^{-1} (Bowles *et al.* 2006, p. 117). Because of its similar physiology to the Jollyville Plateau salamander, we assume that the Austin blind salamander will have a similar response to elevated water conductance. Although one laboratory study on the related San Marcos salamander demonstrated that conductivities up to 2,738 µS cm^{-1} had no measurable effect on adult activity (Woods and Poteet 2006, p. 5), it remains unclear how elevated water conductance might affect juveniles or the long-term health of salamanders in the wild. Furthermore, higher conductivity in urban streams is well-documented and is correlated with decreases in invertebrate species, the prey base of this species (Coles *et al.* 2012, p. 63, 78). Based on the best available information on the sensitivity of salamanders to changes in conductivity (or other contaminants) in the wild, it is reasonable to assume that salamander survival, growth, and reproduction will be most successful when water quality is unaltered from natural aquifer conditions. The average water conductance at Main Spring, Eliza Spring, and Sunken Garden Spring is between 605 and 740 µS cm^{-1} (COA 2011, unpublished data).

Therefore, based on the information above, we identify aquatic invertebrates and water from the Barton Springs Segment of the Edwards Aquifer with adequate dissolved oxygen concentration, water conductance, and water temperature to be physical or biological features essential for the nutritional and physiological requirements of this species.

Jollyville Plateau Salamander

As in other *Eurycea* species, the Jollyville Plateau salamander feeds on aquatic invertebrates that commonly occur in spring environments (reviewed in COA 2001, pp. 5–6). A stomach content analysis by the City of Austin demonstrated that this salamander preys on varying proportions of ostracods, copepods, mayfly larvae, fly larvae, snails, water mites, aquatic beetles, and stone fly larvae depending on the location of the site (Bendik 2011b, pers. comm.). In addition, flatworms were found to be the primary food source for the related Barton Springs salamander (Gillespie 2013, p. 5), suggesting that flatworms may also contribute to the diet of the Jollyville Plateau salamander if present in the invertebrate community.

Jollyville Plateau salamanders are strictly aquatic and spend their entire lives submersed in water sourced from the Northern Segment of the Edwards Aquifer, the Trinity Aquifer, and local alluvium (loose unconsolidated soils) (COA 2001, pp. 3–4; Bowles *et al.* 2006, p. 112; Johns 2011, p. 5–6). These salamanders, and the prey that they feed on, require water at sufficient flows (quantity) to meet all of their physiological requirements. This water should be flowing and unchanged in chemistry, temperature, and volume from natural conditions. The average water temperature at Jollyville Plateau salamander sites with undeveloped watersheds ranges from 65.3 to 73.4 °F (18.5 to 23 °C) (Bowles *et al.* 2006, p. 115; COA 2012, pers. comm.). Concentrations of water quality contaminants should be below levels that could exert direct lethal or sublethal effects (such as effects to reproduction, growth, development, or metabolic processes), or indirect effects (such as effects to the Jollyville Plateau salamander's prey base).

Edwards Aquifer *Eurycea* species are adapted to a lower range of oxygen saturations compared to other salamanders (Turner 2009, p. 11). However, *Eurycea* salamanders need dissolved oxygen concentrations to be above a certain concentration, as the related Barton Springs salamander demonstrates declining abundance with declining dissolved oxygen levels (Turner 2009, p. 14). In addition, Woods *et al.* (2010, p. 544) observed a number of physiological effects to low dissolved oxygen concentrations (below 4.5 mg L^{-1}) in the related San Marcos salamander, including decreased metabolic rates and decreased juvenile growth rates. The average dissolved oxygen level of Jollyville Plateau

salamander sites with little or no development in the watershed ranges from 5.6 to 7.1 mg L^{-1} (Bendik 2011a, p. 10). Based on this information, we conclude that the dissolved oxygen level of water is important to the Jollyville Plateau salamander for respiratory function.

The conductivity of water is also important to salamander physiology because it is related to the concentration of ions in the water. Increased conductivity is associated with increased water contamination and decreased *Eurycea* abundance (Willson and Dorcas 2003, pp. 766–768; Bowles *et al.* 2006, pp. 117–118). The lower limit of conductivity in developed Jollyville Plateau salamander sites where salamander densities were lower than undeveloped sites was 800 µS cm^{-1} (Bowles *et al.* 2006, p. 117). Salamanders were significantly more abundant at undeveloped sites where water conductivity averaged 600 µS cm^{-1} (Bowles *et al.* 2006, p. 117). The average water conductance of Jollyville Plateau salamander sites with little or no development in the watershed ranges from 550 to 625 µS cm^{-1} (Bendik 2011a, p. 10, Bowles *et al.* 2006, p.115). Although one laboratory study on the related San Marcos salamander demonstrated that conductivities up to 2,738 µS cm^{-1} had no measurable effect on adult activity (Woods and Poteet 2006, p. 5), it remains unclear how elevated water conductance might affect juveniles or the long-term health of salamanders in the wild. Furthermore, higher conductivity in urban streams is well-documented and is correlated with decreases in invertebrate species, the prey base of this species (Coles *et al.* 2012, p. 63, 78). Based on the best available information on the sensitivity of salamanders to changes in conductivity (or other contaminants) in the wild, it is reasonable to presume that salamander survival, growth, and reproduction will be most successful when water quality is unaltered from natural aquifer conditions.

Therefore, based on the information above, we identify aquatic invertebrates and water from the Northern Segment of the Edwards Aquifer, including adequate dissolved oxygen concentration, water conductance, and water temperature, to be physical or biological features essential for the nutritional and physiological requirements of this species.

Cover or Shelter

Austin Blind Salamander

The Austin blind salamander spends most of its life below the surface in the aquifer, and may only be flushed to the surface accidentally (Hillis *et al.* 2001, p. 273). This species should therefore have access back into the aquifer through the spring outlets.

While on the surface near spring outlets, they move into interstitial spaces (empty voids between rocks) within the substrate, using these spaces for foraging habitat and cover from predators similar to other *Eurycea* salamanders in central Texas (Cole 1995, p. 24; Pierce and Wall 2011, pp. 16–17). These spaces should have minimal sediment, as sediment fills interstitial spaces, eliminating resting places and also reducing habitat of the prey base (small aquatic invertebrates) (O'Donnell *et al.* 2006, p. 34). Austin blind salamanders have been observed under rocks and vegetation (Dries 2011, COA, pers. comm.).

Therefore, based on the information above, we identify rocky substrate, consisting of boulder, cobble, and gravel, with interstitial spaces that have minimal sediment, to be an essential component of the physical or biological features essential for the cover and shelter for this species. Access to the aquifer is also an essential component of these physical or biological features.

Jollyville Plateau Salamander

Similar to other *Eurycea* salamanders in central Texas, Jollyville Plateau salamanders move an unknown depth into the interstitial spaces (empty voids between rocks) within the substrate, using these spaces for foraging habitat and cover from predators (Cole 1995, p. 24; Pierce and Wall 2011, pp. 16–17). These spaces should have minimal sediment, as sediment fills interstitial spaces, eliminating resting places and also reducing habitat of the prey base (small aquatic invertebrates) (O'Donnell *et al.* 2006, p. 34).

Jollyville Plateau salamanders have been observed under rocks, leaf litter, and other vegetation (Bowles *et al.* 2006, pp. 114–116). There was a strong positive relationship between salamander abundance and the amount of available rocky substrate (Bowles *et al.* 2006, p. 114). Salamanders were more likely to use larger rocks (larger than 2.5 inches (in) or 64 millimeters (mm)) compared to gravel (Bowles *et al.* 2006, p. 114, 116).

If springs stop flowing and the surface habitat dries up, Jollyville Plateau salamanders are known to recede with the water table and persist in groundwater refugia until surface flow returns (Bendik 2011a, p. 31). Access to subsurface refugia allows populations some resiliency against drought events.

Therefore, based on the information above, we identify rocky substrate, consisting of boulder, cobble, and gravel, with interstitial spaces that have minimal sediment, to be an essential component of the physical or biological features essential for the cover and shelter for this species. Access to the subsurface groundwater table is also an essential component of these physical or biological features.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Austin Blind Salamander

Little is known about the reproductive habits of this species in the wild. However, the Austin blind salamander is fully aquatic and, therefore, spends all of its life cycles in aquifer and spring waters. Eggs of central Texas *Eurycea* species are rarely seen on the surface, so it is widely assumed that eggs are laid underground (Gluesenkamp 2011, TPWD, pers. comm.; Bendik 2011b, COA, pers. comm.).

Therefore, based on the information above, we identify underground spaces to be an essential component of the physical or biological features essential for breeding and reproduction for this species.

Jollyville Plateau Salamander

Little is known about the reproductive habits of this species in the wild. However, the Jollyville Plateau salamander is fully aquatic and, therefore, spends all of its life cycles in aquifer and spring waters. Eggs of central Texas *Eurycea* species are rarely seen on the surface, so it is widely assumed that eggs are laid underground (Gluesenkamp 2011, TPWD, pers. comm.; Bendik 2011b, COA, pers. comm.).

Therefore, based on the information above, we identify underground spaces to be an essential component of the physical or biological features essential for breeding and reproduction for this species.

Primary Constituent Elements for the Austin Blind and Jollyville Plateau Salamanders

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the Austin blind and Jollyville Plateau salamanders in areas occupied at the time of listing, focusing on the features' primary constituent elements. Primary constituent elements (PCEs) are those specific elements of the physical or biological features that provide for a species' life-history processes and are

essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to the Austin blind and Jollyville Plateau salamanders are:

Austin Blind Salamander

Surface Habitat PCEs

i. *Water from the Barton Springs Segment of the Edwards Aquifer.* The groundwater is similar to natural aquifer conditions as it discharges from natural spring outlets. Concentrations of water quality constituents and contaminants are below levels that could exert direct lethal or sublethal effects (such as effects to reproduction, growth, development, or metabolic processes), or indirect effects (such as effects to the Austin blind salamander's prey base). Hydrologic regimes similar to the historical pattern of the specific sites are present, with constant surface flow. The water chemistry is similar to natural aquifer conditions, with temperatures from 67.8 to 72.3 °F (19.9 and 22.4 °C), dissolved oxygen concentrations from 5 to 7 mg L^{-1}, and specific water conductance from 605 to 740 µS cm^{-1}.

ii. *Rocky substrate with interstitial spaces.* Rocks in the substrate of the salamander's surface aquatic habitat are large enough to provide salamanders with cover, shelter, and foraging habitat (larger than 2.5 in (64 mm)). The substrate and interstitial spaces have minimal sedimentation.

iii. *Aquatic invertebrates for food.* The spring environment supports a diverse aquatic invertebrate community that includes crustaceans, insects, and flatworms.

iv. *Subterranean aquifer.* Access to the subsurface water table exists to provide shelter, protection, and space for reproduction. This access can occur in the form of large conduits that carry water to the spring outlet or fissures in the bedrock.

Subsurface Habitat PCEs

i. *Water from the Barton Springs Segment of the Edwards Aquifer.* The groundwater is similar to natural aquifer conditions. Concentrations of water quality constituents and contaminants are below levels that could exert direct lethal or sublethal effects (such as effects to reproduction, growth, development, or metabolic processes), or indirect effects (such as effects to the Austin blind salamander's prey base). Hydrologic regimes similar to the historical pattern of the specific sites are present, with continuous flow in the subterranean habitat. The water chemistry is similar to natural aquifer conditions, including temperature, dissolved oxygen, and specific water conductance.

ii. *Subsurface spaces.* Conduits underground are large enough to provide salamanders with cover, shelter, and foraging habitat.

iii. *Aquatic invertebrates for food.* The habitat supports an aquatic invertebrate community that includes crustaceans, insects, or flatworms.

Jollyville Plateau Salamander

Surface Habitat PCEs

i. *Water from the Trinity Aquifer, Northern Segment of the Edwards Aquifer, and local alluvial aquifers.* The groundwater is similar to natural aquifer conditions as it discharges from natural spring outlets. Concentrations of water quality constituents and contaminants should be below levels that could exert direct lethal or sublethal effects (such as effects to reproduction, growth, development, or metabolic processes), or indirect effects (such as effects to the Jollyville Plateau salamander's prey base). Hydrologic regimes similar to the historical pattern of the specific sites are present, with at least some surface flow during the year. The water chemistry is similar to natural aquifer conditions, with temperatures from 64.1 to 73.4 °F (17.9 to 23 °C), dissolved oxygen concentrations from 5.6 to 8 mg L^{-1}, and specific water conductance from 550 to 721 µS cm^{-1}.

ii. *Rocky substrate with interstitial spaces.* Rocks in the substrate of the salamander's surface aquatic habitat are large enough to provide salamanders with cover, shelter, and foraging habitat (larger than 2.5 in (64 mm)). The substrate and interstitial spaces have minimal sedimentation.

iii. *Aquatic invertebrates for food.* The spring environment supports a diverse aquatic invertebrate community that includes crustaceans, insects, and flatworms.

iv. *Subterranean aquifer.* Access to the subsurface water table should exist to provide shelter, protection, and space for reproduction. This access can occur in the form of large conduits that carry water to the spring outlet or porous voids between rocks in the streambed that extend down into the water table.

Subsurface Habitat PCEs

i. *Water from the Trinity Aquifer, Northern Segment of the Edwards Aquifer, and local alluvial aquifers.* The groundwater is similar to natural aquifer conditions. Concentrations of water quality constituents and contaminants are below levels that could exert direct lethal or sublethal effects (such as effects to reproduction, growth, development, or metabolic processes), or indirect effects (such as effects to the Jollyville Plateau salamander's prey base). Hydrologic regimes similar to the historical pattern of the specific sites are present, with continuous flow. The water chemistry is similar to natural aquifer conditions, including temperature, dissolved oxygen, and specific water conductance.

ii. *Subsurface spaces.* Voids between rocks underground are large enough to provide salamanders with cover, shelter, and foraging habitat. These spaces have minimal sedimentation.

iii. *Aquatic invertebrates for food.* The habitat supports an aquatic invertebrate community that includes crustaceans, insects, or flatworms.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of these species may require special management considerations or protection to reduce the following threats: water quality degradation from contaminants, alteration to natural flow regimes, and physical habitat modification.

For these salamanders, special management considerations or protection are needed to address threats. Management activities that could ameliorate threats include (but are not limited to): (1) Protecting the quality of groundwater by implementing comprehensive programs to control and reduce point sources and non-point sources of pollution throughout the Barton Springs and Northern Segments of the Edwards Aquifer and contributing portions of the Trinity Aquifer, (2) protecting the quality and quantity of surface water by implementing comprehensive programs to control and reduce point sources and non-point sources of pollution within the surface drainage areas of the salamander spring sites, (3) protecting groundwater and spring flow quantity (for example, by implementing water conservation and drought contingency plans throughout the Barton Springs and Northern Segments of the Edwards Aquifer and contributing portions of the Trinity

Aquifer), (4) fencing and signage to protect from human vandalism, (5) protecting water quality and quantity from present and future quarrying, and (6) excluding cattle and feral hogs through fencing to protect spring habitats from damage.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific data available in determining areas that contain the features that are essential to the conservation of the Austin blind and Jollyville Plateau salamanders. During our preparation for designating critical habitat for the two salamander species, we reviewed: (1) Data for historical and current occurrence, (2) information pertaining to habitat features essential for the conservation of these species, and (3) scientific information on the biology and ecology of the two species. We have also reviewed a number of studies and surveys of the two salamander species that confirm historical and current occurrence of the two species including, but not limited to, Sweet (1978; 1982), Russell (1993), Warton (1997), COA (2001), Chippindale *et al.* (2000), and Hillis *et al.* (2001). Finally, salamander site locations and observations were verified with the aid of salamander biologists, museum collection records, and site visits.

In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we consider whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. We are not designating any additional areas outside the geographical area occupied by the species, although we acknowledge that other areas, such as the recharge zone of the aquifers supporting salamander locations, are very important to the conservation of the species. We also recognize that there may be additional occupied areas outside of the areas designated as critical habitat that we are not aware of at the time of this designation that are necessary for the conservation of the species. For the purpose of designating critical habitat for the Austin blind and Jollyville Plateau salamanders, we define an area as occupied based upon the reliable observation of a salamander species by a knowledgeable scientist. It is very difficult to prove unquestionably that a salamander population has been extirpated from a spring site due to these species' ability to occupy the inaccessible subsurface habitat. We therefore considered any site that had a salamander observation at any prior time to be currently occupied, unless that spring or cave site had been destroyed.

Based on our review, the critical habitat areas described below constitute our best assessment at this time of areas that are within the geographical range occupied by at least one of the two salamander species and are considered to contain features essential to the conservation of these species. The extent to which the subterranean populations of these species exist belowground away from outlets of the spring system is unknown. Because the hydrology of central Texas is very complex and information on the hydrology of specific spring sites is largely unknown, we will continue to seek information to increase our understanding of spring hydrology and salamander underground distribution to inform conservation efforts for these species. At the time of this final critical habitat rule, the best scientific evidence available suggests that a population of these salamanders can extend at least 984 ft (300 m) from the spring opening through underground conduits or voids between rocks.

We are designating as critical habitat areas that we have determined are occupied by at least one of the two salamanders and contain elements of physical or biological features essential for the conservation of the species. We delineated both surface and subsurface critical habitat components. The surface critical habitat component was delineated by starting with the spring point locations that are occupied by the salamanders and extending a line upstream and downstream 262 ft (80 m) because this is the farthest a salamander has been observed from a spring outlet (Bendik 2013, pers. comm.). When determining surface critical habitat boundaries, we were not able to delineate specific stream segments on the map due to the small size of the streams. Therefore, we drew a circle with a 262-ft (80-m) radius representing the extent the surface population of the site is estimated to exist upstream and downstream. The surface critical habitat includes the spring outlets and outflow up to the ordinary high water line (the average amount of water present in non-flood conditions, as defined in 33 CFR 328.3(e)) and 262 ft (80 m) of upstream and downstream habitat (to the extent that this habitat is ever present), including the dry stream channel during periods of no surface flow. We acknowledge that some spring sites occupied by one of the two salamanders are the start of the watercourse, and upstream habitat does not exist for these sites. The surface habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) within this circle.

We delineated the subsurface critical habitat unit boundaries by starting with the cave or spring point locations that are occupied by the salamanders. From these cave or spring points, we delineated an area with a 984-ft (300-m) radius to create the polygons that capture the extent to which we believe the salamander populations exist through underground habitat. This radial distance comes from observations of the Austin blind salamander, which is believed to occur underground throughout the entire Barton Springs complex (Dries 2011, COA, pers. comm.). The spring outlets used by salamanders of the Barton Springs complex are not connected on the surface, so the Austin blind salamander population extends a horizontal distance of at least 984 ft (300 m) underground, as this is the approximate distance between the farthest two outlets within the Barton Springs complex known to be occupied by the species. This knowledge was applied to the Jollyville Plateau salamanders due to its similar life history. The subsurface polygons were then simplified to reduce the number of vertices, but still retain the overall shape and extent. Once that was done, polygons that were within 98 ft (30 m) of each other were merged together because these areas are likely connected underground. Each new merged polygon was then revised by removing extraneous divits or protrusions that resulted from the merge process.

Developed areas such as lands covered by buildings, pavement, and other structures lack physical or biological features for the Austin blind and Jollyville Plateau salamanders. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent or subsurface critical habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying

regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0001, on our Internet site (*http://www.fws.gov/southwest/es/AustinTexas/ESA_Sp_Salamanders.html*) and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Final Critical Habitat Designation

We are designating a total of 33 units for designation for the Austin blind and Jollyville Plateau salamanders based on essential physical or biological features being present to support the salamanders' life-history processes. The critical habitat areas described below constitute our best assessment at this time of areas that meet the definition of critical habitat. Some units contain all of the identified elements of physical or biological features and support multiple life-history processes. Some units contain only some elements of the physical or biological features necessary to support Austin blind and Jollyville Plateau salamanders' particular use of that habitat. In some units, the physical or biological features essential for the conservation of these salamanders have been impacted at times, and in some cases these impacts have had negative effects on the salamander populations there. We recognize that some units have experienced impacts and may have physical or biological features of lesser quality than others. Special management considerations or protection may be needed at these sites to provide for long-term sustainability of the species at these sites. In addition, high-quality sites need protection, and in some cases management, to maintain their quality and ability to sustain the salamander populations over the long term.

We are designating 1 unit as critical habitat for the Austin blind salamander and 32 units as critical habitat for the Jollyville Plateau salamander (33 units total). The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Austin blind and Jollyville Plateau salamanders. As previously noted, we are designating both surface and subsurface critical habitat components. The surface critical habitat includes the spring outlets and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat, but does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas); however, the subsurface critical habitat may extend below such structures. The subsurface critical habitat includes underground features in a circle with a radius of 984 ft (300 m) around the cave and surface salamander locations. The 33 units we are designating as critical habitat are listed and described below, and acreages are based on the size of the subsurface critical habitat component, because it encompasses the surface critical habitat. All units described below are occupied by one of the two salamander species.

TABLE 2—CRITICAL HABITAT UNIT FOR THE AUSTIN BLIND SALAMANDER

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)
1. Barton Springs Unit	City, Private	120 (49)
Total		120 (49)

NOTE: Area estimates reflect all land within critical habitat unit boundaries.

TABLE 3—CRITICAL HABITAT UNITS FOR THE JOLLYVILLE PLATEAU SALAMANDER

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)
1. Krienke Spring Unit	Private	68 (28)
2. Brushy Creek Spring Unit	Private	68 (28)
3A. Buttercup Creek Unit	Private, City	260 (105)
3B. Buttercup Creek Unit	Private	28 (11)
3C. Buttercup Creek Unit	Private	3 (1)
3D. Buttercup Creek Unit	Private	16 (6)
3E. Buttercup Creek Unit	Private	17 (7)
6. Avery Spring Unit	Private	237 (96)
7. PC Spring Unit	Private	68 (28)
8. Baker and Audubon Spring Unit	Private	110 (45)
9. Wheless Spring Unit	Private, County	145 (59)
10. Blizzard R-Bar-B Spring Unit	Private, County	88 (36)
11. House Spring Unit	Private	68 (28)
12. Kelly Hollow Spring Unit	Private	68 (28)
13. MacDonald Well Unit	Private, County	68 (28)
14. Kretschmarr Unit	Private	68 (28)
15. Pope and Hiers (Canyon Creek) Spring Unit	Private	68 (28)
16. Fern Gully Spring Unit	Private, City	68 (28)
17. Bull Creek 1 Unit	Private, City, County	1,198 (485)
18. Bull Creek 2 Unit	Private, City, County	237 (96)
19. Bull Creek 3 Unit	Private, City	97 (39)
20. Moss Gully Spring Unit	City, County	68 (28)
21. Ivanhoe Spring Unit	City	68 (28)
22. Sylvia Spring Area Unit	Private, City, County	439 (178)
24. Long Hog Hollow Unit	Private	68 (28)
25. Tributary 3 Unit	Private	68 (28)

TABLE 3—CRITICAL HABITAT UNITS FOR THE JOLLYVILLE PLATEAU SALAMANDER—Continued

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)
26. Sierra Spring Unit	Private	68 (28)
27. Troll Spring Unit	Private, City	98 (40)
28. Stillhouse Unit	Private, City	203 (82)
30. Indian Spring Unit	Private	68 (28)
31. Spicewood Spring Unit	Private	68 (28)
32. Balcones District Park Spring Unit	Private, City	68 (28)
Total		4,331 (1,753)

NOTE: Area sizes may not sum due to rounding. Area estimates reflect all land within critical habitat unit boundaries.

We present below brief descriptions of all units and reasons why they meet the definition of critical habitat for the Austin blind and Jollyville Plateau salamanders. The function of each unit with respect to species conservation is to contribute to the redundancy, representation, and resiliency of its respective species, which determines the species' probability of persistence. Redundancy means a sufficient number of populations to provide a margin of safety to reduce the risk of losing a species or certain representation (variation) within a species. Representation means conserving ''some of everything'' with regard to genetic and ecological diversity to allow for future adaptation and maintenance of evolutionary potential. Resiliency is the ability of a species to persist through severe hardships (Tear *et al.* 2005, p. 841).

Austin Blind Salamander

Unit 1: Barton Springs Unit

The Barton Springs Unit consists of 120 ac (49 ha) of City and private land in the City of Austin, Travis County, Texas. Most of the unit consists of landscaped areas managed as Zilker Park, which is owned by the City of Austin. The southwestern portion of the unit is dense commercial development, and part of the southern portion contains residential development. Barton Springs Road, a major roadway, crosses the northeastern portion of the unit. This unit contains Parthenia Spring, Sunken Gardens (Old Mill) Spring, and Eliza Spring, which are occupied by Austin blind salamander. The springs are located in the Barton Creek watershed. Parthenia Spring is located in the backwater of Barton Springs Pool, which is formed by a dam on Barton Creek; Eliza Spring is on an unnamed tributary to the bypass channel of the pool; and Sunken Gardens Spring is located on a tributary that enters Barton Creek downstream of the dam for Barton Springs Pool. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

Special management considerations or protection may be required because of the potential for groundwater pollution from current and future development in the contributing and recharge zone for the Barton Springs segment of the Edwards Aquifer, depletion of groundwater, runoff from impervious cover within the surface watershed into surface habitat, and impacts of the impoundment (see *Special Management Considerations or Protection* section). Special management may also be needed to protect the surface from disturbance as part of the operation of Barton Springs Pool, and this management is being provided as part of the Barton Springs Pool HCP. Twenty-two ac (9 ha) of this unit are covered by the Barton Springs Pool HCP, which covers adverse impacts to the Barton Springs salamander and the Austin blind salamander.

The designation includes the underground aquifer in this area and the springs and fissure outlets, and their outflows 262 ft (80 m) upstream and downstream. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat. We joined the edges of the resulting circles. Because we did not have specific points for species locations, we used the center of Eliza and Sunken Gardens springs and the southwestern point of a fissure in Parthenia Springs as the center point for the circles.

Jollyville Plateau Salamander

Unit 1: Krienke Spring Unit

Unit 1 consists of 68 ac (28 ha) of private land in southern Williamson County, Texas. The unit is located just south of State Highway 29. The northern part of the unit is under dense residential development, while the southern part of the unit is less densely developed. County Road 175 (Sam Bass Road) crosses the northern half of the unit. This unit contains Krienke Spring, which is occupied by the Jollyville Plateau salamander. The spring is located on an unnamed tributary of Dry Fork, which is a tributary to Brushy Creek. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

Special management considerations or protection may be required because of the potential for groundwater pollution from current and future development in the recharge area, runoff from impervious cover within the surface watershed into surface habitat, potential physical disturbance of the surface habitat, impacts of the impoundment, and depletion of groundwater (see *Special Management Considerations or Protection* section). Private landowners have shown interest in conserving the area and are providing some management of the area.

The designation includes the spring outlet and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subterranean critical habitat.

Unit 2: Brushy Creek Spring Unit

Unit 2 consists of 68 ac (28 ha) of private land in southern Williamson County, Texas. The unit is centered just south of Palm Valley Boulevard and west of Grimes Boulevard. The northern part of the unit is covered with commercial and residential development, while the southern part is less densely developed. Some areas along the stream are undeveloped. This unit contains Brushy Creek Spring, which is occupied by the Jollyville Plateau salamander. The spring is near Brushy Creek. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

Special management considerations or protection may be required because

of the potential for groundwater pollution from current and future development in the recharge area, runoff from impervious cover within the surface watershed into surface habitat, potential physical disturbance of the surface habitat, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The designation includes the spring outlet and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subterranean critical habitat.

Unit 3: Buttercup Creek Unit

In the proposed rule, Unit 3 consisted of 699 ac (283 ha) of City of Austin, City of Cedar Park, State of Texas, and private land in southern Williamson County and northern Travis County, Texas. Under section 4(b)(2) of the Act, certain lands in this unit have been excluded from the final rule for critical habitat (see *Application of Section 4(b)(2) of the Act* section below). The remaining portions of the unit not within the boundaries of the HCP were retained as critical habitat subunits because these areas still contained subsurface primary constituent elements of the physical or biological features essential to the conservation of the species. We created five subunits following the exclusion. All of the subunits are occupied by the Jollyville Plateau salamander. A description of these subunits follows.

Subunit 3A

Subunit 3A consists of 260 ac (105 ha) of City of Austin, City of Cedar Park, and private land in southern Williamson County and northern Travis County, Texas. The subunit is located between Anderson Mill Road and Lakeline Boulevard. The subunit is mostly covered with residential property on the eastern half and undeveloped area of parks on the western half. This subunit contains four caves, Hunter's Lane Cave, Testudo Tube, Bluewater Cave #1, and Bluewater Cave #2, which are all occupied by the Jollyville Plateau salamander. The subunit contains subsurface primary constituent elements of the physical or biological features essential to the conservation of the Jollyville Plateau salamander.

Special management considerations or protection may be required because of the potential for groundwater pollution from current and future development in the recharge area, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section). These caves are currently gated and locked.

The critical habitat designation includes the cave openings. The subunit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the cave openings, representing the extent of the subterranean critical habitat. We joined the edges of the resulting circles. Those areas within the boundary of the Buttercup Creek HCP were then excluded from the subunit.

Subunit 3B

Subunit 3B consists of 28 ac (11 ha) of private land in southern Williamson County, Texas. The unit is located east of Anderson Mill Road and west of Lakeline Boulevard. The unit is mostly under a quarry, except for the eastern portion, which is covered by several buildings and a parking lot. This subunit does not contain a cave opening. The subunit contains subsurface primary constituent elements of the physical or biological features essential to the conservation of the Jollyville Plateau salamander.

Special management considerations or protection may be required because of the potential for groundwater pollution from current and future development in the recharge area, depletion of groundwater, and potential impacts from quarry operations (see *Special Management Considerations or Protection* section).

The subunit was delineated by drawing a circle with a radius of 984 ft (300 m) around nearby cave openings, representing the extent of the subterranean critical habitat. We joined the edges of the resulting circles. Those areas within the boundary of the Buttercup Creek HCP (including the cave openings) were then excluded from the subunit.

Subunit 3C

Subunit 3C consists of 3 ac (1 ha) of private land in southern Williamson County, Texas. The unit is located east of Lakeline Boulevard. The subunit is under residential development. This subunit does not contain a cave opening. The subunit contains subsurface primary constituent elements of the physical or biological features essential to the conservation of the Jollyville Plateau salamander.

Special management considerations or protection may be required because of the potential for groundwater pollution from current and future development in the recharge area, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The subunit was delineated by drawing a circle with a radius of 984 ft (300 m) around nearby cave openings, representing the extent of the subterranean critical habitat. We joined the edges of the resulting circles. Those areas within the boundary of the Buttercup Creek HCP (including the cave openings) were then removed from the subunit.

Subunit 3D

Subunit 3D consists of 16 ac (6 ha) of private land in southern Williamson County, Texas. The subunit is located east of Lakeline Boulevard and north of Buttercup Creek Boulevard. The subunit is under residential development. This subunit does not contain a cave opening. The subunit contains subsurface primary constituent elements of the physical or biological features essential to the conservation of the Jollyville Plateau salamander.

Special management considerations or protection may be required because of the potential for groundwater pollution from current and future development in the recharge area, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The subunit was delineated by drawing a circle with a radius of 984 ft (300 m) around nearby cave openings, representing the extent of the subterranean critical habitat. We joined the edges of the resulting circles. Those areas within the boundary of the Buttercup Creek HCP (including the cave openings) were then removed from the subunit.

Subunit 3E

Subunit 3E consists of 17 ac (7 ha) of private land in southern Williamson County, Texas. The subunit is located east of Lakeline Boulevard. Buttercup Creek Boulevard crosses the subunit from east to west. The subunit is under residential development. This subunit does not contain a cave opening. The subunit contains subsurface primary constituent elements of the physical or biological features essential to the conservation of the Jollyville Plateau salamander.

Special management considerations or protection may be required because of the potential for groundwater pollution from current and future development in the recharge area, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The subunit was delineated by drawing a circle with a radius of 984 ft

(300 m) around nearby cave openings, representing the extent of the subterranean critical habitat. We joined the edges of the resulting circles. Those areas within the boundary of the Buttercup Creek HCP (including the cave openings) were then removed from the subunit.

Unit 6: Avery Springs Unit

Unit 6 consists of 237 ac (96 ha) of private land in southern Williamson County, Texas. The unit is located north of Avery Ranch Boulevard and west of Parmer Lane. The unit has large areas covered by residential development. The developed areas are separated by fairways and greens of a golf course. This unit contains three springs (Avery Springhouse Spring, Hill Marsh Spring, and Avery Deer Spring) that are occupied by the Jollyville Plateau salamander. The springs are located on three unnamed tributaries to South Brushy Creek. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

Special management considerations or protection may be required because of the potential for groundwater pollution from current and future development in the recharge area, runoff from impervious cover within the surface watershed into surface habitat, potential physical disturbance of the surface habitat, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The designation includes the spring outlets and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the three springs, representing the extent of the subterranean critical habitat. We joined the edges of the resulting circles.

Unit 7: PC Spring Unit

Unit 7 consists of 68 ac (28 ha) of private land in southern Williamson County, Texas. State Highway 45, a major toll road, crosses the north central part of the unit from east to west, and Ranch to Market Road 620 goes under the toll road midway between the center and the western edge. Except for roadways, the unit is undeveloped. This unit contains PC Spring, which is occupied by the Jollyville Plateau salamander. The spring is located on Davis Spring Branch. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

Special management considerations or protection may be required because of the potential for groundwater pollution from current and future development in the recharge area, runoff from impervious cover within the surface watershed into surface habitat, potential physical disturbance of the surface habitat, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The designation includes the spring outlet and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subterranean critical habitat.

Unit 8: Baker and Audubon Spring Unit

Unit 8 consists of 110 ac (45 ha) of private land in northern Travis County, Texas. The unit is located south of Lime Creek Road and southwest of the intersection of Canyon Creek Drive and Lime Springs Road. The unit is wooded, undeveloped, and owned by Travis Audubon Society and Lower Colorado River Authority. The entire unit is managed as part of the Balcones Canyonlands HCP. This unit contains two springs (Baker Spring and Audubon Spring) that are occupied by the Jollyville Plateau salamander. The springs are in the drainage of an unnamed tributary to Cypress Creek. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

The unit is within the Balcones Canyonlands Preserve which serves as mitigation for impacts to 35 species covered in the Balcones Canyonlands HCP (Service 1996, p. 3). However, impacts to the Jollyville Plateau salamander are not covered under this HCP. Special management is being provided by the preserve because the surface watersheds of these two springs are entirely contained within the preserve. Special management may also be needed because of the potential for groundwater pollution and depletion from current and future development in the groundwater recharge area of the springs, which may extend outside of the preserve. The surface habitat also needs special management to protect it from potential physical disturbance (see *Special Management Considerations or Protection* section).

The designation includes the spring outlets and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat. We joined the edges of the resulting circles.

Unit 9: Wheless Spring Unit

Unit 9 consists of 145 ac (59 ha) of private and Travis County land in northern Travis County, Texas. The unit is located about 0.8 mi (1.3 km) west of Grand Oaks Loop. The unit is wooded and consists of totally undeveloped land. The unit is managed as part of the Balcones Canyonlands Preserve HCP. An unpaved two-track road crosses the unit from north to south. This unit contains three sites (Wheless Spring, Wheless 2 and Spring 25) that are occupied by the Jollyville Plateau salamander. The springs are in the Long Hollow Creek drainage that leads to Lake Travis. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

The unit is within the Balcones Canyonlands Preserve, which serves as mitigation for impacts to 35 species covered in the Balcones Canyonlands HCP (Service 1996, p. 3). However, impacts to the Jollyville Plateau salamander are not covered under this HCP. Some special management is being provided by the preserve because the surface watersheds of these three sites are entirely contained within the preserve. Special management considerations or protection may be required because of the potential for groundwater pollution and depletion from current and future development in the groundwater recharge area of the springs, which may extend outside of the preserve. The surface habitat also needs special management to protect it from potential physical disturbance (see *Special Management Considerations or Protection* section).

The designation includes the spring outlets and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat. We joined the edges of the resulting circles.

Unit 10: Blizzard R-Bar-B Spring Unit

Unit 10 consists of 88 ac (36 ha) of private and Travis County land in northern Travis County, Texas. The unit is located west of Grand Oaks Loop. The extreme eastern portion of the unit is on the edge of residential development; a golf course (Twin Creeks) crosses the central portion; and the remainder is wooded and undeveloped. This unit contains three sites (Blizzard R-Bar-B Spring, Blizzard 2, and Blizzard 3) that are occupied by the Jollyville Plateau

salamander. The springs are located on Cypress Creek. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

The unit is within the Balcones Canyonlands Preserve, which serves as mitigation for impacts to 35 species covered in the Balcones Canyonlands HCP (Service 1996, p. 3). However, impacts to the Jollyville Plateau salamander are not covered under this HCP. Some special management is being provided by the preserve because the surface watersheds of these three springs are partially contained within the preserve. Special management considerations or protection may be required because of the potential for groundwater pollution and depletion from current and future development in the groundwater recharge area of the springs, which may extend outside of the preserve. The surface habitat also needs special management to protect it from surface runoff from impervious cover outside of the preserve and potential physical disturbance of the surface habitat (see *Special Management Considerations or Protection* section).

The designation includes the spring outlets and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the sites, representing the extent of the subterranean critical habitat. We joined the edges of the resulting circles.

Unit 11: House Spring Unit

Unit 11 consists of 68 ac (28 ha) of private land in northern Travis County, Texas. The unit is located just north of Benevento Way Road. Dies Ranch Road crosses the extreme eastern part of the unit. The entire unit is covered with dense residential development except for a narrow corridor along the stream, which crosses the unit from north to south. Several streets are located in the unit. This unit contains House Spring, which is occupied by the Jollyville Plateau salamander. The spring is located on an unnamed tributary to Lake Travis. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

Special management considerations or protection may be required because of the potential for groundwater pollution from current and future development in the recharge area, runoff from impervious cover within the surface watershed into surface habitat, potential physical disturbance of the surface habitat, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The designation includes the spring outlet and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat.

Unit 12: Kelly Hollow Spring Unit

Unit 12 consists of 68 ac (28 ha) of private land in northern Travis County, Texas. The unit is located southeast of the intersection of Anderson Mill Road and Farm to Market Road 2769. With the exception of a portion of Anderson Mill Road along the northern edge of the unit, this unit is primarily undeveloped woodland. This unit contains Kelly Hollow Spring, which is occupied by the Jollyville Plateau salamander. The spring is located on an unnamed tributary to Lake Travis. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

Special management considerations or protection may be required because of the potential for groundwater pollution from current and future development in the recharge area, runoff from impervious cover within the surface watershed into surface habitat, potential physical disturbance of the surface habitat, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The designation includes the spring outlet and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subterranean critical habitat.

Unit 13: MacDonald Well Unit

Unit 13 consists of 68 ac (28 ha) of private and Travis County land in northern Travis County, Texas. The unit is centered near the intersection of Grand Oaks Loop and Farm to Market Road 2769. Farm to Market Road 2769 crosses the unit slightly north of its center. The northern portion of the unit contains residential development and part of Twin Creeks Golf Course. This unit contains MacDonald Well, which is a spring occupied by the Jollyville Plateau salamander. The spring is located on an unnamed tributary to Lake Travis. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

The unit is within the Balcones Canyonlands Preserve, which serves as mitigation for impacts to 35 species covered in the Balcones Canyonlands HCP (Service 1996, p. 3). However, impacts to the Jollyville Plateau salamander are not covered under this HCP. Some special management is being provided by the preserve because the surface watershed of this spring is partially contained within the preserve. Special management considerations or protection may be required because of the potential for groundwater pollution and depletion from current and future development in the groundwater recharge area of the spring, which may extend outside of the preserve. The surface habitat also needs special management to protect it from surface runoff from impervious cover outside of the preserve and potential physical disturbance of the surface habitat (see *Special Management Considerations or Protection* section).

The designation includes the spring outlet and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subterranean critical habitat.

Unit 14: Kretschmarr Unit

Unit 14 consists of 68 ac (28 ha) of private land in northern Travis County, Texas. The unit is located west of Ranch to Market Road 620. Wilson Parke Avenue crosses the unit along its southern border. Most of the unit is undeveloped, with one commercial development near the west-central portion. This unit contains two sites (Kretschmarr Salamander Cave and Unnamed Tributary Downstream of Grandview) that are occupied by the Jollyville Plateau salamander. Kretschmarr Salamander Cave is a cave, and Unnamed Tributary Downstream of Grandview is a spring site. Under section 4(b)(2) of the Act, certain lands in this unit have been excluded from the final rule for critical habitat (see *Application of Section 4(b)(2) of the Act* section below). These lands include approximately half of the surface habitat of Unnamed Tributary Downstream of Grandview. This unit also contains approximately half of the surface habitat of SAS Canyon, which is a spring outlet on the Grandview Hills HCP. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

Some special management is being provided by the Balcones Canyonlands Preserve, which serves as mitigation for

impacts to 35 species covered in the Balcones Canyonlands HCP (Service 1996, p. 3), because the surface watersheds of these two springs are partially contained within the preserve. However, impacts to the Jollyville Plateau salamander are not covered under this HCP. Special management considerations or protection may be required because of the potential for groundwater pollution and depletion from current and future development in the groundwater recharge area of the springs, which may extend outside of the preserve. The surface habitat also needs special management to protect it from surface runoff from impervious cover outside of the preserve and potential physical disturbance of the surface habitat (see *Special Management Considerations or Protection* section).

The surface designation was delineated by drawing a circle with a radius of 262 ft (80 m) around the spring outlets (including a nearby occupied spring within the boundary of the HCP) and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring outlets (including a nearby occupied spring within the boundary of the HCP) and cave, representing the extent of the subsurface critical habitat. We connected the edges of the resulting circles. Those surface and subsurface areas within the boundary of the Grandview Hills HCP were then removed from the unit.

Unit 15: Pope and Hiers (Canyon Creek) Spring Unit

Unit 15 consists of 68 ac (28 ha) of private land in northern Travis County, Texas. The unit is located between Bramblecrest Drive and Winchelsea Drive. The unit contains dense residential development on its northern, eastern, and western portions. The central portion of the unit is an undeveloped canyon and is preserved in perpetuity as part of a private preserve. This unit contains Pope and Hiers (Canyon Creek) Spring, which is occupied by the Jollyville Plateau salamander. The spring is located on Bull Creek Tributary 6. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

Special management considerations or protection may be required because of the potential for groundwater pollution from current and future development in the recharge area, runoff from impervious cover within the surface watershed outside of the preserve into surface habitat, potential physical disturbance of the surface habitat, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The designation includes the spring outlets and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subsurface critical habitat.

Unit 16: Fern Gully Spring Unit

Unit 16 consists of 68 ac (28 ha) of private and City of Austin land in northern Travis County, Texas. The unit is centered just south of the intersection of Jenaro Court and Boulder Lane. The unit contains dense residential development on much of its northern half. Most of the southern half of the unit is undeveloped land managed by the City of Austin as part of the Balcones Canyonlands HCP Preserve, and a portion is part of the Canyon Creek preserve, a privately managed conservation area. This unit contains Fern Gully Spring, which is occupied by the Jollyville Plateau salamander. The spring is located on Bull Creek Tributary 5. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

The unit is within the Balcones Canyonlands Preserve, which serves as mitigation for impacts to 35 species covered in the Balcones Canyonlands HCP (Service 1996, p. 3). However, impacts to the Jollyville Plateau salamander are not covered under this HCP. Some special management is being provided by the preserve because the surface watershed of this spring is partially contained within the preserve. However, special management considerations or protection may be required because of the potential for groundwater pollution and depletion from current and future development in the groundwater recharge area of the spring, which may extend outside of the preserve. The surface habitat also needs special management to protect it from surface runoff from impervious cover outside of the preserve and potential physical disturbance of the surface habitat (see *Special Management Considerations or Protection* section).

The designation includes the spring outlet and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subsurface critical habitat.

Unit 17: Bull Creek 1 Unit

Unit 17 consists of 1,198 ac (485 ha) of private, City of Austin, and Travis County land in northern Travis County, Texas. The unit extends from the southeastern portion of Chestnut Ridge Road to 3M Center, just north of Ranch to Market Road 2222. The unit contains some residential development on the extreme edge of its northern portion and part of Vandegrift High School near its southeastern corner. Most of the remainder of the unit is undeveloped land managed by the City of Austin and Travis County as part of the Balcones Canyonlands HCP Preserve. This unit contains the following sites: Bull Creek Tributary 6 site 2, Bull Creek Tributary 6 site 3, Bull Creek Tributary 5 site 2, Bull Creek Tributary 5 site 3, Tubb Spring, Broken Bridge Spring, Spring 17, Tributary No. 5, Tributary 6 at Sewage Line, Canyon Creek, Tributary No. 6, Gardens of Bull Creek, Canyon Creek Hog Wallow Spring, Spring 5, Three Hole Spring, Franklin, Franklin Tract 2, Franklin Tract 3, Pit Spring, Bull Creek Spring Pool, Spring 1, Spring 4, Spring 2, Lanier Spring, Cistern (Pipe) Spring, Spring 3, Lanier 90-foot Riffle, Bull Creek at Lanier Tract, Ribelin/Lanier, Spring 18, Horsethief, Ribelin, Spring 15, Spring 16, Spring 14, Lower Ribelin, Spring 13, Spring 12, Upper Ribelin, Ribelin 2, Spring 10, and Spring 9. These springs are occupied by the Jollyville Plateau salamander and are located on Bull Creek and its tributaries. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

The unit is within the Balcones Canyonlands Preserve, which serves as mitigation for impacts to 35 species covered in the Balcones Canyonlands HCP (Service 1996, p. 3). However, impacts to the Jollyville Plateau salamander are not covered under this HCP. Some special management is being provided by the preserve because the surface watersheds of these springs are partially contained within the preserve. However, special management considerations or protection may be required because of the potential for groundwater pollution and depletion from current and future development in the groundwater recharge area of the springs, which may extend outside of the preserve. The surface habitat also needs special management to protect it from surface runoff from impervious cover outside of the preserve and potential physical disturbance of the surface habitat (see *Special Management Considerations or Protection* section).

The designation includes the spring outlets and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the sites, representing the extent of the subsurface critical habitat. We joined the edges of the resulting circles.

Unit 18: Bull Creek 2 Unit

Unit 18 consists of 237 ac (96 ha) of private, City of Austin, and Travis County land in northern Travis County, Texas. The center of the unit is near the eastern end of Concordia University Drive. Concordia University is in the central and eastern parts of the unit. Much of the rest of the unit is undeveloped land managed by the City of Austin and Travis County as part of the Balcones Canyonlands HCP Preserve. This unit contains six springs (Schlumberger Spring No. 1, Schlumberger Spring No. 2, Spring 6, Spring 19, Concordia Spring X, and Concordia Spring Y) that are occupied by the Jollyville Plateau salamander. The springs are located on Bull Creek Tributary 7. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

The unit is within the Balcones Canyonlands Preserve, which serves as mitigation for impacts to 35 species covered in the Balcones Canyonlands HCP (Service 1996, p. 3). However, impacts to the Jollyville Plateau salamander are not covered under this HCP. Some special management is being provided by the preserve because the surface watersheds of these springs are partially contained within the preserve. However, special management considerations or protection may be required because of the potential for groundwater pollution and depletion from current and future development in the groundwater recharge area of the springs, which may extend outside of the preserve. The surface habitat also needs special management to protect it from surface runoff from impervious cover outside of the preserve and potential physical disturbance of the surface habitat (see *Special Management Considerations or Protection* section).

The designation includes the spring outlets and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subsurface critical habitat. We joined the edges of the resulting circles.

Unit 19: Bull Creek 3 Unit

Unit 19 consists of 97 ac (39 ha) of private and City of Austin land in northern Travis County, Texas. The unit is just southeast of the intersection of Ranch to Market Road 620 and Vista Parke Drive. The unit contains some residential development on its western tip, but the rest of the unit is undeveloped land. Much of the remainder of the unit is managed by the City of Austin as part of the Balcones Canyonlands Preserve HCP. This unit contains two sites (Hamilton Reserve West and Gaas Spring) that are occupied by the Jollyville Plateau salamander. The springs are located on Bull Creek. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

The unit is partially within the Balcones Canyonlands Preserve, which serves as mitigation for impacts to 35 species covered in the Balcones Canyonlands HCP (Service 1996, p. 3). However, impacts to the Jollyville Plateau salamander are not covered under this HCP. Some special management is being provided by the preserve because the surface watersheds of these springs are partially contained within the preserve. However, special management considerations or protection may be required because of the potential for groundwater pollution and depletion from current and future development in the groundwater recharge area of the springs, which may extend outside of the preserve. The surface habitat also needs special management to protect it from surface runoff from impervious cover outside of the preserve and potential physical disturbance of the surface habitat (see *Special Management Considerations or Protection* section). Under section 4(b)(2) of the Act, certain lands in this unit have been excluded from the final rule for critical habitat under the Four Points HCP (see *Application of Section 4(b)(2) of the Act* section below).

The designation includes the spring outlets and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring outlets (including nearby occupied spring outlets within the boundary of the Four Points HCP), representing the extent of the subsurface critical habitat. We connected the edges of the resulting circles. Those areas within the boundary of the Four Points HCP were then excluded from the unit.

Unit 20: Moss Gully Spring Unit

Unit 20 consists of 68 ac (28 ha) of City of Austin and Travis County land in northern Travis County, Texas. The unit is just east of the eastern end of Unit 19. The unit is all undeveloped woodland, and it is managed by the City of Austin or Travis County as part of the Balcones Canyonlands HCP Preserve. This unit contains Moss Gully Spring, which is occupied by the Jollyville Plateau salamander. The spring is located on Bull Creek. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

The unit is within the Balcones Canyonlands Preserve, which serves as mitigation for impacts to 35 species covered in the Balcones Canyonlands HCP (Service 1996, p. 3). However, impacts to the Jollyville Plateau salamander are not covered under this HCP. Some special management is being provided by the preserve because the surface watershed of this site is entirely contained within the preserve. However, special management considerations or protection may be required because of the potential for groundwater pollution and depletion from current and future development in the groundwater recharge area of the spring, which may extend outside of the preserve. The surface habitat also needs special management to protect it from potential physical disturbance of the surface habitat (see *Special Management Considerations or Protection* section).

The designation includes the spring outlet and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subsurface critical habitat.

Unit 21: Ivanhoe Spring Unit

Unit 21 consists of 68 ac (28 ha) of City of Austin land in northern Travis County, Texas. The unit is east of the northwest extent of High Hollow Drive. The unit is all undeveloped woodland and is managed by the City of Austin as part of the Balcones Canyonlands Preserve HCP. This unit contains Ivanhoe Spring 2, which is occupied by the Jollyville Plateau salamander. The spring is located on West Bull Creek. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

The unit is within the Balcones Canyonlands Preserve, which serves as mitigation for impacts to 35 species covered in the Balcones Canyonlands

HCP (Service 1996, p. 3). However, impacts to the Jollyville Plateau salamander are not covered under this HCP. Some special management is being provided by the preserve because the surface watershed of this site is entirely contained within the preserve. However, special management considerations or protection may be required because of the potential for groundwater pollution and depletion from current and future development in the groundwater recharge area of the spring, which may extend outside of the preserve. The surface habitat also needs special management to protect it from potential physical disturbance of the surface habitat (see *Special Management Considerations or Protection* section).

The designation includes the spring outlet and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subsurface critical habitat.

Unit 22: Sylvia Spring Area Unit

Unit 22 consists of 439 ac (178 ha) of private, City of Austin, and Williamson County land in northern Travis County and southwestern Williamson County, Texas. The unit is located east of the intersection of Callanish Park Drive and Westerkirk Drive, north of the intersection of Spicewood Springs Road and Yaupon Drive, and west of the intersection of Spicewood Springs Road and Old Lampasas Trail in the Bull Creek Ranch community. Spicewood Springs Road crosses the unit from southwest to east. Residential and commercial development is found in most of the unit. An undeveloped stream corridor crosses the unit from east to west. This unit contains 13 sites (Small Sylvia Spring, Sylvia Spring Area 2, Sylvia Spring Area 3, Sylvia Spring Area 4, Downstream of Small Sylvia Spring 1, Downstream of Small Sylvia Spring 2, Spicewood Valley Park Spring, Tributary 4 upstream, Tributary 4 downstream, Spicewood Park Dam, Tanglewood Spring, Tanglewood 2, and Tanglewood 3) that are occupied by the Jollyville Plateau salamander. Small Sylvia Spring, Sylvia Spring Area 2, Sylvia Spring Area 3, Sylvia Spring Area 4, Downstream of Small Sylvia Spring 1, Downstream of Small Sylvia Spring 2, Spicewood Valley Park Spring, Tributary 4 upstream, Tributary 4 downstream, and Spicewood Park Dam are located on Tributary 4. Tanglewood Spring, Tanglewood 2, and Tanglewood 3 are located on Tanglewood Creek, a tributary to Tributary 4. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

Special management considerations or protection may be required because of the potential for groundwater pollution from current and future development in the recharge area, runoff from impervious cover within the surface watershed into surface habitat, potential physical disturbance of the surface habitat, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The designation includes the spring outlets and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subsurface critical habitat. We joined the edges of the resulting circles.

Unit 24: Long Hog Hollow Unit

Unit 24 consists of 68 ac (28 ha) of private land in northern Travis County, Texas. The unit is centered east of the intersection of Cassia Drive and Fireoak Drive. Most of the unit is in residential development. There are wooded corridors in the central and eastern portion of the unit. This unit contains one spring (Long Hog Hollow Tributary below Fireoak Spring) that is occupied by the Jollyville Plateau salamander. The spring is located on Long Hog Hollow Tributary. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

Special management considerations or protection may be required because of the potential for groundwater pollution from current and future development in the recharge area, runoff from impervious cover within the surface watershed into surface habitat, potential physical disturbance of the surface habitat, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The designation includes the spring outlet and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subsurface critical habitat.

Unit 25: Tributary 3 Unit

Unit 25 consists of 68 ac (28 ha) of private land in northern Travis County, Texas. The unit is centered between Bluegrass Drive and Spicebush Drive. The eastern and western part of the unit is in residential development. There are wooded corridors in the central part of the unit, and scattered woodland in the eastern and western part. There is a golf course in the north-central part of the unit. This unit contains Tributary No. 3, which is occupied by the Jollyville Plateau salamander. The spring is located on Bull Creek Tributary 3. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

Special management considerations or protection may be required because of the potential for groundwater pollution from current and future development in the recharge area, runoff from impervious cover within the surface watershed into surface habitat, potential physical disturbance of the surface habitat, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The designation includes the spring outlet and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subsurface critical habitat.

Unit 26: Sierra Spring Unit

Unit 26 consists of 68 ac (28 ha) of private land in northern Travis County, Texas. The unit is located west of the intersection of Tahoma Place and Ladera Vista Drive. The eastern and western part of the unit is in residential development. A wooded corridor crosses the central part of the unit from north to south. A facility that handles automotive fluids is located in the northwest portion of the unit. This unit contains Sierra Spring, which is occupied by the Jollyville Plateau salamander. The spring is located on a tributary to Bull Creek. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

Special management considerations or protection may be required because of the potential for groundwater pollution from current and future development in the recharge area, runoff from impervious cover within the surface watershed into surface habitat, potential physical disturbance of the surface habitat, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The designation includes the spring outlet and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around

the spring, representing the extent of the subsurface critical habitat.

Unit 27: Troll Spring Unit

Unit 27 consists of 98 ac (40 ha) of City of Austin and private land in northern Travis County, Texas. The unit is located west of the intersection of Jollyville Road and Taylor Draper Lane. The eastern and western part of the unit is in residential development. A wooded corridor crosses the central part of the unit from north to south. This unit contains two springs (Hearth Spring and Troll Spring) that are occupied by the Jollyville Plateau salamander. The springs are located on a tributary to Bull Creek. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

Special management considerations or protection may be required because of the potential for groundwater pollution from current and future development in the recharge area, runoff from impervious cover within the surface watershed into surface habitat, potential physical disturbance of the surface habitat, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The designation includes the spring outlets up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the springs, representing the extent of the subsurface critical habitat. We connected the edges of the resulting circles.

Unit 28: Stillhouse Unit

Unit 28 consists of 203 ac (82 ha) of City of Austin and private land in northern Travis County, Texas. The unit is centered due north of the intersection of West Rim Drive and Burney Drive. The northern and southern part of the unit is in residential development. A wooded corridor crosses the central part of the unit from east to west. This unit contains eight sites: Stillhouse Hollow, Barrow Hollow Spring, Spring 20, Stillhouse Hollow Tributary, Stillhouse Tributary, Little Stillhouse Hollow Spring, Stillhouse Hollow Spring, and Barrow Preserve Tributary. All are occupied by the Jollyville Plateau salamander. The springs are located on an unnamed tributary to Bull Creek. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

Special management considerations or protection may be required because of the potential for groundwater pollution from current and future development in the recharge area, runoff from impervious cover within the surface watershed into surface habitat, potential physical disturbance of the surface habitat, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The designation includes the spring outlets and outflows up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the sites, representing the extent of the subsurface critical habitat. We connected the edges of the resulting circles.

Unit 30: Indian Spring Unit

Unit 30 consists of 68 ac (28 ha) of private land in northern Travis County, Texas. The unit is centered just south of Greystone Drive about halfway between its intersection with Edgerock Drive and Chimney Corners Drive. Most of the unit is covered with residential development except for a small wooded corridor that crosses the central part of the unit from east to west. This unit contains Indian Spring, which is occupied by the Jollyville Plateau salamander. The spring is located on an unnamed tributary to Shoal Creek. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

Special management considerations or protection may be required because of the potential for groundwater pollution from current and future development in the recharge area, runoff from impervious cover within the surface watershed into surface habitat, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The designation includes the spring outlet and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subsurface critical habitat.

Unit 31: Spicewood Spring Unit

Unit 31 consists of 68 ac (28 ha) of private land in northern Travis County, Texas. The unit is centered just northeast of the intersection of Ceberry Drive and Spicewood Springs Road, just downstream of the bridge on Ceberry Drive. Most of the unit is covered with commercial and residential development except for a small wooded corridor along the stream, which crosses the unit from north to east. This unit contains two sites, Spicewood Spring and Spicewood Tributary, which are occupied by the Jollyville Plateau salamander. The springs are located in an unnamed tributary to Shoal Creek. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

Special management considerations or protection may be required because of the potential for groundwater pollution from current and future development in the recharge area, runoff from impervious cover within the surface watershed into surface habitat, physical disturbance of the surface habitat, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The designation includes the spring outlet and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around the sites, representing the extent of the subsurface critical habitat.

Unit 32: Balcones District Park Spring Unit

Unit 32 consists of 68 ac (28 ha) of private and City of Austin land in northern Travis County, Texas. The unit is centered about 1,411 ft (430 m) northeast of the intersection of Duval Road and Amherst Drive. Most of the unit is in a city park (Balcones District Park) with a swimming pool. A substantial amount of the park is wooded and undeveloped. There is dense commercial development in the southern and southeastern portions of the unit. This unit contains Balcones District Park Spring, which is occupied by the Jollyville Plateau salamander. The spring is located in the streambed of an unnamed tributary to Walnut Creek. The unit contains primary constituent elements of the physical or biological features essential to the conservation of the species.

Special management considerations or protection may be required because of the potential for groundwater pollution from current and future development in the recharge area, runoff from impervious cover within the surface watershed into surface habitat, potential physical disturbance of the surface habitat, and depletion of groundwater (see *Special Management Considerations or Protection* section).

The designation includes the spring outlet and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat. The unit was further delineated by drawing a circle with a radius of 984 ft (300 m) around

the spring, representing the extent of the subsurface critical habitat.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species to be listed under the Act or result in the destruction or adverse modification of critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for the Austin blind and Jollyville Plateau salamanders. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species. The function of each unit with respect to species conservation is to contribute to the redundancy, representation, and resiliency of its respective species, which affects the species' probability of persistence.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the Austin blind and Jollyville Plateau salamanders. These activities include, but are not limited to:

(1) Actions that would physically disturb the spring or subsurface habitat upon which these two salamander species depend. Such activities could include, but are not limited to, channelization, removal of the substrate, and other activities that result in the physical destruction of habitat or the modification of habitat so that it is not suitable for the species.

(2) Actions that would increase the concentration of sediment or contaminants in the surface or subsurface habitat. Such activities could include, but are not limited to, increases in impervious cover in the surface watershed, inadequate erosion controls on the surface and subsurface watersheds, and release of pollutants into the surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities could alter water conditions to levels that are harmful to the Austin blind and Jollyville Plateau salamanders or their prey and result in direct, indirect, or cumulative adverse effects to these salamander individuals and their life cycles. Sedimentation can also adversely affect salamander habitat by reducing access to interstitial spaces.

(3) Actions that would deplete the aquifer to an extent that decreases or

stops the flow of occupied springs or that reduces the quantity of subterranean habitat used by the species. Such activities could include, but are not limited to water withdrawals from aquifers, increases in impervious cover over recharge areas, and channelization or other modification of recharge features that would decrease recharge. These activities could dewater habitat or cause reduced water quality to levels that are harmful to one of the two salamanders or their prey and result in adverse effects to their habitat.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an Integrated Natural Resources Management Plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands with a completed INRMP within or near the critical habitat designation. Therefore, we are not exempting lands from this final designation of critical habitat for the Austin blind and Jollyville Plateau salamanders pursuant to section 4(a)(3)(B)(i) of the Act.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise her discretion to exclude the area only if such exclusion would not result in the extinction of the species.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide.

In the case of the Austin blind and Jollyville Plateau salamanders, the benefits of critical habitat include public awareness of the species' presence and the importance of habitat protection and, in cases where a Federal nexus exists, increased habitat protection for the species due to the protection from adverse modification or destruction of critical habitat.

When considering the benefits of exclusion and whether exclusion is likely to result in implementation of a management plan that provides equal or more conservation than a critical habitat designation would provide, we consider a variety of factors, including but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

When considering the benefits of exclusion and whether exclusion is likely to result in the continuation, strengthening, or encouragement of partnerships, we consider a variety of factors including but not limited to, whether or not the Service has entered into written conservation agreements with landowners based on conservation partnerships or issued permits with assurances covering the species.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as additional public comments received, we evaluated whether certain lands were appropriate for exclusion from this final designation pursuant to section 4(b)(2) of the Act. As a result, we are excluding approximately 576 ac (233 ha) from the portions of Jollyville Plateau salamander proposed critical

habitat Units 3, 14, and 19 that are covered under the Four Points, Grandview Hills, and Buttercup Creek HCPs. The boundaries of these HCPs did not cover the entirety of their respective critical habitat units; therefore, the entire unit was not excluded. Table 3 below provides approximate areas of lands that meet the definition of critical habitat but have been excluded from our final designation. We are excluding these areas because we believe that they are appropriate for exclusion under the ''other relevant impacts'' provisions of section 4(b)(2) of the Act. Please note that we identified some additional areas within our proposed rule that we considered for exclusion, and we received requests for exclusion of additional areas during the public comment periods, but after further analysis we did not exclude these additional areas from critical habitat. Explanations for our conclusions in these cases can be found in the Summary of Comments and Recommendations section of this final rule.

TABLE 4—AREAS EXCLUDED FROM THE DESIGNATION OF CRITICAL HABITAT BY CRITICAL HABITAT UNIT

Critical habitat unit	Specific area	Basis for exclusion	Areas excluded in acres (hectares)
3	Buttercup Creek	Buttercup Creek HCP/Partnership	375 (152)
14	Grandview Hills	Grandview Hills HCP/Partnership	44 (18)
19	Four Points	Four Points HCP/Partnership	157 (64)

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. To consider economic impacts, we prepared a draft economic analysis of the proposed critical habitat designation and related factors (Industrial Economics 2013).

The intent of the final economic analysis (FEA) is to quantify the economic impacts of potential conservation efforts for the central Texas salamanders; some of these costs will likely be incurred regardless of whether we designate critical habitat (baseline). The economic impact of the final critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for the species (for example, under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the estimated costs incurred regardless of whether critical habitat is designated. The ''with critical habitat'' scenario describes the estimated incremental impacts (costs) associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat.

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The FEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. The Service uses this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the FEA considers those costs that may occur in the 23 years following the designation of critical habitat, which was determined to be the appropriate period for analysis because limited planning information was available for most activities to forecast activity levels for projects beyond a 23-year timeframe. The FEA quantifies economic impacts of the Austin blind and Jollyville Plateau salamanders' conservation efforts associated with the following categories of activity: (1) Development, (2) Water management activities, (3) Transportation projects, (4) Utility projects, (5) Mining, and (6) Livestock grazing.

All incremental costs anticipated to result from the designation are administrative in nature and result from the consideration of adverse modification in section 7 consultations and reinitiation for existing management plans. Consultations associated with development activities account for approximately 98.7 percent of incremental impacts in the FEA. Please refer to the FEA for a comprehensive discussion of the potential impacts.

Our economic analysis did not identify any disproportionate costs that are likely to result from the designation of critical habitat for the Austin blind and Jollyville Plateau salamanders. Consequently, we have determined not to use our discretion to exclude any areas from this designation of critical habitat based on economic impacts. A copy of the FEA with supporting documents may be obtained by contacting the Austin Ecological Services Field Office (see **ADDRESSES**) or by downloading them from the Internet at *http://www.regulations.gov*, Docket No. FWS–R2–ES–2013–0001.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. In preparing this final rule, we have determined that none of the lands within the designation of critical habitat for the Austin blind and Jollyville Plateau salamanders are owned and managed by the Department of Defense. Consequently, the Secretary is not exercising her discretion to exclude any areas from this final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether the landowners have developed any HCPs or other management plans for the area, or whether there are

conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues and consider the government-to-government relationship of the United States with tribal entities.

Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships

When considering the benefits of exclusion based on a current land management or conservation plan (HCPs as well as other types), we assess whether:

(1) The plan is complete and identifies how it provides for the conservation of the essential physical or biological features;

(2) there is a reasonable expectation that the conservation management strategies and actions will be implemented for the foreseeable future, based on past practices, written guidance, or regulations;

(3) the conservation strategies in the plan are likely to be effective;

(4) the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information; and

(5) whether the plan provides equal or more conservation than a critical habitat designation would provide.

When considering the benefits of exclusion based on whether it is likely to result in the continuation, strengthening, or encouragement of partnerships, we assess whether:

(1) The Service has entered into a written conservation agreement with a landowner based on a conservation partnership, or

(2) the Service has issued a permit with assurances covering the species.

Based on consideration of these other relevant factors, we believe the benefits of excluding the Four Points, Grandview Hills, and Buttercup Creek HCP areas outweigh the benefits of including them. Thus, we are excluding approximately 576 ac (233 ha) of non-Federal lands in portions of Units 3, 14, and 19 under these HCPs. See further discussion of our assessment below.

Four Points HCP Overview

The goals of the Four Points HCP are to avoid, minimize, and mitigate for the potential negative effects of construction and operation of mixed use (hotel, commercial, office, and retail) and residential development near and adjacent to currently occupied habitat of the endangered golden-cheeked warbler, endangered karst invertebrates (Tooth Cave ground beetle (*Rhadine persephone*) and bone cave harvestman), and the Jollyville Plateau salamander, and to contribute to conservation of the covered species and other listed and non-listed cave or karst fauna. The Jollyville Plateau salamander was covered as a non-listed species in the HCP and the Service provided ''No Surprises'' assurances covering the Jollyville Plateau salamander. The ''No Surprises'' rule (63 FR 8859, February 23, 1998) generally states that the Service will not require additional commitment of land, water, or financial compensation or restrictions on the use of land, water, or other natural resources otherwise available for development or use under the HCP for species covered by the permit under a properly implemented conservation plan without the consent of the permittee. No surprises assurances apply only to species adequately covered by the HCP in question and only to those permittees who are in full compliance with the terms of their HCP, incidental take permit, and other supporting documents.

The Four Points HCP authorizes incidental take of the golden-cheeked warbler and endangered karst invertebrates (in two caves). Under the Four Points HCP, mitigation for take was implemented by setting aside 179 ac (72 ha) of the property, which remain in a natural undisturbed condition and are preserved in perpetuity for the benefit of the listed and non-listed species. Specifically, one 52-ac (21-ha) on-site preserve contains five caves (four with Tooth Cave ground beetle and three with bone cave harvestman) and high-quality golden-cheeked warbler habitat, and contributes to the maintenance of water quality for Jollyville Plateau salamander springs downstream, both on and offsite of Four Points. Another approximately 127-ac (51-ha) onsite preserve supports high-quality golden-cheeked warbler habitat and contributes to protection of the water quality of onsite Jollyville Plateau salamander springs, Springs 21, 22, and 24. Additionally, development within the upland area that is immediately adjacent to the preserve lands with the Jollyville Plateau salamander will be sited to avoid drainages that contain springs known to support Jollyville Plateau salamanders. As part of the Four Points HCP, the permittee, New TPG—Four Points, is required to protect and manage the preserve areas in perpetuity in accordance with the permit, HCP, and conservation needs of the species.

All of the approximately 157 ac (64 ha) of non-Federal lands under the Four Points HCP in critical habitat Unit 19 that we are excluding have either been authorized for development or preserved in perpetuity for the conservation of the golden-cheeked warbler, Tooth Cave ground beetle, bone cave harvestman, and Jollyville Plateau salamander. The entirety of Unit 19 is not covered under this HCP, and thus, the entire unit was not excluded.

Grandview Hills HCP Overview

The goals of the Grandview Hills HCP are to avoid, minimize, and mitigate for the potential negative effects of construction and operation of residential and commercial development near and adjacent to Jollyville Plateau salamander, golden-cheeked warbler, black-capped vireo, Tooth Cave pseudoscorpion (*Tartarocreagris texana*), and the Kretschmarr Cave mold beetle (*Texamaurops reddelli*). The Jollyville Plateau salamander was covered as a non-listed species in the HCP, and the Service provided ''No Surprises'' assurances covering the Jollyville Plateau salamander.

The Grandview Hills HCP authorizes incidental take of golden-cheeked warbler, black-capped vireo, and karst invertebrates. Implementation of the HCP will result in preservation of approximately 313 ac (127 ha), which includes golden-cheeked warbler and black-capped vireo habitat, one endangered species karst invertebrate cave, and a spring and spring run containing Jollyville Plateau salamanders. Specifically, 266 ac (108 ha) of golden-cheeked warbler habitat will be deeded to the Balcones Canyonlands Preserve, 15 ac (6 ha) of black-capped vireo habitat will be restored, 600-ft (183-m) setbacks will be placed around Amber Cave, buffers will be placed around the Jollyville Plateau salamander spring, and drainage will be routed away from the Jollyville Plateau salamander site. As part of the Grandview Hills HCP, 69 Grandview LP (formerly Tomen-Parke Associates) is required to protect and manage the onsite preserve areas in perpetuity in accordance with the permit, HCP, and conservation needs of the species.

All of the approximately 44 ac (18 ha) of non-Federal lands under the Grandview Hills HCP in critical habtat Unit 14 that we are excluding have either been authorized for development or preserved in perpetuity for the conservation of the golden-cheeked warbler, black-capped vireo, Tooth Cave pseudoscorpion, Kretschmarr Cave mold beetle, and Jollyville Plateau salamander. The entirety of Unit 14 is not covered under this HCP, and thus, the entire unit was not excluded.

Buttercup Creek HCP Overview

The goals of the Buttercup Creek HCP are to avoid, minimize, and mitigate for the potential negative effects of construction and operation of single and multifamily residences and a school near and adjacent to currently occupied habitat of the endangered Tooth Cave ground beetle and other rare cave and karst species, including the Jollyville Plateau salamander, and to contribute to conservation of the listed and non-listed cave or karst fauna. The Jollyville Plateau salamander was covered as a non-listed species in an Implementing Agreement signed by the Service, and the Service provided ''No Surprises'' assurances covering the Jollyville Plateau salamander.

The Buttercup Creek HCP authorizes incidental take of endangered karst invertebrates, if encountered during construction. Under the Buttercup Creek HCP, mitigation for take of the karst invertebrates was implemented by setting aside 12 separate cave preserves (totaling 130 ac (53 ha) and encompassing 37 caves) and two greenbelt flood plains (33 ac (13 ha)) for a total of 163 ac (66 ha), which remain in a natural undisturbed condition and are preserved in perpetuity for the benefit of the listed and non-listed species. There are 21 occupied endangered karst invertebrate caves and 10 Jollyville Plateau salamander caves in the preserves. The shape and size of each preserve was designed to include surface drainage basins for all caves, the subsurface extent of all caves, and connectivity between nearby caves and features. Additionally, for those more sensitive cave preserves, particularly with regard to recharge, 7 of the 12 preserves are to be fenced off to restrict access for only maintenance, monitoring, and research. All preserves are regularly monitored, fences and gates are checked and repaired, and red imported fire ants (*Solenopsis invicta*) controlled. Surface water drainage from streets and parking areas will be diverted by permanent diversion structures to treatment systems and detention ponds or will discharge down-gradient of the cave preserves. An additional 3 to 4 in (76 to 102 mm) of topsoil are added in yards and landscaped areas for additional filtration and absorption of fertilizers, pesticides, and other common constituents. And an education and outreach program informs homeowners about the proper use of fertilizers and pesticides, the benefits of native landscaping, and the disposal of household hazardous waste.

All of the approximately 375 ac (152 ha) of non-Federal lands under the Buttercup Creek HCP in critical habitat Unit 3 that we are excluding have either been authorized for development or preserved in perpetuity for the conservation of the Tooth Cave ground beetle, Jollyville Plateau salamander, and other non-listed species. The entirety of Unit 3 is not covered under this HCP, and thus, the entire unit was not excluded.

Benefits of Inclusion

The principal benefit of including an area in critical habitat designation is the requirement of Federal agencies to ensure that actions that they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, which is the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Federal agencies must consult with the Service on actions that may affect a listed species, and refrain from actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some cases, the outcome of these analyses will be similar, because effects to habitat will often result in effects to the species. However, the regulatory standard is different, as the jeopardy analysis investigates the action's impact to survival and recovery of the species, while the adverse modification analysis investigates the action's effects to the designated critical habitat's contribution to conservation. This will, in many cases, lead to different results and different regulatory requirements. Thus, critical habitat designation may provide greater benefits to the recovery of a species than listing would alone. Therefore, critical habitat designation may provide a regulatory benefit for the Jollyville Plateau salamander on lands covered under the Four Points, Grandview Hills, and Buttercup Creek HCPs when there is a Federal nexus present for a project that might adversely modify critical habitat.

Another possible benefit of including lands in critical habitat is public education regarding the potential conservation value of an area that may help focus conservation efforts on areas of high conservation value for certain species. We consider any information about the Jollyville Plateau salamander and its habitat that reaches a wide audience, including parties engaged in conservation activities, to be valuable. Designation of critical habitat would provide educational benefits by informing Federal agencies and the public about the presence of listed species for all units.

In summary, we believe that the benefits of inclusion of lands under the Four Points, Grandview Hills, and Buttercup Creek HCPs are (1) a regulatory benefit when there is a Federal nexus present for a project that might adversely modify critical habitat and (2) educational benefits about the Jollyville Plateau salamander and its habitat.

Benefits of Exclusion

The benefits of excluding lands from critical habitat designation with properly implemented HCPs, such as the Four Points, Grandview Hills, and Buttercup Creek HCPs, include relieving the permit holders of any additional regulatory burden that might be imposed as a result of the designation. A related benefit of exclusion is the continued ability to maintain existing relationships and seek new partnerships with future HCP participants, including States, counties, local jurisdictions, conservation organizations, private landowners, and developers, which together can implement conservation actions that we would be unable to accomplish on our own. Not only are HCPs important for listed species, but they can help conserve many species that are not State or federally listed, which might not otherwise receive protection absent the HCPs. We place great value on the partnerships that are developed with HCPs.

The exclusion of lands under the Four Points, Grandview Hills, and Buttercup Creek HCPs from critical habitat will help preserve the partnership we have developed with the permittees, reinforce those relationships we are building with other developers, and foster future partnerships and development of future management plans. The preserve lands under these HCPs are providing some protection for the physical and biological features essential to the conservation of the species. Therefore, exclusion of these lands under the Four Points, Grandview Hills, and Buttercup Creek HCPs from critical habitat will help preserve the partnerships and will foster future partnerships and future conservation efforts. Excluding lands under these HCPs will show that we are committed to our partners to further the conservation for the Jollyville Plateau salamander and other endangered and threatened species.

Benefits of Exclusion Outweigh the Benefits of Inclusion

Four Points HCP

We reviewed and evaluated the benefits of inclusion versus exclusion from critical habitat of the Four Points HCP lands within proposed critical habitat Unit 3. We acknowledge that the Four Points development has not been completed within the watersheds of two of the three springs onsite, and, therefore, there is potential for more conservation benefit to this species at this site. In accordance with their HCP, New TPG—Four Points is required to capture and route runoff from development away from drainages that contain springs known to support Jollyville Plateau salamanders. Additionally, by our issuance of an incidental take permit under the HCP and covering the Jollyville Plateau salamander, the Service has already determined that long-term conservation benefits will result from the implementation of this HCP, which will occur regardless of critical habitat designation. Inclusion of the Four Points HCP lands in the critical habitat designation would provide little additional regulatory protection under section 7 of the Act because no additional future Federal actions that may affect the critical habitat are foreseen. Any potential educational benefits resulting from a critical habitat designation are reduced because the HCP permit holders are already aware of the species' location, and these benefits are outweighed by the benefits of exclusion.

While additional or different conservation measures may be included in future section 7 consultations and HCPs, at the time of this HCP, these conservation measures were considered appropriate to minimize, mitigate, or avoid impacts to the Jollyville Plateau salamander. The Service provided ''No Surprises'' assurances that the permit holders, if appropriately implementing the HCP, would not incur additional commitment of land, water, or financial compensation or restrictions on the use of land, water, or other natural resources otherwise available for development or use under the HCP for this species. Therefore, in consideration of the relevant impact to current and future partnerships as discussed under *Exclusions Based on Other Relevant Factors* above, we determined for the Four Points HCP lands that the benefits of exclusion (continuation, strengthening, and encouragement of conservation partnerships) outweigh the benefits of critical habitat designation (additional regulatory protections from activities with a Federal nexus and educational benefits).

Grandview Hills HCP

We reviewed and evaluated the benefits of inclusion versus exclusion from critical habitat Unit 14 of the Grandview Hills HCP lands. We acknowledge that the Grandview Hills development has not been completed within the watershed of the two springs, and, therefore, there is potential for more conservation benefit to this species at this site. In accordance with their HCP, 69 Grandview LP is required to capture and route runoff from development away from drainages that contain springs known to support the Jollyville Plateau salamander. Additionally, by our issuance of an incidental take permit under the HCP and covering the Jollyville Plateau salamander, the Service has already determined that long-term conservation benefits will result from the implementation of this HCP, which will occur regardless of critical habitat designation. Inclusion of the Grandview HCP lands in the critical habitat designation would provide little additional regulatory protection under section 7 of the Act because no additional future Federal actions that may affect the critical habitat are foreseen. Any potential educational benefits resulting from a critical habitat designation are reduced because the HCP permit holders are already aware of the species' location, and these benefits are outweighed by the benefits of exclusion.

While additional or different conservation measures may be included in future section 7 consultations and HCPs, at the time of this HCP, these conservation measures were considered appropriate to minimize, mitigate, or avoid impacts to the Jollyville Plateau salamander. The Service provided ''No Surprises'' assurances that the permit holders, if appropriately implementing the HCP, would not incur additional commitment of land, water, or financial compensation or restrictions on the use of land, water, or other natural resources otherwise available for development or use under the HCP for this species. Therefore, in consideration of the relevant impact to current and future partnerships and conservation benefits as discussed under *Exclusions Based on Other Relevant Factors* above, we determined for the Grandview Hills HCP lands that the benefits of exclusion (continuation, strengthening, and encouragement of conservation partnerships) outweigh the benefits of critical habitat designation (additional regulatory protections from activities with a Federal nexus and educational benefits).

Buttercup Creek HCP

We reviewed and evaluated the benefits of inclusion versus exclusion from critical habitat Unit 19 of the Buttercup Creek HCP lands. First, the Buttercup Creek development has been completed around each of the cave openings with Jollyville Plateau salamanders. Second, in accordance with their HCP, the permit holder, Forestar, captures and routes runoff from development away from the cave preserves. Finally, by our issuance of an incidental take permit under the HCP and covering the Jollyville Plateau salamander, the Service has already determined that long-term conservation benefits will result from the implementation of this HCP, which will occur regardless of critical habitat designation. Inclusion of the Buttercup Creek HCP lands in the critical habitat designation would provide little additional regulatory protection under section 7 of the Act because no additional future Federal actions that may affect the critical habitat are foreseen. Any potential educational benefits resulting from a critical habitat designation are reduced because the HCP permit holders are already aware of the species' location, and these benefits are outweighed by the benefits of exclusion.

While additional or different conservation measures may be included in future section 7 consultations and HCPs, at the time of this HCP, these conservation measures were considered appropriate to minimize, mitigate, or avoid impacts to the Jollyville Plateau salamander. The Service provided ''No Surprises'' assurances that the permit holders, if appropriately implementing the HCP, would not incur additional commitment of land, water, or financial compensation or restrictions on the use of land, water, or other natural resources otherwise available for development or use under the HCP for this species. Therefore, in consideration of the relevant impact to current and future partnerships and conservation benefits as discussed under *Exclusions Based on Other Relevant Factors* above, we determined for the Buttercup Creek HCP lands that the benefits of exclusion (continuation, strengthening, and encouragement of conservation partnerships) outweigh the benefits of critical habitat designation (additional regulatory protections from activities with a Federal nexus and educational benefits).

In summary, impacts to the Jollyville Plateau salamander from the HCP's

permitted activities within those areas being excluded have already been analyzed and authorized. Once an HCP is permitted, implementation of conservation measures will occur regardless of whether critical habitat is designated within its plan boundaries. Furthermore, we believe that the educational benefits of critical habitat designation are not significant due to the ongoing conservation efforts. Also, we are designating as critical habitat those lands surrounding lands covered by the Four Points, Grandview Hills, and Buttercup Creek HCPs, which already results in educational benefits for the Jollyville Plateau salamander and its habitat without designating the HCP lands as critical habitat. Thus, an inclusion of the Four Points, Grandview Hills, and Buttercup Creek HCP lands would not provide any additional educational benefits. As noted above, the exclusion of the Four Points, Grandview Hills, and Buttercup Creek HCP lands will help to strengthen the relationships between the Service and our partners and provide an incentive for the voluntary development of effective management plans that provide benefits to species. These partnership benefits are significant, because they serve to provide protection and conservation of species on private lands that would not otherwise occur.

The Exclusion Will Not Likely Result in Extinction of the Jollyville Plateau Salamander

The exclusion from final critical habitat designation of the Four Points, Grandview Hills, and Buttercup Creek HCP lands will not result in extinction of the Jollyville Plateau salamander due, in part, to the long-term conservation benefits that result from the implementation of the HCPs. In addition, the jeopardy standard of section 7 of the Act will also provide protection in occupied areas when there is a Federal nexus. Therefore, based on the above discussion, the Secretary is exercising her discretion to exclude 576 ac (233 ha) of land within the boundaries of these three HCPs from this final critical habitat designation.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

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

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C 801 *et seq.*), whenever an agency must 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 effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for the Austin blind and Jollyville Plateau salamanders will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts on these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Importantly, the incremental impacts of a rule must be both significant and substantial to prevent certification of the rule under the RFA and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the proposed critical habitat designation, but the per-entity economic impact is not significant, the Service may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the Service may also certify.

The Service's current understanding of recent case law is that Federal agencies are required to evaluate the potential impacts of rulemaking only on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts if sufficient data are available, whether or not this analysis is believed

by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the E.O. regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable.

In conclusion, we believe that, based on our interpretation of directly regulated entities under the RFA and relevant case law, this designation of critical habitat will directly regulate only Federal agencies, which are not by definition small business entities. And as such, we certify that, if promulgated, this designation of critical habitat would not have a significant economic impact on a substantial number of small business entities. Therefore, a regulatory flexibility analysis is not required. However, though not necessarily required by the RFA, in our final economic analysis for this rule we considered and evaluated the potential effects to third parties that may be involved with consultations with Federal action agencies related to this action.

Designation of critical habitat affects only activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the Austin blind and Jollyville Plateau salamanders. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (see *Application of the ''Adverse Modification Standard''* section).

In our final economic analysis of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the Austin blind and Jollyville Plateau salamanders and the designation of critical habitat. The analysis is based on the estimated impacts associated with the rulemaking as described in Chapters 1 through 4 and Appendix A of the analysis and evaluates the potential for economic impacts related to: (1) Residential and commercial development, (2) surface mining, and (3) habitat and species management.

The FEA analyzes the proposed designation as described in the proposed rule and does not reflect changes to the proposed critical habitat designation made in the final rule. In summary, we considered whether this designation would result in a significant economic effect on a substantial number of small entities. Based on the currently available information, we concluded that this rule would not result in a significant economic impact on a substantial number of small entities (Industrial Economics 2013, pp. A–2–A–8). Therefore, we are certifying that the designation of critical habitat for Austin blind and Jollyville Plateau salamanders will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration.

The economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with the Austin blind and Jollyville Plateau salamanders' conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because it would not produce a Federal mandate of $100 million or greater in any year; that is, it

is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The FEA concludes incremental impacts may occur due to administrative costs of section 7 consultations for development, water management activities, transportation projects, utility projects, mining, and livestock grazing; however, these are not expected to significantly affect small governments. Incremental impacts stemming from various species conservation and development control activities are expected to be borne by the Federal Government, Texas Department of Transportation, City of Austin, Lower Colorado River Authority, Travis and Williamson Counties, Concordia University, and other entities, which are not considered small governments. Consequently, we do not believe that the critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Austin blind and Jollyville Plateau salamanders in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. The FEA found that this designation will not affect a substantial number of small entities, but there could be costs of development restrictions in the form of reduced land values. A number of the private landowners are not small businesses. However, we found that 6,864 small developers may be affected by this designation, but the impact is less than 1 percent of average annual sales of these businesses. Based on information contained in the FEA and described within this document, it is not likely that economic impacts to a property owner will be of a sufficient magnitude to support a takings action. The takings implications assessment concludes that this designation of critical habitat for the Austin blind and Jollyville Plateau salamanders does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this rule does not have significant Federalism effects. A federalism impact summary statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in Texas. We received comments from Texas Parks and Wildlife Department, Texas Commission on Environmental Quality, Texas Department of Transportation, Office of the Governor, Texas Comptroller of Public Accounts, and the Texas Department of Agriculture and have addressed them in the Summary of Comments and Recommendations, which can be found on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/southwest/es/AustinTexas/* at Docket No. FWS–R2–ES–2013–0001. The designation of critical habitat in areas currently occupied by the Austin blind and Jollyville Plateau salamanders imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the Austin blind and Jollyville Plateau salamanders. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). The designation of critical habitat for the Austin blind and Jollyville Plateau salamanders is entirely within the 5th Circuit jurisdiction; therefore, we did not prepare an environmental analysis in connection with this critical habitat designation.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations

with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We determined that there are no tribal lands occupied by the Austin blind and Jollyville Plateau salamanders at the time of listing that contain the physical or biological features essential to conservation of the species, and no tribal lands unoccupied by the Austin blind and Jollyville Plateau salamanders that are essential for the conservation of the species. Therefore, we are not designating critical habitat for the Austin blind and Jollyville Plateau salamanders on tribal lands.

References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.gov,* Docket No. FWS–R2–ES–2013–0001, and *http://www.fws.gov/southwest/es/AustinTexas/,* and upon request from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary authors of this rulemaking are the staff members of the Austin Ecological Services Field Office with support from staff of the Arlington Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding entries for ''Salamander, Georgetown'' and ''Salamander, Salado'' in alphabetical order under AMPHIBIANS to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
AMPHIBIANS							
*	*	*	*	*	*	*	
Salamander, Austin blind.	*Eurycea waterlooensis.*	U.S.A. (TX)	Entire	E	817	17.95(d)	NA
*	*	*	*	*	*	*	
Salamander, Jollyville Plateau.	*Eurycea tonkawae* ..	U.S.A. (TX)	Entire	T	817	17.95(d)	NA
*	*	*	*	*	*	*	

■ 3. Amend § 17.95(d) by adding entries for ''Austin Blind Salamander (*Eurycea waterlooensis*),'' and ''Jollyville Plateau Salamander (*Eurycea tonkawae*)'' in the same alphabetical order in which the species appear in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians.*

* * * * *

Austin Blind Salamander (*Eurycea waterlooensis*)

(1) The critical habitat unit is depicted for Travis County, Texas, on the map below.

(2) Within this area, the primary constituent elements (PCEs) of the physical or biological features essential to the conservation of Austin blind salamander consist of six components:

(i) Surface habitat PCEs.

(A) *Water from the Barton Springs Segment of the Edwards Aquifer.* The groundwater is similar to natural aquifer conditions as it discharges from natural spring outlets. Concentrations of water quality constituents and contaminants are below levels that could exert direct lethal or sublethal effects (such as effects to reproduction, growth, development, or metabolic processes), or indirect effects (such as effects to the Austin blind salamander's prey base). Hydrologic regimes similar to the historical pattern of the specific sites are present, with constant surface flow. The water chemistry is similar to natural aquifer conditions, with temperatures from 67.8 to 72.3 °F (19.9 and 22.4 °C), dissolved oxygen concentrations from 5 to 7 mg L^{-1}, and specific water conductance from 605 to 740 µS cm^{-1}.

(B) *Rocky substrate with interstitial spaces.* Rocks in the substrate of the salamander's surface aquatic habitat are large enough to provide salamanders with cover, shelter, and foraging habitat (larger than 2.5 in (64 mm)). The substrate and interstitial spaces have minimal sedimentation.

(C) *Aquatic invertebrates for food.* The spring environment supports a diverse aquatic invertebrate community that includes crustaceans, insects, and flatworms.

(D) *Subterranean aquifer.* Access to the subsurface water table exists to provide shelter, protection, and space for reproduction. This access can occur in the form of large conduits that carry water to the spring outlet or fissures in the bedrock.

(ii) Subsurface habitat PCEs.

(A) *Water from the Barton Springs Segment of the Edwards Aquifer.* The groundwater is similar to natural aquifer conditions. Concentrations of water quality constituents and contaminants are below levels that could exert direct lethal or sublethal effects (such as effects to reproduction, growth, development, or metabolic processes), or indirect effects (such as effects to the Austin blind salamander's prey base). Hydrologic regimes similar to the historical pattern of the specific sites are present, with continuous flow in the subterranean habitat. The water chemistry is similar to natural aquifer conditions, including temperature, dissolved oxygen, and specific water conductance.

(B) *Subsurface spaces.* Conduits underground are large enough to provide salamanders with cover, shelter, and foraging habitat.

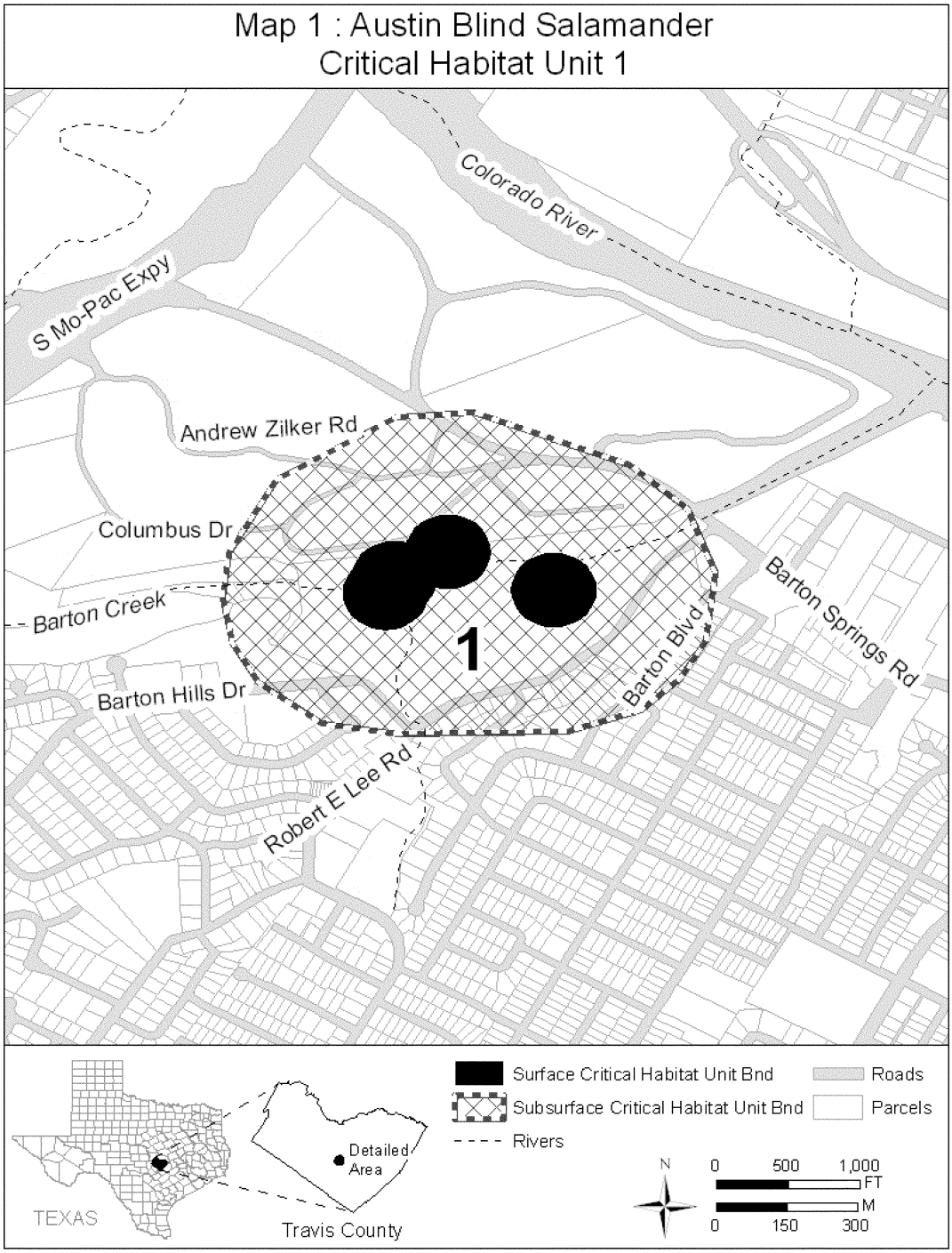
(C) *Aquatic invertebrates for food.* The habitat supports an aquatic invertebrate community that includes crustaceans, insects, or flatworms.

(3) Surface critical habitat includes the spring outlets and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat, including the dry stream channel during periods of no surface flow. The surface critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) existing within the legal boundaries on the effective date of this rule; however, the subsurface critical habitat may extend below such structures. The subsurface critical habitat includes underground features in a circle with a radius of 984 ft (300 m) around the springs.

(4) *Critical habitat map units.* Data layers defining map units were created using a geographic information system (GIS), which included species locations, roads, property boundaries, 2011 aerial photography, and USGS 7.5′ quadrangles. Points were placed on the GIS. We delineated critical habitat unit boundaries by starting with the cave or spring point locations that are occupied by the salamanders. From these cave or springs points, we delineated a circle with a 984-ft (300-m) radius to create the polygons that capture the extent to which we believe the salamander populations exist through underground conduits. The polygons were then simplified to reduce the number of vertices, but still retain the overall shape and extent. Subsequently, polygons that were within 98 ft (30 m) of each other were merged together. Each new merged polygon was then revised to remove extraneous divots or protrusions that resulted from the merge process. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the field office Internet site (*http://www.fws.gov/southwest/es/AustinTexas/*), *www.regulations.gov* at Docket No. FWS–R2–ES–2013–0001 and at the Service's Austin Ecological Services Field Office. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Unit 1: Barton Springs Unit, Travis County, Texas. Map of Unit 1 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

* * * * *

Jollyville Plateau Salamander (*Eurycea tonkawae*)

(1) Critical habitat units are depicted for Travis and Williamson Counties, Texas, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of Jollyville Plateau salamander consist of six components:

(i) Surface habitat PCEs.

(A) *Water from the Trinity Aquifer, Northern Segment of the Edwards Aquifer, and local alluvial aquifers.* The groundwater is similar to natural aquifer conditions as it discharges from natural spring outlets. Concentrations of water quality constituents and contaminants should be below levels that could exert direct lethal or sublethal effects (such as effects to reproduction, growth, development, or metabolic processes), or indirect effects (such as effects to the Jollyville Plateau salamander's prey base). Hydrologic regimes similar to the historical pattern of the specific sites are present, with at least some surface flow during the year. The water chemistry is similar to natural aquifer conditions, with temperatures from 64.1 to 73.4 °F (17.9 to 23 °C), dissolved oxygen concentrations from 5.6 to 8 mg L^{-1}, and specific water conductance from 550 to 721 µS cm^{-1}.

(B) *Rocky substrate with interstitial spaces.* Rocks in the substrate of the salamander's surface aquatic habitat are

large enough to provide salamanders with cover, shelter, and foraging habitat (larger than 2.5 in (64 mm)). The substrate and interstitial spaces have minimal sedimentation.

(C) *Aquatic invertebrates for food.* The spring environment supports a diverse aquatic invertebrate community that includes crustaceans, insects, and flatworms.

(D) *Subterranean aquifer.* Access to the subsurface water table should exist to provide shelter, protection, and space for reproduction. This access can occur in the form of large conduits that carry water to the spring outlet or porous voids between rocks in the streambed that extend down into the water table.

(ii) Subsurface habitat PCEs.

(A) *Water from the Trinity Aquifer, Northern Segment of the Edwards Aquifer, and local alluvial aquifers.* The groundwater is similar to natural aquifer conditions. Concentrations of water quality constituents and contaminants are below levels that could exert direct lethal or sublethal effects (such as effects to reproduction, growth, development, or metabolic processes), or indirect effects (such as effects to the Jollyville Plateau salamander's prey base). Hydrologic regimes similar to the historical pattern of the specific sites are present, with continuous flow. The water chemistry is similar to natural aquifer conditions, including temperature, dissolved oxygen, and specific water conductance.

(B) *Subsurface spaces.* Voids between rocks underground are large enough to provide salamanders with cover, shelter, and foraging habitat. These spaces have minimal sedimentation.

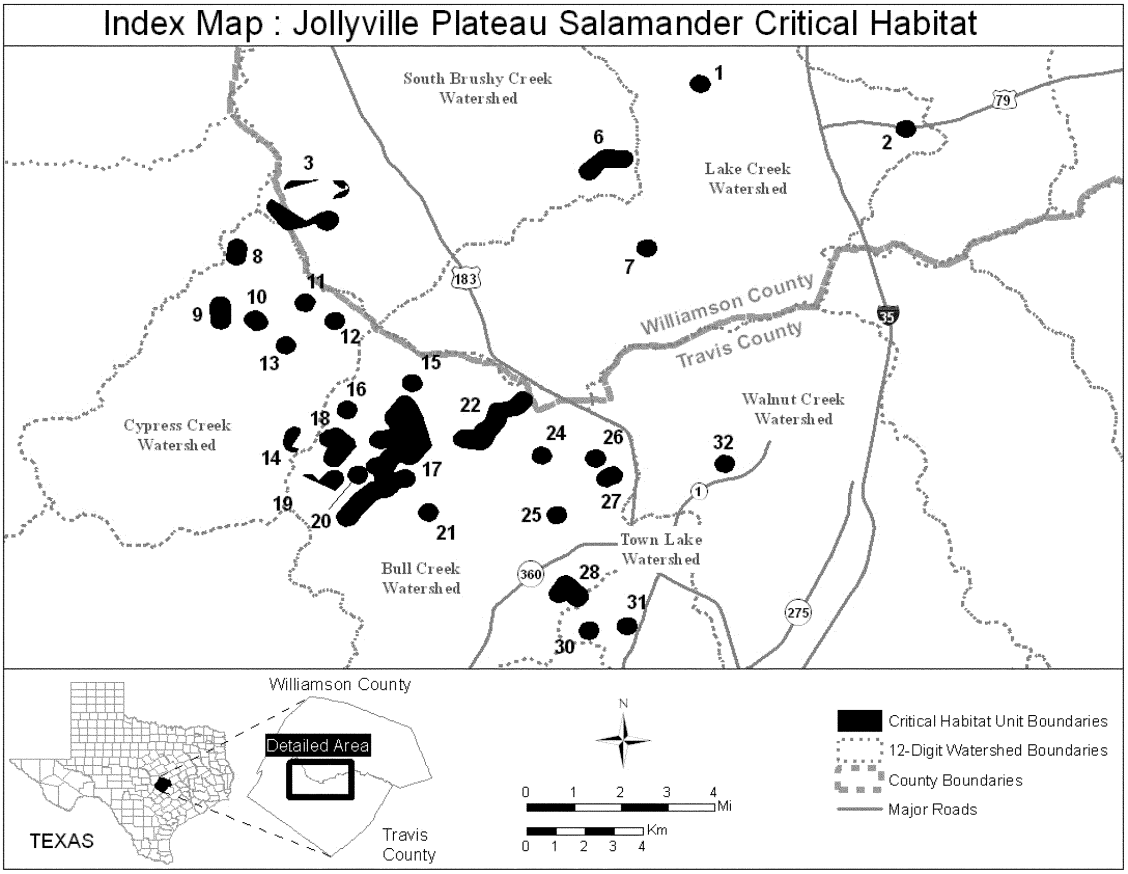
(C) *Aquatic invertebrates for food.* The habitat supports an aquatic invertebrate community that includes crustaceans, insects, or flatworms.

(3) Surface critical habitat includes the spring outlets and outflow up to the high water line and 262 ft (80 m) of upstream and downstream habitat, including the dry stream channel during periods of no surface flow. The surface critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) existing within the legal boundaries on the effective date of this rule; however, the subsurface critical habitat may extend below such structures. The subsurface critical habitat includes underground features in a circle with a radius of 984 ft (300 m) around the springs.

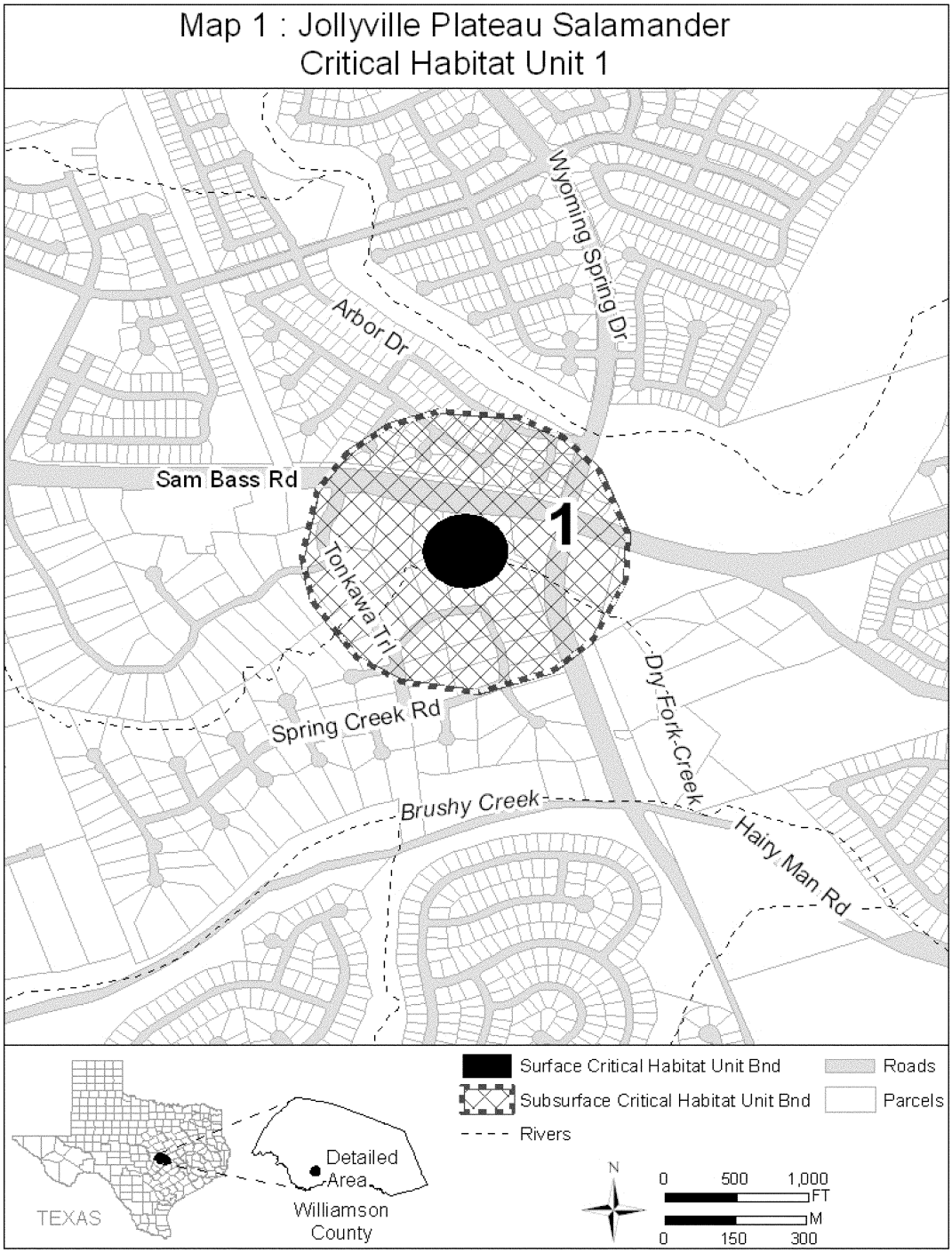
(4) *Critical habitat map units.* Data layers defining map units were created using a geographic information system (GIS), which included species locations, roads, property boundaries, 2011 aerial photography, and USGS 7.5′ quadrangles. Points were placed on the GIS. We delineated critical habitat unit boundaries by starting with the cave or spring point locations that are occupied by the salamanders. From these cave or springs points, we delineated a 984-ft (300-m) buffer to create the polygons that capture the extent to which we believe the salamander populations exist through underground conduits. The polygons were then simplified to reduce the number of vertices, but still retain the overall shape and extent. Subsequently, polygons that were within 98 ft (30 m) of each other were merged together. Each new merged polygon was then revised to remove extraneous divots or protrusions that resulted from the merge process. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the field office Internet site (*http://www.fws.gov/southwest/es/AustinTexas/), http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0001 and at the Service's Austin Ecological Services Field Office. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

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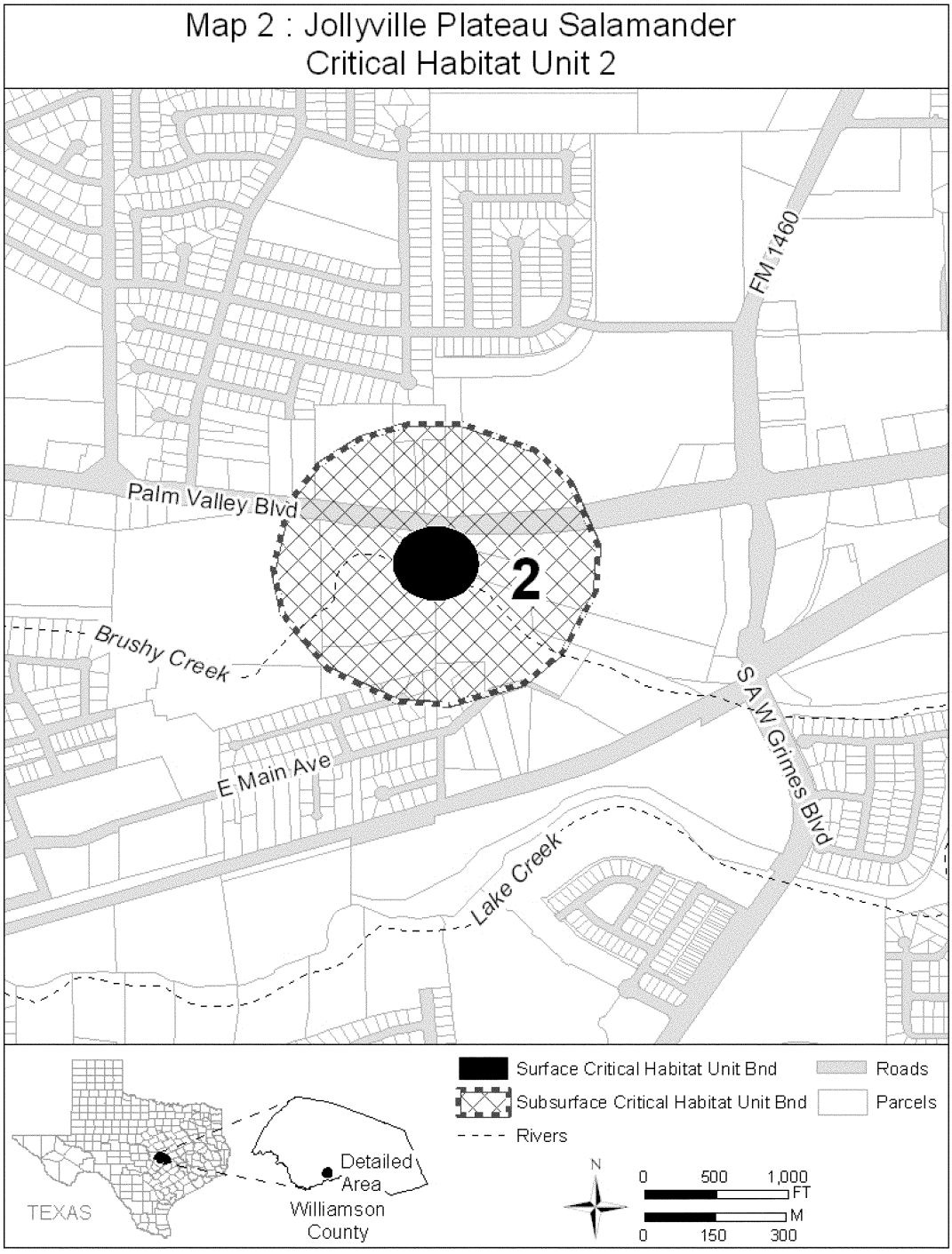
(5) Index map follows:



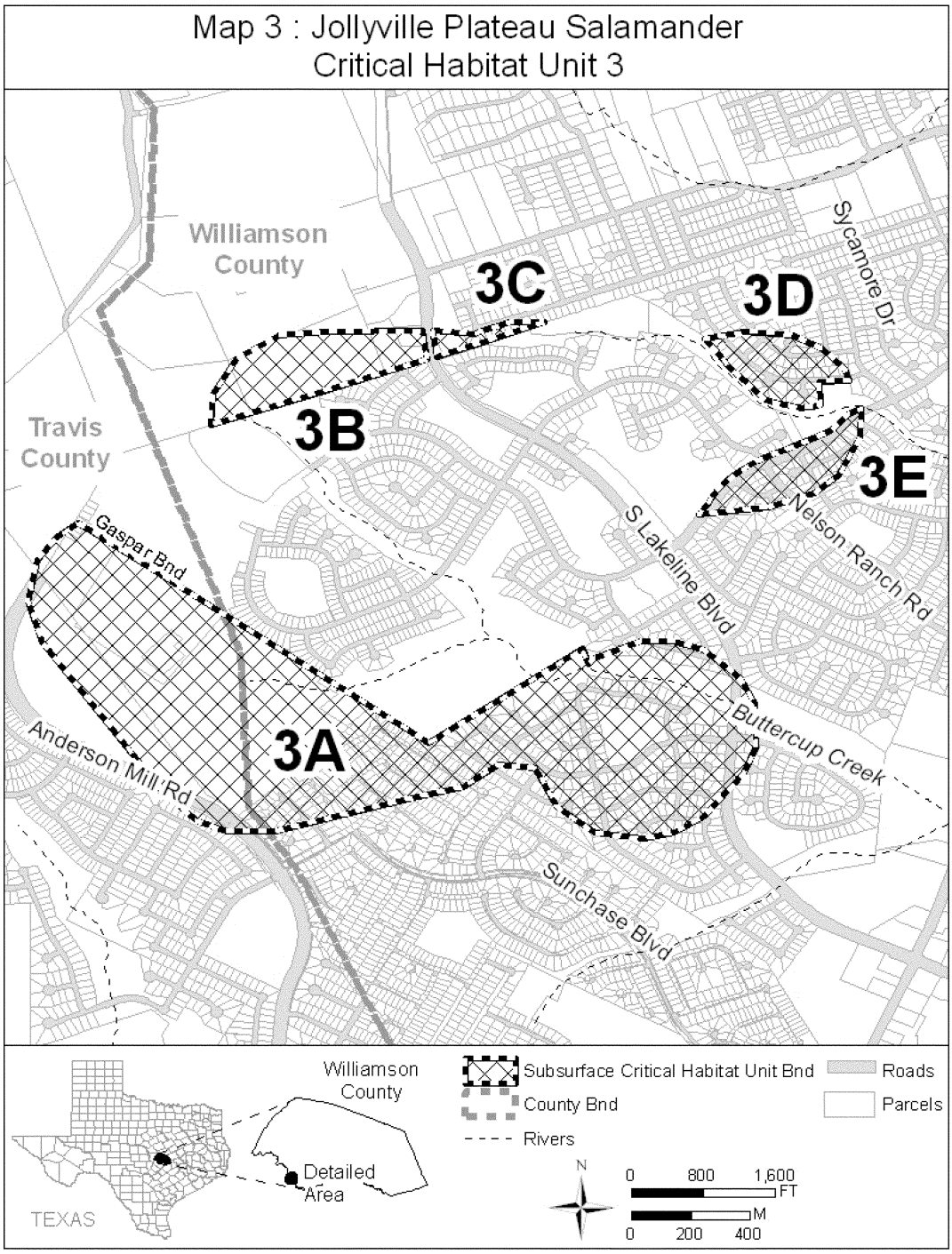
(6) Unit 1: Krienke Spring Unit, Williamson County, Texas. Map of Unit 1 follows:



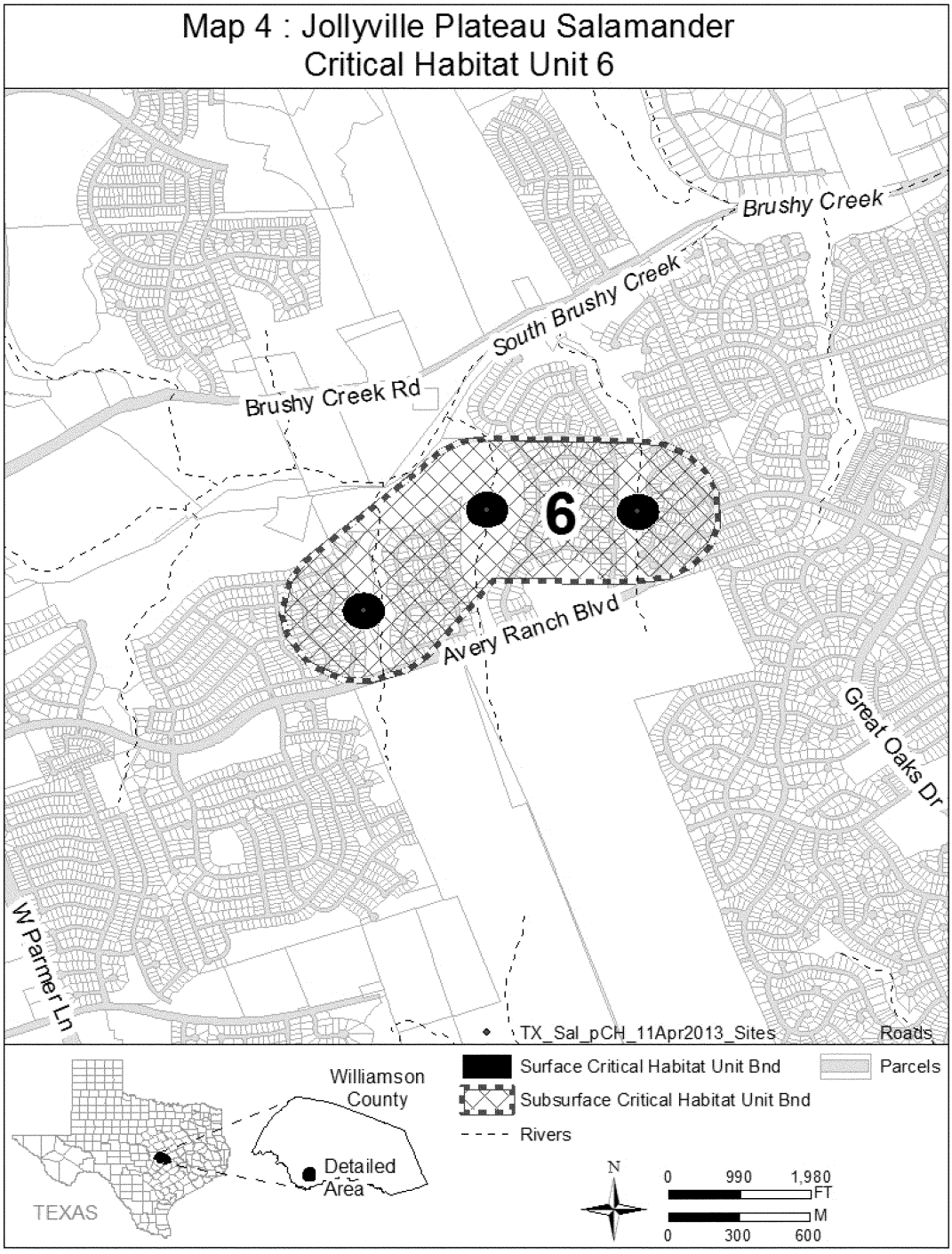
(7) Unit 2: Brushy Creek Spring Unit, Williamson County, Texas. Map of Unit 2 follows:



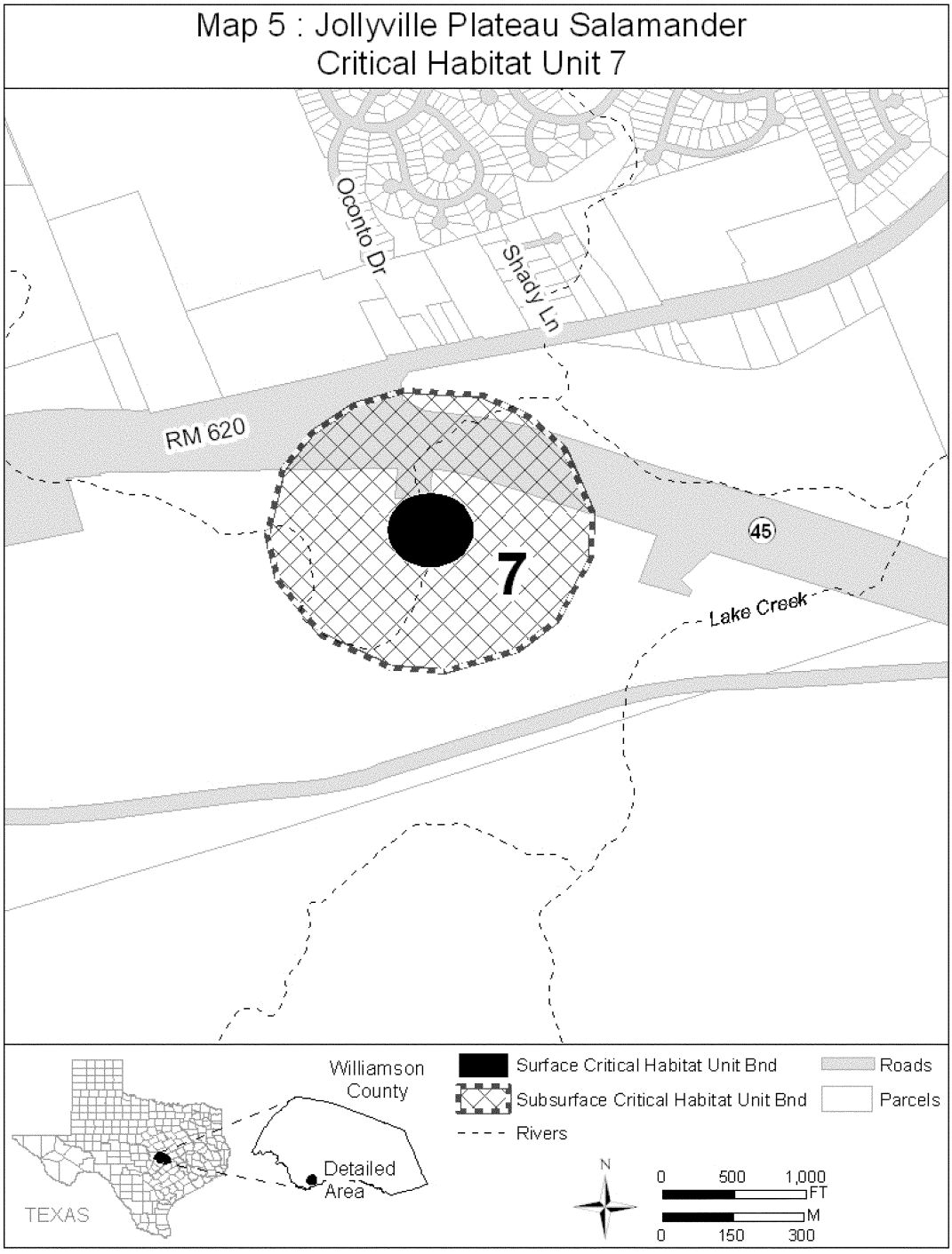
(8) Units 3A, 3B, 3C, 3D, and 3E: Buttercup Creek Units, Williamson and Travis Counties, Texas. Map of Units 3A, 3B, 3C, 3D, and 3E follows:



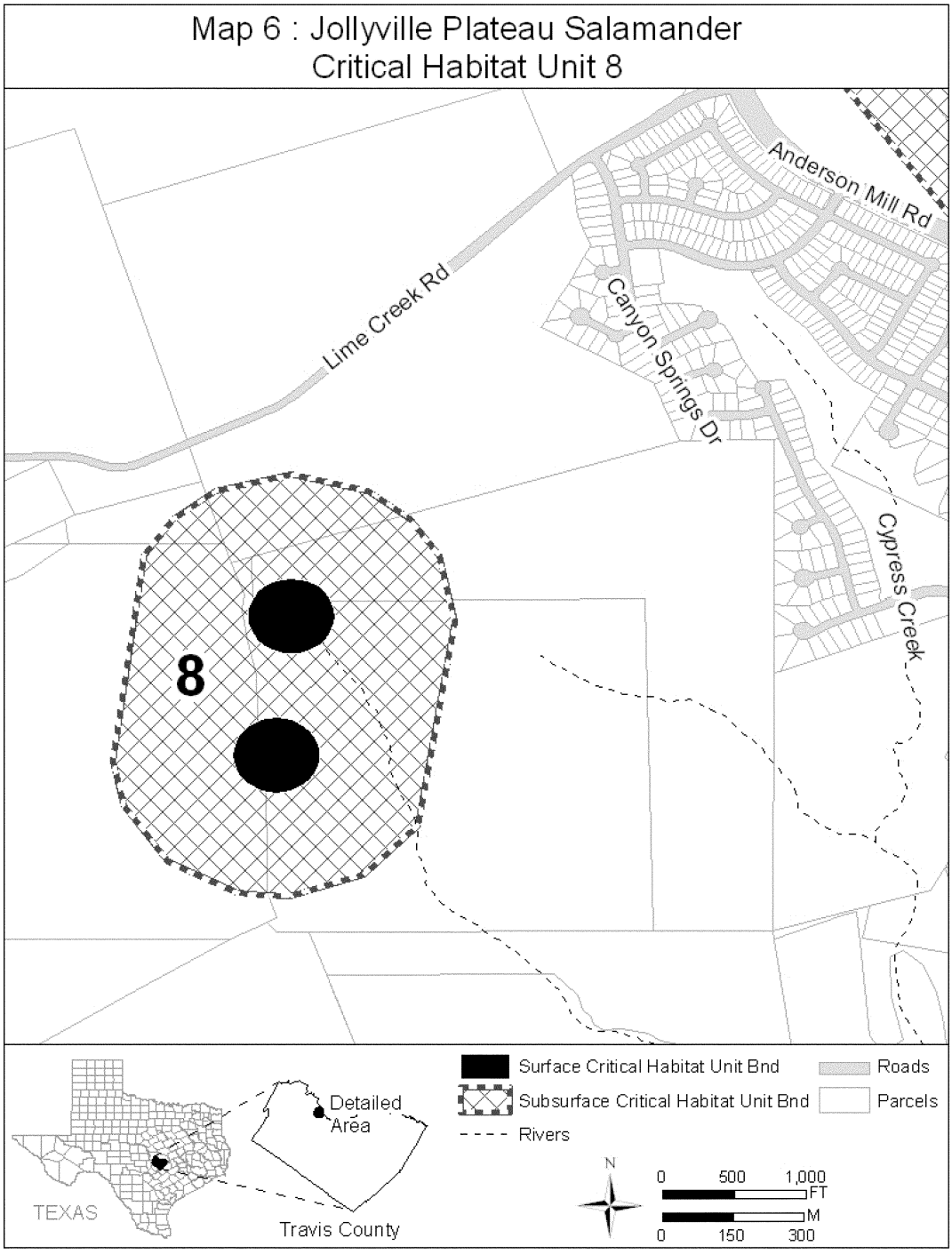
(9) Unit 6: Avery Springs Unit, Williamson County, Texas. Map of Unit 6 follows:



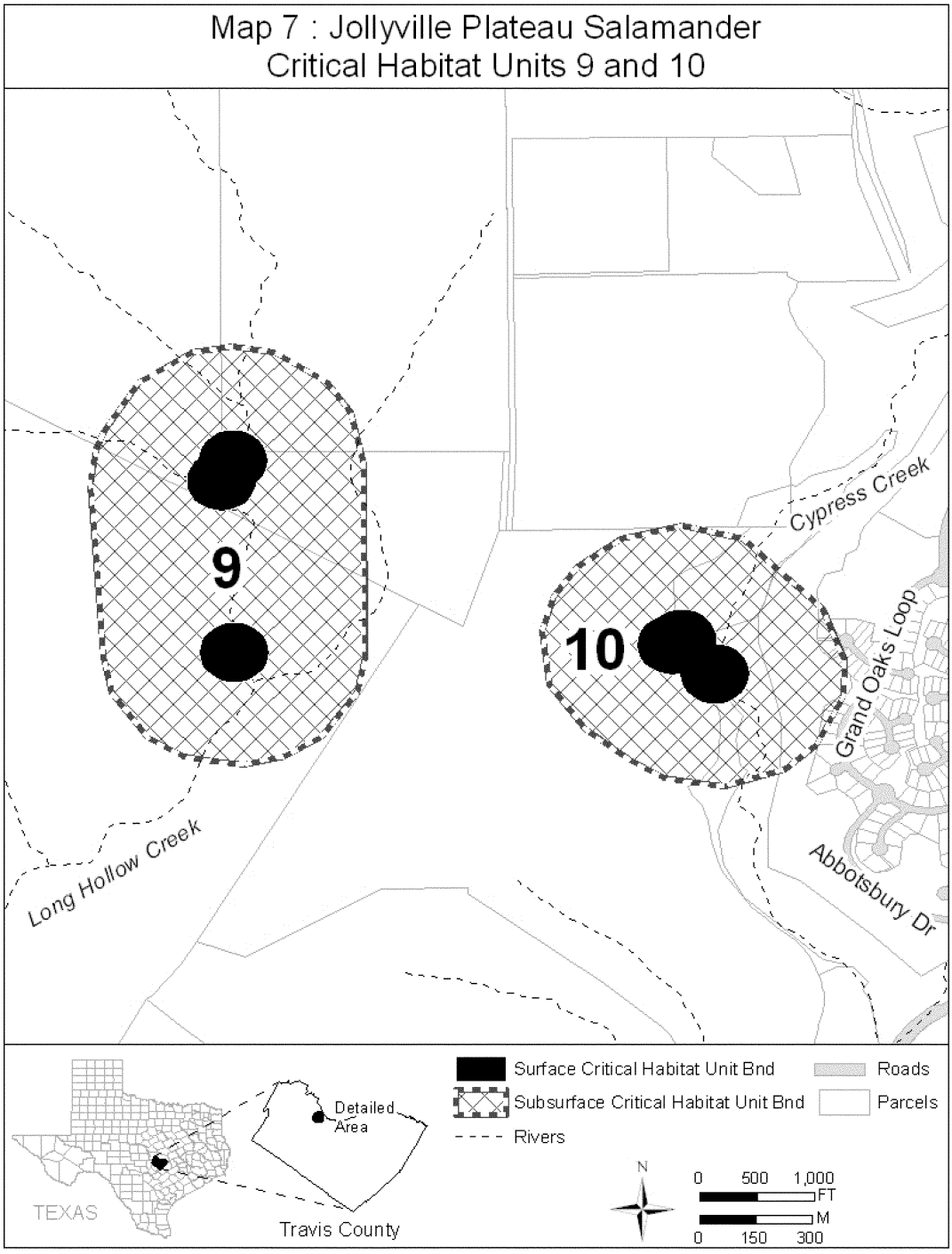
(10) Unit 7: PC Spring Unit, Williamson County, Texas. Map of Unit 7 follows:



(11) Unit 8: Baker and Audubon Spring Unit, Travis County, Texas, Map of Unit 8 follows:

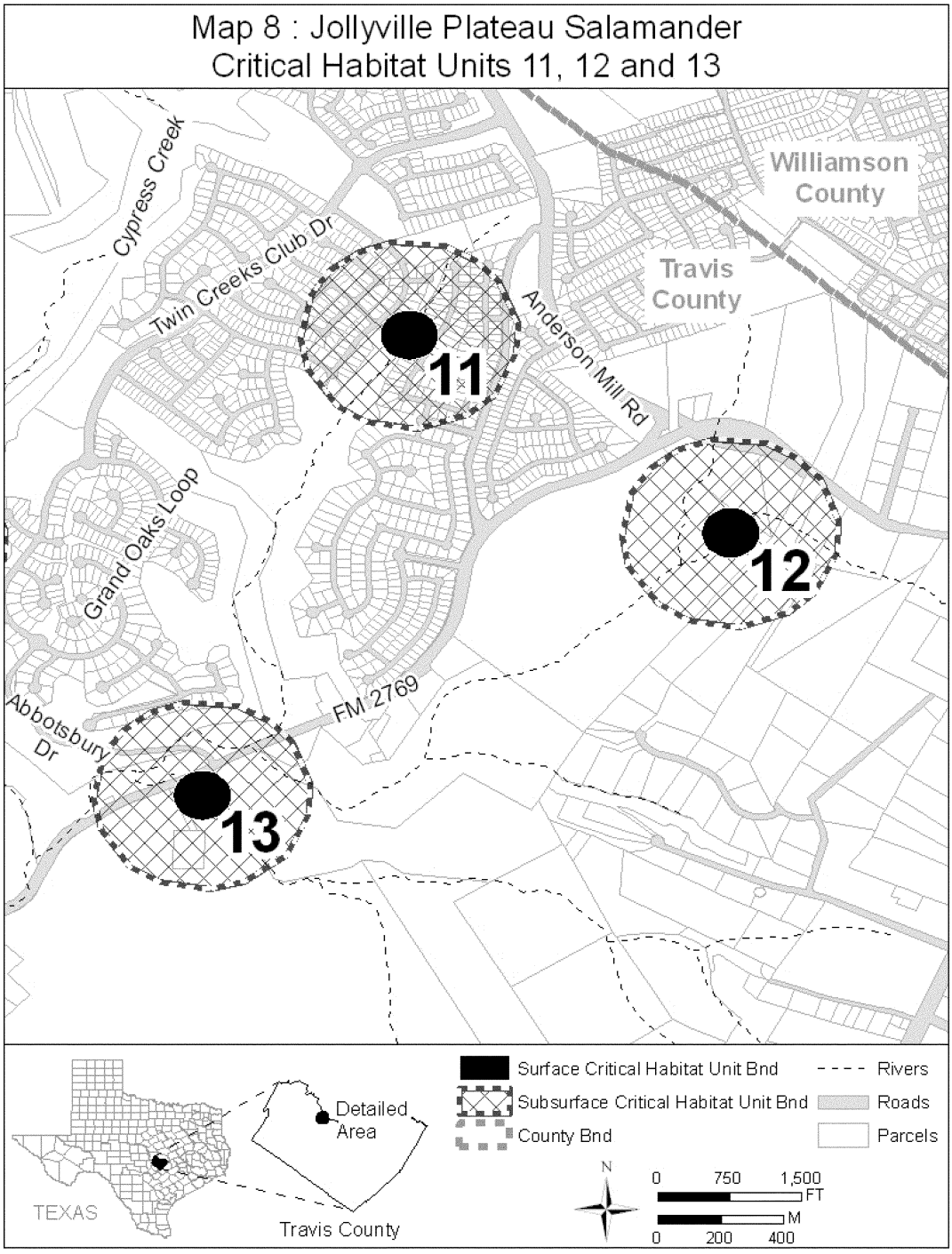


(12) Unit 9: Wheless Spring Unit, Travis County, Texas. Map of Units 9 and 10 follows:



(13) Unit 10: Blizzard R-Bar-B Spring Unit, Travis County, Texas. Map of Units 9 and 10 is provided at paragraph (12) of this entry.

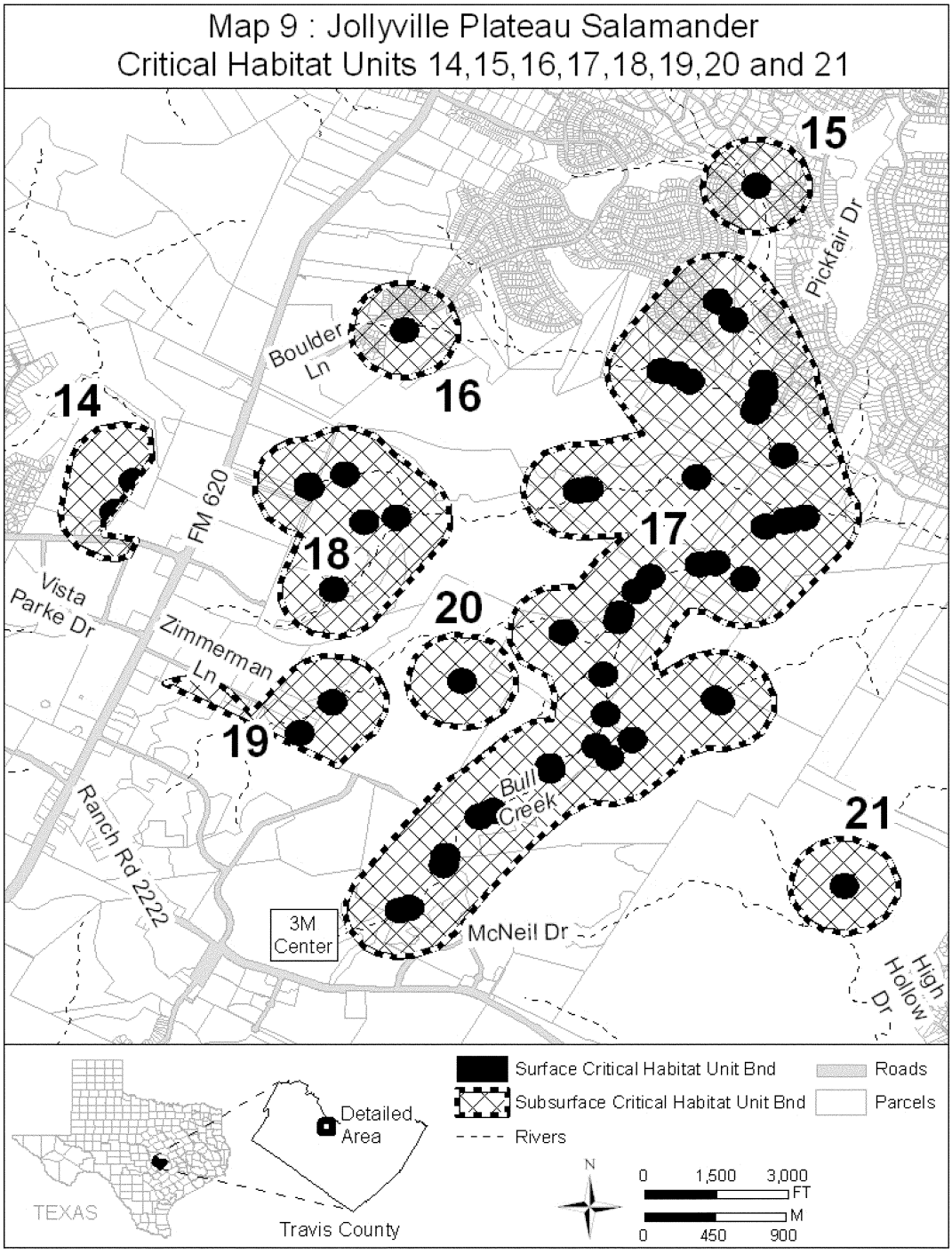
(14) Unit 11: House Spring Unit, Travis County, Texas. Map of Units 11, 12, and 13 follows:



(15) Unit 12: Kelly Hollow Spring Unit, Travis County, Texas. Map of Units 11, 12, and 13 is provided at paragraph (14) of this entry.

(16) Unit 13: MacDonald Well Unit, Travis County, Texas. Map of Units 11, 12, and 13 is provided at paragraph (14) of this entry.

(17) Unit 14: Kretschmarr Unit, Travis County, Texas. Map of Units 14, 15, 16, 17, 18, 19, 20, and 21 follows:



(18) Unit 15: Pope and Hiers Spring Unit, Travis County, Texas. Map of Units 14, 15, 16, 17, 18, 19, 20, and 21 is provided at paragraph (17) of this entry.

(19) Unit 16: Fern Gully Spring Unit, Travis County, Texas. Map of Units 14, 15, 16, 17, 18, 19, 20, and 21 is provided at paragraph (17) of this entry.

(20) Unit 17: Bull Creek 1 Unit, Travis County, Texas. Map of Units 14, 15, 16, 17, 18, 19, 20, and 21 is provided at paragraph (17) of this entry.

(21) Unit 18: Bull Creek 2 Unit, Travis County, Texas. Map of Units 14, 15, 16, 17, 18, 19, 20, and 21 is provided at paragraph (17) of this entry.

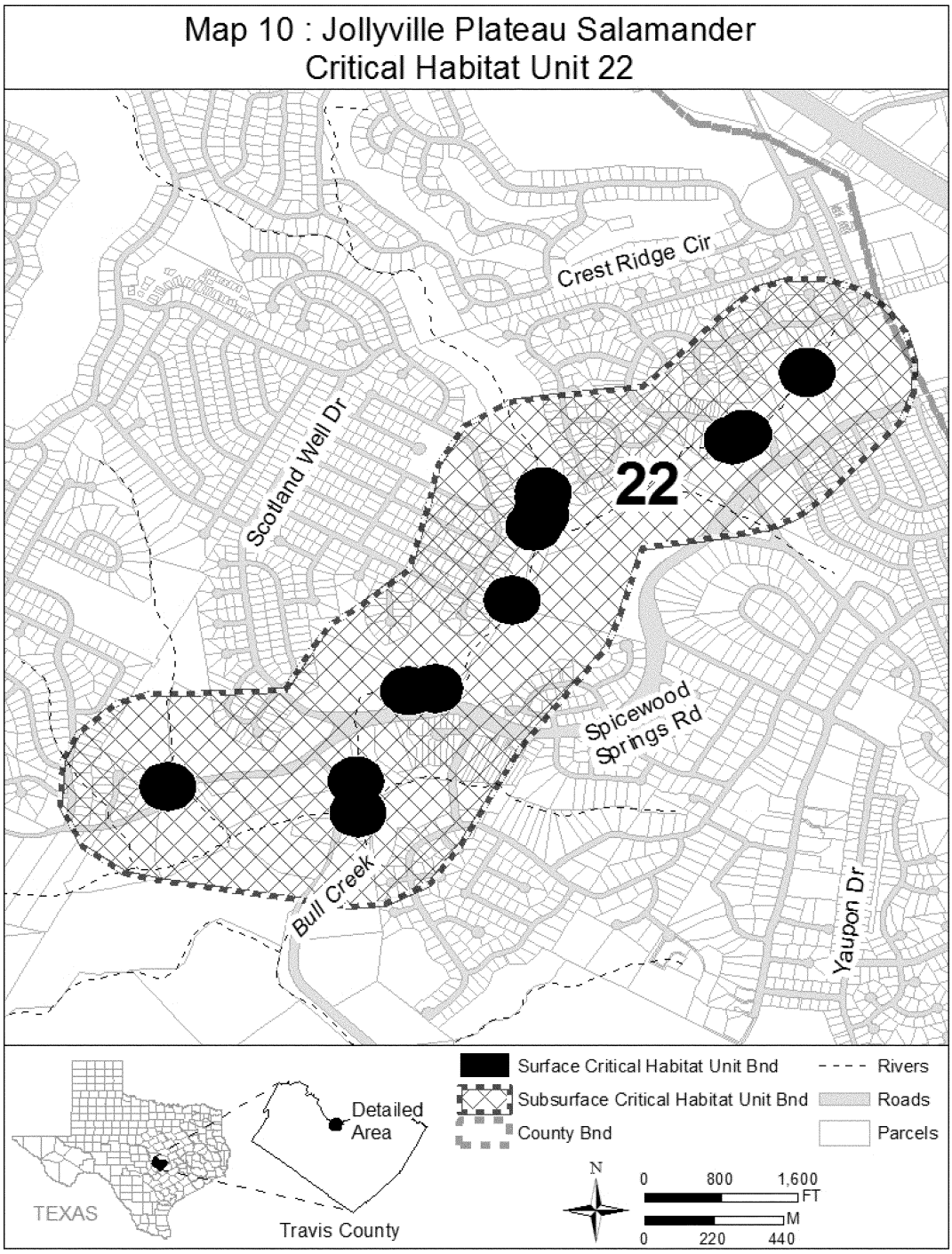
(22) Unit 19: Bull Creek 3 Unit, Travis County, Texas. Map of Units 14, 15, 16, 17, 18, 19, 20, and 21 is provided at paragraph (17) of this entry.

(23) Unit 20: Moss Gully Spring Unit, Travis County, Texas. Map of Units 14,

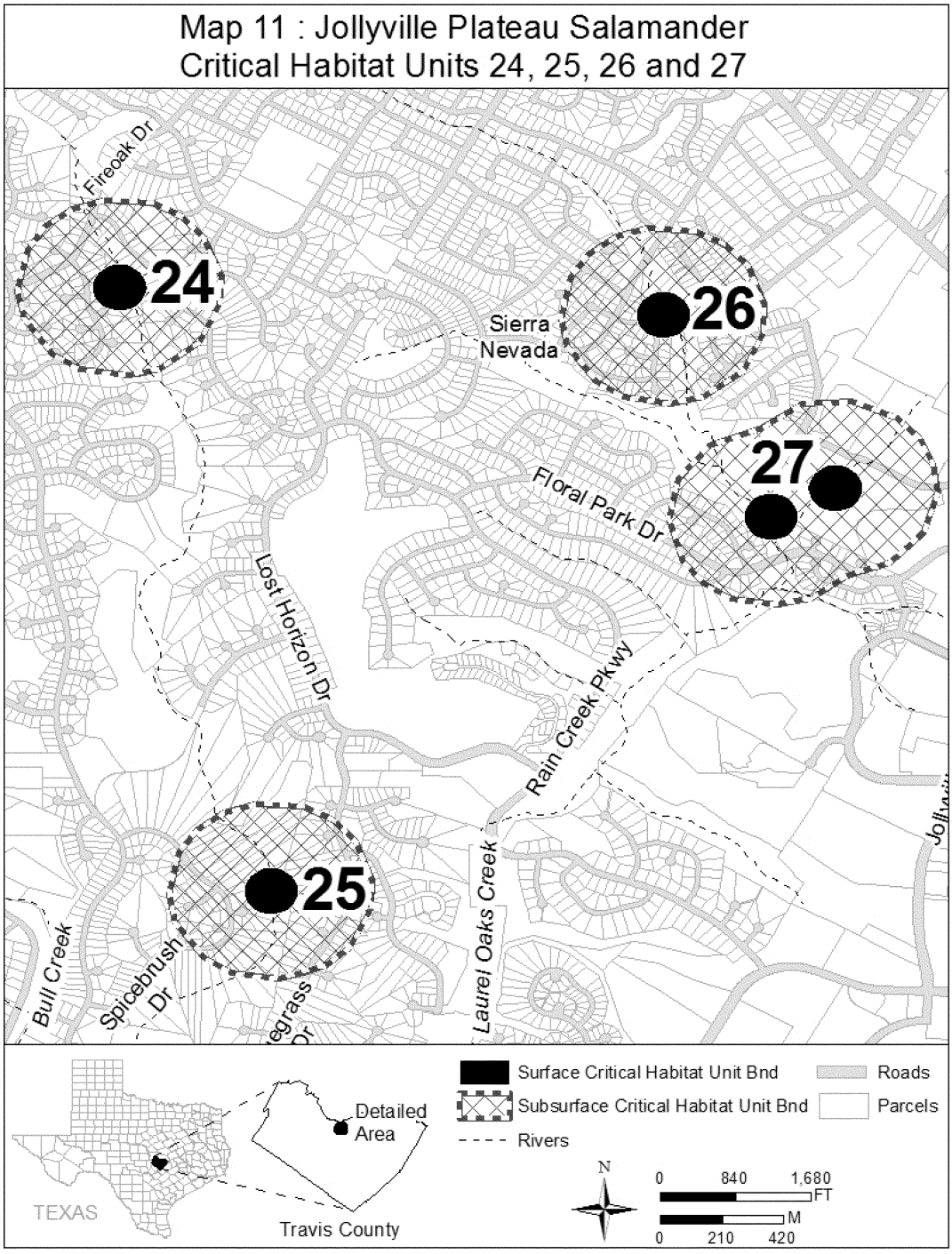
15, 16, 17, 18, 19, 20, and 21 is provided at paragraph (17) of this entry.

(24) Unit 21: Ivanhoe Spring Unit, Travis County, Texas. Map of Units 14, 15, 16, 17, 18, 19, 20, and 21 is provided at paragraph (17) of this entry.

(25) Unit 22: Sylvia Spring Area Unit, Williamson and Travis Counties, Texas. Map of Unit 22 follows:



(26) Unit 24: Long Hog Hollow Unit, Travis County, Texas. Map of Units 24, 25, 26, and 27 follows:

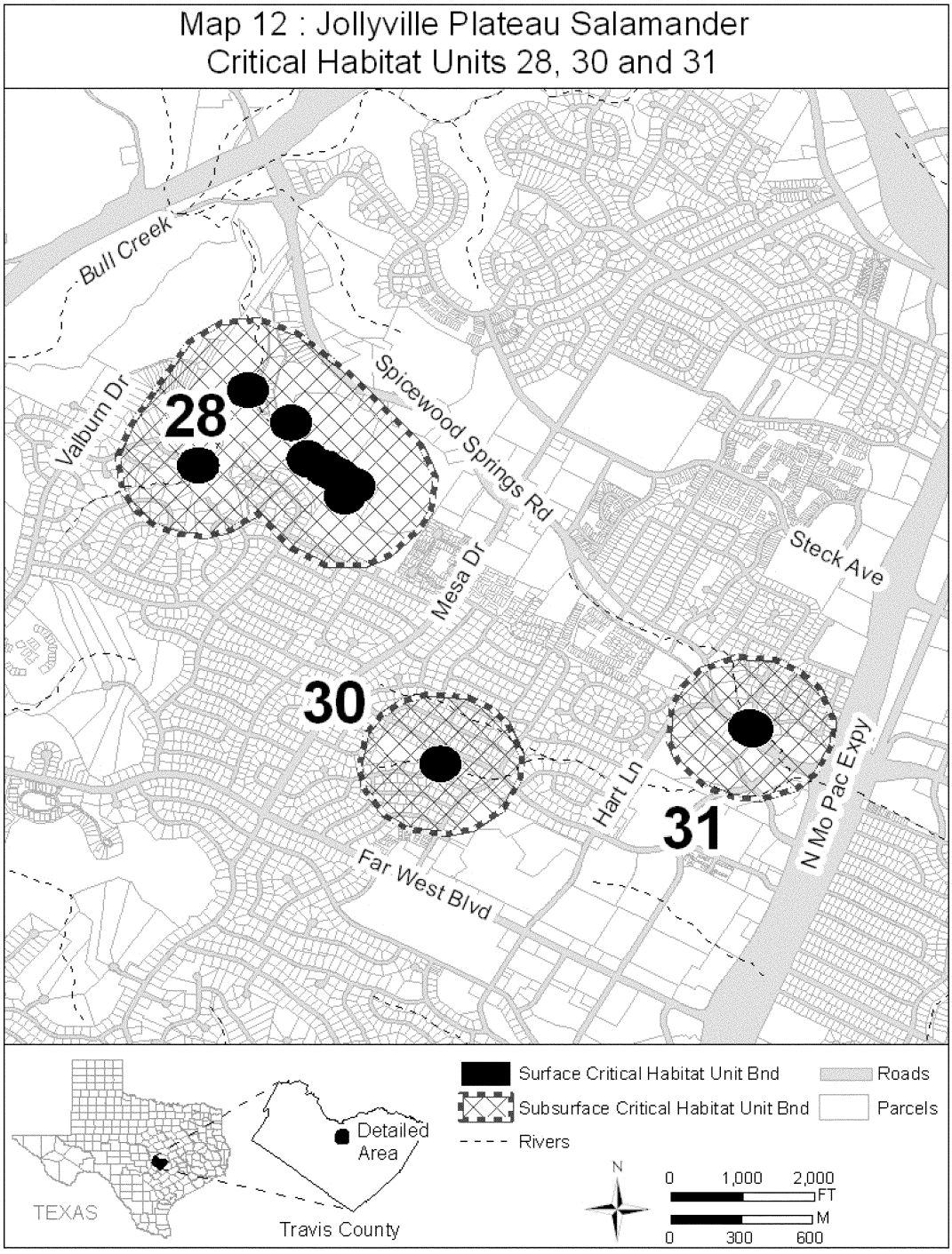


(27) Unit 25: Tributary 3 Unit, Travis County, Texas. Map of Units 24, 25, 26, and 27 is provided at paragraph (26) of this entry.

(28) Unit 26: Sierra Spring Unit, Travis County, Texas. Map of Units 24, 25, 26, and 27 is provided at paragraph (26) of this entry.

(29) Unit 27: Troll Spring Unit, Travis County, Texas. Map of Units 24, 25, 26, and 27 is provided at paragraph (26) of this entry.

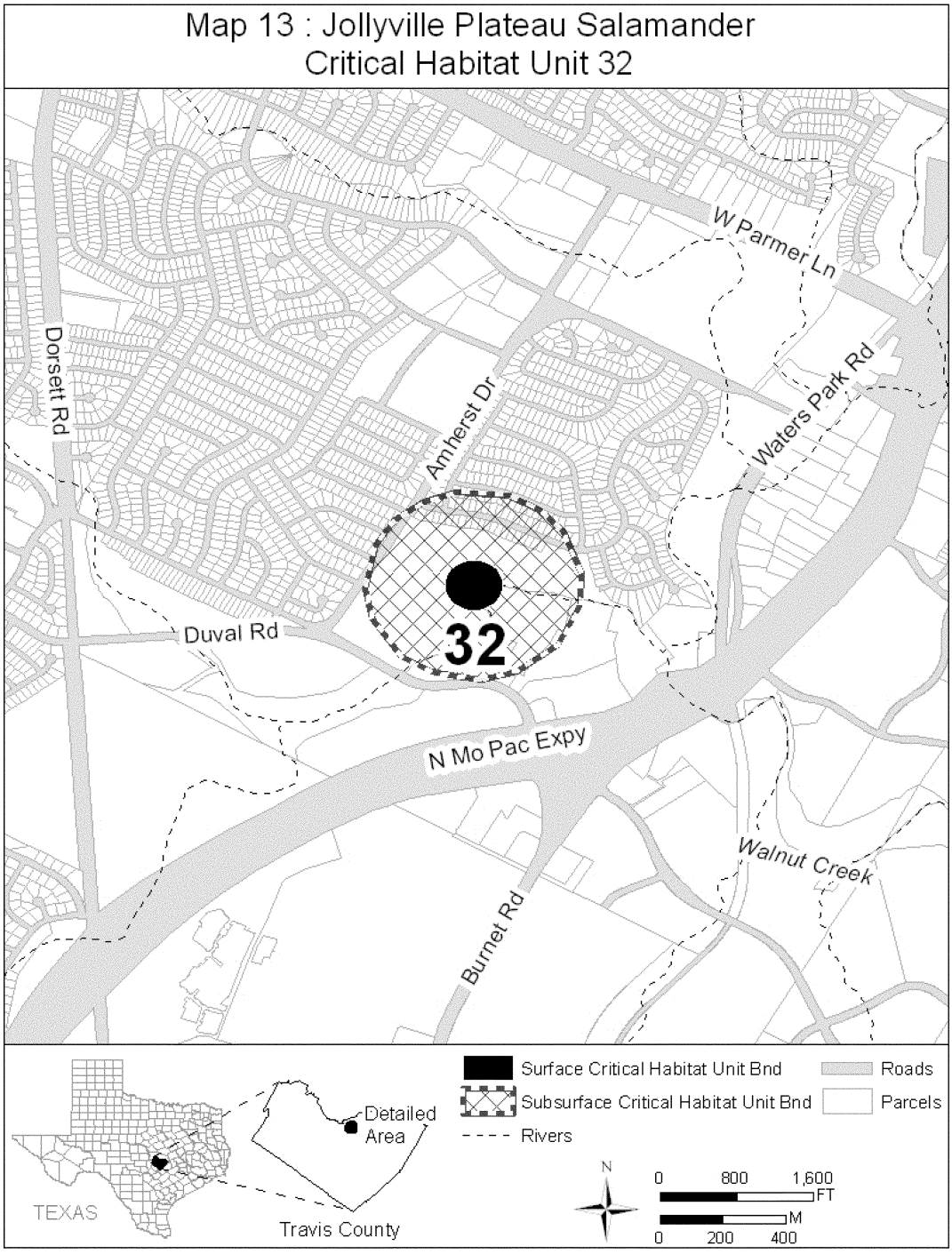
(30) Unit 28: Stillhouse Unit, Travis County, Texas. Map of Units 28, 30, and 31 follows:



(31) Unit 30: Indian Spring Unit, Travis County, Texas. Map of Units 28, 30, and 31 is provided at paragraph (30) of this entry.

(32) Unit 31: Spicewood Spring Unit, Travis County, Texas. Map of Units 28, 30, and 31 is provided at paragraph (30) of this entry.

(33) Unit 32: Balcones District Park Spring Unit, Travis County, Texas. Map of Unit 32 follows:



* * * * *

Dated: August 6, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–19713 Filed 8–19–13; 8:45 am]

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FEDERAL REGISTER

Vol. 78 Tuesday,
No. 161 August 20, 2013

Part IV

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Parts 573, 577, and 579
Early Warning Reporting, Foreign Defect Reporting, and Motor Vehicle and Equipment Recall Regulations; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 573, 577, and 579

[Docket No. NHTSA–2012–0068; Notice 2]

RIN 2127–AK72

Early Warning Reporting, Foreign Defect Reporting, and Motor Vehicle and Equipment Recall Regulations

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: NHTSA is adopting amendments to certain provisions of the early warning reporting (EWR) rule and the regulations governing motor vehicle and equipment safety recalls. The amendments to the EWR rule require light vehicle manufacturers to specify the vehicle type and the fuel and/or propulsion system type in their reports and add new component categories of stability control systems for light vehicles, buses, emergency vehicles, and medium-heavy vehicle manufacturers, and forward collision avoidance, lane departure prevention, and backover prevention for light vehicle manufacturers. These amendments will also require light vehicle manufacturers to segregate their Service Brake EWR data into two new discrete component categories. In addition, NHTSA will require motor vehicle manufacturers to report their annual list of substantially similar vehicles via the Internet.

As to safety recalls, we will now require certain manufacturers to provide a VIN-based recalls lookup tool on their Web site or the Web site of a third party; require the submission of recalls reports and information via the Internet; and require adjustments to the required content of the owner notification letters and envelopes required to be issued to owners and purchasers of recalled vehicles and equipment.

DATES: This rule is effective October 21, 2013, except the amendments to 49 CFR 573.9, 49 CFR 573.15, and 49 CFR part 579, which are effective August 20, 2014, and the amendment to 49 CFR 577.5, which is effective February 18, 2014. For more details, see **SUPPLEMENTARY INFORMATION.**

Petitions for Reconsideration: If you wish to petition for reconsideration of this rule, your petition must be received by October 4, 2013.

ADDRESSES: If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590.

The petition will be placed in the docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and follow the online instructions for accessing the docket. You may also visit DOT's Docket Management Facility, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001 for on-line access to the docket.

FOR FURTHER INFORMATION CONTACT: For non-legal issues on EWR requirements, contact Gayle Dalrymple, Office of Defects Investigation, NHTSA (telephone: 202–366–5559). For non-legal issues on recall requirements, contact Jennifer Timian, Office of Defects Investigation, NHTSA (telephone: 202–366–0209). For legal issues, contact Andrew J. DiMarsico, Office of Chief Counsel, NHTSA (telephone: 202–366–5263). You may send mail to these officials at National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Effective Dates

The effective dates of the requirements in this final rule are as follows: all amendments to the EWR rule reporting requirements, and contained within 49 CFR part 579, August 20, 2014; requirement of certain large volume light vehicle and motorcycle manufacturers to provide publicly accessible vehicle safety recall completion information, and contained within 49 CFR 573.15, August 20, 2014; requirement to submit safety recall-related reports, information, and associated documents through a secure portal on NHTSA's Web site, and contained within 49 CFR 573.9, August 20, 2014; requirement to include the standardized label on all safety recall owner notification letter envelopes, and contained within 49 CFR 577.5, February 18, 2014; all other amendments to the safety recall reporting and notification requirements addressed in this final rule, and contained within 49 CFR parts 573 and 577, October 21, 2013.

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I. Statutory and Regulatory Background

A. The Early Warning Reporting Rule

In 2000, Congress enacted the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Public Law 106–414. Up until the TREAD Act's enactment, NHTSA relied primarily on analyses of complaints from consumers and technical service bulletins (TSBs) from manufacturers to identify potential safety related defects in motor vehicles and motor vehicle equipment. Congress concluded that NHTSA did not have access to data that may provide an earlier warning of safety defects or information related to foreign recalls and safety campaigns. Accordingly, the TREAD Act required that NHTSA prescribe rules requiring motor vehicle and equipment manufacturers to submit certain information to NHTSA that would assist identifying potential safety related defects and to require manufacturers to submit reports on foreign defects and safety campaigns. *See* 49 U.S.C. 30166(m) and (l).

On July 10, 2002, NHTSA published its Early Warning Reporting (EWR) regulations requiring that motor vehicle and equipment manufacturers provide certain early warning data. 49 CFR part 579, subpart C; *see* 67 FR 45822. The EWR rule requires quarterly reporting of early warning information: production information; information on incidents involving death or injury; aggregate data on property damage claims, consumer complaints, warranty claims, and field reports; and copies of field reports (other than dealer reports and product evaluation reports) involving specified vehicle components, a fire, or a rollover.

As described more fully in the section, below, EWR requirements vary somewhat depending on the nature of the reporting entity (motor vehicle manufacturers, child restraint system manufacturers, tire manufacturers, and other equipment manufacturers) and the annual production of the entity. The EWR information NHTSA receives is stored in a database, called Artemis, which also contains additional information (e.g., domestic and foreign recall details and complaints filed directly by consumers) related to defects and investigations.

The Early Warning Division of the Office of Defects Investigation (ODI) reviews and analyzes a huge volume of early warning data and documents submitted by manufacturers. Using its traditional sources of information, such as consumer complaints from vehicle owner questionnaires (VOQs) and manufacturers' own communications, and the additional information provided by EWR submissions, ODI investigates potential safety defects. These investigations often result in recalls.

In the last several years, the agency published two amendments to the EWR regulations. On May 29, 2007, NHTSA made three changes to the EWR rule. 72 FR 29435. First, the definition of ''fire'' was amended to more accurately capture fire-related events. 72 FR 29443. Second, the agency eliminated the requirement to produce hard copies of a subset of field reports known as ''product evaluation reports.'' *Id.* Last, the agency limited the time that manufacturers must update a missing vehicle identification number (VIN)/tire identification number (TIN) information or a component in a death or injury incident to a period of no more than one year after NHTSA receives the initial report. 72 FR 29444. On December 5, 2008, NHTSA issued a notice of proposed rulemaking (NPRM) which was followed in September 2009 by a final rule that modified the reporting threshold for light vehicle, bus, medium-heavy vehicle (excluding emergency vehicles), motorcycle and trailer manufacturers' quarterly EWR reports. *See* 73 FR 74101 (December 5, 2008); 74 FR 47740, 47757–58 (September 17, 2009). This rule further required manufacturers to submit EWR reports with consistent product names from quarter to quarter and amended part 573 *Defect and Noncompliance Responsibility and Reports* to require tire manufacturers to provide tire identification number ranges for recalled tires. 74 FR 47757–58. The final rule also stated that manufacturers must provide the country of origin for a recalled component. *Id.* Last, the rule amended the definition of ''other safety campaign'' to be consistent with the definition of ''customer satisfaction campaign.'' *Id.*

The September 2009 rule did not address several proposals in the preceding December 2008 NPRM. Those proposals sought to require light vehicle manufacturers to include the vehicle type in the aggregate portion of their quarterly EWR reports, report on use of electronic stability control in light vehicles, and specify fuel and/or propulsion systems when providing model designations. *Id.* The agency decided to issue a separate rulemaking addressing some of the foregoing proposals to obtain more meaningful comments. *See* 74 FR 47744. This final rule addresses those proposals raised in the December 2008 NPRM not resolved by the September 2009 final rule.

Under the early warning reporting requirements of the TREAD Act, NHTSA is required to issue a rule establishing reporting requirements for manufacturers of motor vehicles and motor vehicle equipment to enhance the agency's ability to carry out the provisions of Chapter 301 of Title 49, United States Code, which is commonly referred to as the National Traffic and Motor Vehicle Safety Act or as the Safety Act. *See* 49 U.S.C. 30166(m)(1), (2). Under one subsection of the early warning provisions, NHTSA is to require reports of information in the manufacturers' possession to the extent that such information may assist in the identification of safety-related defects and which concern, *inter alia,* data on claims for deaths and aggregate

statistical data on property damage. 49 U.S.C. 30166(m)(3)(A)(i); *see also* 49 U.S.C. 30166(m)(3)(C). Another subsection, specifically 30166(m)(3)(B), authorizes the agency to require manufacturers to report information that may assist in the identification of safety defects. Specifically, section 30166(m)(3)(B) states: ''As part of the final rule . . . the Secretary may, to the extent that such information may assist in the identification of defects related to motor vehicle safety in motor vehicles and motor vehicle equipment in the United States, require manufacturers of motor vehicles or motor vehicle equipment to report, periodically or upon request of the Secretary, such information as the Secretary may request.'' This subsection conveys substantial authority and discretion to the agency. Most EWR data, with the exception of information on deaths and property damage claims, is reported under regulations authorized by this provision.

The agency's discretion is not unfettered. Per 49 U.S.C. 30166(m)(4)(D), NHTSA may not impose undue burdens upon manufacturers, taking into account the cost incurred by manufacturers to report EWR data and the agency's ability to use the EWR data meaningfully to assist in the identification of safety defects.

The EWR regulation divides manufacturers of motor vehicles and motor vehicle equipment into two groups with different reporting responsibilities for reporting information. The first group consists of: (a) Larger vehicle manufacturers that meet certain production thresholds that produce light vehicles, buses, emergency vehicles, medium-heavy vehicles, trailers and/or motorcycles; (b) tire manufacturers that produce over a certain number per tire line; and (c) all manufacturers of child restraints. Light vehicle, motorcycle, trailer and medium-heavy vehicle manufacturers except buses and emergency vehicles that produced, imported, offered for sale, or sold 5,000 or more vehicles annually in the United States are required to report comprehensive reports every calendar quarter. Emergency vehicle manufacturers must report if they produced, imported, offered for sale, or sold 500 or more vehicles annually and bus manufacturers must report if they produced, imported or offered for sale, or sold 100 or more buses annually in the United States. Passenger car tire, light truck tire and motorcycle tire manufacturers that produced, imported, offered for sale, or sold 15,000 or more tires per tire line are also required to provide comprehensive quarterly reports. The first group must provide comprehensive reports every calendar quarter. 49 CFR 579.21–579.26. The second group consists of all other manufacturers of motor vehicles and motor vehicle equipment (i.e., vehicle manufacturers that produce, import, or sell in the United States fewer than 5,000 light vehicles, medium-heavy vehicles (excluding emergency vehicles and buses), motorcycles, or trailers annually; vehicle manufacturers that produce, import, or sell in the United States fewer than 500 emergency vehicles annually; vehicle manufacturers that produce, import, or sell in the United States fewer than 100 buses annually; manufacturers of original motor vehicle equipment; and manufacturers of replacement motor vehicle equipment other than child restraint systems and tires). The second group has limited reporting responsibility.[1] 49 CFR 579.27.

Light vehicle, bus, emergency vehicle and medium-heavy vehicle manufacturers must provide information relating to:

- Production (the cumulative total of vehicles or items of equipment manufactured in the year).
- Incidents involving death or injury based on claims and notices received by the manufacturer.
- Claims relating to property damage received by the manufacturer.
- Consumer complaints (a communication by a consumer to the manufacturer that expresses dissatisfaction with the manufacturer's product or performance of its product or an alleged defect).
- Warranty claims paid by the manufacturer pursuant to a warranty program (in the tire industry these are warranty adjustment claims).
- Field reports (a report prepared by an employee or representative of the manufacturer concerning the failure, malfunction, lack of durability or other performance problem of a motor vehicle or item of motor vehicle equipment).

For property damage claims, warranty claims, consumer complaints and field reports, light vehicle, bus, emergency vehicle and medium-heavy vehicle manufacturers submit information in the form of numerical tallies, by specified system and component. These data are referred to as aggregate data. Reports on deaths or injuries contain specified data elements. In addition, light vehicle, bus, emergency vehicle and medium-heavy vehicle manufacturers are required to submit copies of field reports, except for dealer and product evaluation reports.

On a quarterly basis, vehicle and equipment manufacturers meeting the production thresholds discussed above must provide comprehensive reports for each make and model for the calendar year of the report and nine previous model years for vehicles and four years for equipment. The vehicle systems or components on which manufacturers provide information vary depending upon the type of vehicle or equipment manufactured. Light vehicle manufacturers must provide reports on twenty (20) vehicle components or systems: steering, suspension, service brake, parking brake, engine and engine cooling system, fuel system, power train, electrical system, exterior lighting, visibility, air bags, seat belts, structure, latch, vehicle speed control, tires, wheels, seats, fire and rollover. Bus, emergency vehicle and medium-heavy vehicle manufacturers must provide reports on an additional four (4) vehicle components or systems: service brake air, fuel system diesel, fuel system other, and trailer hitch.[2]

B. The Foreign Defect Reporting Rule

The TREAD Act also amended 49 U.S.C. 30166 to add a new subsection (l) to address reporting of foreign defects and other safety campaigns by vehicle and equipment manufacturers. This section requires manufacturers of motor vehicles or items of motor vehicle equipment to notify NHTSA if the manufacturer or a foreign government determines that the manufacturer should conduct a recall or other safety campaign on a motor vehicle or item of motor vehicle equipment that is identical or substantially similar to a motor vehicle or item of motor vehicle equipment offered for sale in the United States. 49 U.S.C. 30166(l). Subsection (l) does not define ''identical'' or the term ''substantially similar.'' Under the TREAD Act's foreign defect reporting provisions, NHTSA is to specify the contents of the notification. *Id.*

On October 11, 2002, NHTSA published regulations implementing foreign motor vehicle and product defect reporting provisions of the TREAD Act, 49 U.S.C. 30166(l). 67 FR 63295, 63310; 49 CFR part 579, subpart B. The Foreign Defect Reporting rule requires certain motor vehicle

[1] In contrast to the comprehensive quarterly reports provided by manufacturers in the first group, the second group of manufacturers does not have to provide quarterly reports. These manufacturers only submit information about a death incident when they receive a claim or notice of a death.

[2] Manufacturers of motorcycles, trailers, child restraints and tires report on varying systems and components. *See* 49 CFR 579.23–26.

manufacturers and motor vehicle equipment manufacturers to report information and submit documents to NHTSA when a manufacturer or a foreign government determines that a safety recall or other safety campaign should be conducted in a foreign country for products that are identical or substantially similar to vehicles or items of equipment sold or offered for sale in the United States. 49 U.S.C. 30166(l)(1) & (2). To assist the agency's program implementation, manufacturers must submit an annual list of substantially similar vehicles to NHTSA. 49 CFR 579.11(e). This list is due by November 1 of each year. Manufacturers may submit their substantially similar vehicle list by mail, facsimile or by email. 49 CFR 579.6(a). NHTSA offers a Microsoft Excel template on its Web site *http://www.safercar.gov/* that manufacturers can download and use to upload their substantially similar lists directly to NHTSA's Artemis database. The vast majority of manufacturers submit their substantially similar list by uploading the template directly to the agency.

C. Domestic Safety Defect and Noncompliance Recalls

Pursuant to 49 U.S.C. 30118 and 30119, manufacturers are required to provide notice to the Secretary if the manufacturer determines that a motor vehicle or item of motor vehicle equipment contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard. The regulation implementing the manufacturer's requirement to provide notice to NHTSA is located at 49 CFR part 573 *Defect and Noncompliance Responsibility and Reports,* which, among other things, requires manufacturers to provide reports (commonly referred to as Defect or Noncompliance reports, or part 573 Information Reports, as the case may be) to NHTSA on defects in motor vehicles and motor vehicle equipment and noncompliances with motor vehicle safety standards found in 49 CFR part 571.

Section 573.6 specifies the information that manufacturers are required to submit to the agency and § 573.9 specifies the address for submitting reports. One element is the identification of the vehicles containing the defect or noncompliance. Section 573.6(c)(2)(i) requires manufacturers to identify passenger cars by the make, line, model year, the dates of manufacture and other information as necessary to describe the vehicles. For all other vehicles, § 573.6(c)(2)(ii) requires manufacturers to identify the vehicles by body style or type, dates of manufacture and any other information as necessary to describe the vehicle, such as the GVWR. Section 573.6(c)(3) requires manufacturers to submit the total number of vehicles that potentially contain the defect or noncompliance.

Section 573.8 requires manufacturers to maintain lists of VINs of the vehicles involved in a recall as well as the remedy status for each vehicle to be included in a manufacturer's quarterly reporting as specified in § 573.7.

The Safety Act also requires manufacturers of motor vehicles or items of motor vehicle equipment to notify NHTSA and owners and purchasers of the vehicle or equipment if the manufacturer determines that a motor vehicle or item of motor vehicle equipment contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard. 49 U.S.C. 30118(c). Manufacturers must provide notification pursuant to the procedures set forth in section 30119 of the Safety Act. Section 30119 sets forth the contents of the notification, which includes a clear description of the defect or noncompliance, the timing of the notification, means of providing notification and when a second notification is required. 49 U.S.C. 30119. Subsection (a) of section 30119 confers considerable authority and discretion on NHTSA, by rulemaking, to require additional information in a manufacturer's notification. *See* 49 U.S.C. 30119(a)(7).

The conduct of a recall notification campaign, including how and when owners, dealers, and distributors are notified, is addressed by regulation in 49 CFR part 577, *Defect and Noncompliance Notification.* Section 577.5 specifies required content and structure of the owner notifications. Section 577.13 specifies required content for dealer and distributor notifications. Section 577.7 dictates the time and manner of these notifications.

In July 2012, Congress enacted the Moving Ahead for Progress in the 21st Century (MAP–21) Act. *See* Public Law 112–141, 126 Stat 405 (July 6, 2012). Sections 31301 of the MAP–21 Act mandates that the Secretary require that motor vehicle safety recall information be made available to the public on the Internet, and it provides authority to the Secretary, in his discretion, to conduct a rulemaking to require each manufacturer to provide its safety recall information on a publicly accessible Internet Web site. Under section 31301(a), Congress has directed the Secretary to require motor vehicle safety information be available on the Internet, searchable by vehicle make, model and VIN, preserves consumer privacy and includes information regarding completion of the particular recall. Section 31301(b) authorizes the Secretary, in his discretion, to conduct a rulemaking requiring manufacturers to provide the safety recall information in paragraph (a) on a publicly accessible Internet Web site. Specifically, section 31301(a) states:

> (a) VEHICLE RECALL INFORMATION.—Not later than 1 year after the date of enactment of this Act, the Secretary shall require that motor vehicle safety recall information—
>
> (1) be available to the public on the Internet;
>
> (2) be searchable by vehicle make and model and vehicle identification number;
>
> (3) be in a format that preserves consumer privacy; and
>
> (4) includes information about each recall that has not been completed for each vehicle.

Section 31301(a) did not directly speak to the mechanism for implementing its requirements, leaving the agency to use its discretion to fill any ambiguity. Paragraph (a) is silent with respect to who is required to make safety recall information available, which manufacturers are subject to the requirement, the types of safety information to be made available, and how and when the information is placed on the Internet.

Paragraph (b) provides the Secretary with the authority to conduct a rulemaking to provide the information in subsection (a) and provides limited instructions as to the scope of any such rulemaking and sharing such information with automobile dealers and consumers. Section 31301(b) states:

> (b) RULEMAKING.—The Secretary may initiate a rulemaking proceeding to require each manufacturer to provide the information described in subsection (a), with respect to that manufacturer's motor vehicles, on a publicly accessible Internet Web site. Any rules promulgated under this subsection—
>
> (1) shall limit the information that must be made available under this section to include only those recalls issued not more than 15 years prior to the date of enactment of [MAP–21].
>
> (2) may require information under paragraph (1) to be provided to a dealer or an owner of a vehicle at no charge; and
>
> (3) shall permit a manufacturer a reasonable period of time after receiving information from a dealer with respect to a vehicle to update the information about the vehicle on the publicly accessible Internet Web site.

Similar to paragraph (a) of 31301, paragraph (b) vests considerable discretion in the agency to conduct a rulemaking to meet the statutory goals of section 31301.

The MAP–21 Act further specifies that a manufacturer's filing of a bankruptcy petition under Chapter 11 of Title 11 of the United States Code, does not negate its duty to comply with, among other things, the defect and noncompliance notification and reporting obligations, and the requirement to provide a free remedy, under the Safety Act.

II. Summary of the NPRM

A. Summary of Our Proposals Affecting Early Warning Rule and Foreign Defect Reporting

The early warning reporting (EWR) rule requires certain manufacturers of motor vehicles and motor vehicle equipment to submit information to NHTSA. 49 CFR part 579, subpart C. The EWR rule divides vehicle manufacturers into different segments based upon weight or vehicle application. These segments are light vehicles, buses, emergency vehicles, medium-heavy vehicles, motorcycles and trailers. The proposed amendments to the EWR rule concern light vehicles, buses, emergency vehicles, and medium-heavy vehicles.

We proposed requiring light vehicle manufacturers to report vehicle type in their death and injury and aggregate reports. Under the current EWR rule, light vehicle manufacturers submit vehicle type as part of production reports, but do not report vehicle types in either their death and injury reports or their aggregate reports. We proposed a solution to this inconsistency.

We proposed to require reporting on additional components in the light vehicle, bus, emergency vehicle, and medium-heavy vehicle component categories and to amend the light vehicle, bus, emergency vehicle, and medium-heavy vehicle reporting templates.

We proposed to add a requirement that light vehicle manufacturers provide the fuel and/or propulsion system type for nine (9) different fuel and/or propulsion system types. In addition, the proposal would add definitions for each fuel and/or propulsion system.

Furthermore, we proposed to add four (4) new light vehicle and one (1) new medium-heavy vehicle component reporting categories. The new light vehicle component categories are electronic stability control, forward collision avoidance, lane departure prevention, and backover prevention; the new medium-heavy vehicle component category is stability control/roll stability control. We also proposed new definitions for each of these components. We also proposed to correct a minor inconsistency in light vehicle manufacturer reporting of vehicle types to capture several recently introduced light vehicle technologies.

We proposed and requested comments on amendments to a manufacturer's reporting requirements related to safety recalls and other safety campaigns in foreign countries under subpart B of part 579. We proposed to standardize the manner of submitting annual lists of substantially similar vehicles under § 579.11(e) by uploading them, via a secure internet connection, to NHTSA's Artemis database using a template provided on NHTSA's EWR Web site. Currently, manufacturers may submit their substantially similar lists by mail, facsimile or email. *See* 49 CFR 579.6(a).

B. Summary of Our Proposals Affecting Safety Recalls Reporting, Administration, and Execution

The NPRM proposed changes and additions to the regulations governing recalls, 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports,* and 49 CFR Part 577, *Defect and Noncompliance Notification.*

We proposed a number of measures in an effort to improve the information the agency receives from recalling manufacturers concerning the motor vehicles and equipment they are recalling and the plans for remedying those products, in addition to distribution of that information to the affected public.

First, for motor vehicle recalls, and in accordance with the MAP–21 Act, we proposed to adopt regulations that would implement MAP–21's mandate that the Secretary require motor vehicle safety recall information be made available to the public on the Internet, be searchable by vehicle make and model and vehicle identification number (VIN), be in a format that preserves consumer privacy, and includes information about each recall that has not been completed for each vehicle. *See* MAP–21 Act, Public Law 112–141, § 31301, 126 Stat 405, 763 (July 6, 2012). The Secretary was given the discretion to engage in rulemaking to require a manufacturer to provide the information above on vehicles it manufacturers on a publicly accessible Internet Web site. *Id.* at section 31301(b). We proposed to exercise the authority given the Secretary in sections (a) and (b), not only to meet the Act's mandate, but to increase the numbers of motor vehicles remedied under safety recall campaigns which, in turn, will serve to reduce the risk of incidents, as well as injuries or fatalities, associated with vehicles that contain safety defects or fail to meet minimum FMVSS.

To meet MAP–21, and increase the number of motor vehicles remedied under safety recall campaigns, the agency proposed to offer vehicle owners and prospective purchasers an enhanced vehicle recalls search tool through its Web site, *www.safercar.gov*, that would go beyond the current functionality to search by specific make and model vehicle, and would offer a VIN-based search function that would report back whether a vehicle has been subject to a safety recall, and whether that vehicle has had the manufacturer's free remedy performed.

In order to gather the information necessary for us to provide this enhanced functionality, we proposed to require larger volume, light vehicle manufacturers to submit the VINs for vehicles affected by a safety recall to NHTSA. We further proposed to require these manufacturers to submit to NHTSA recall remedy completion information on those vehicles, again supplied by VIN, that would be updated at least once daily so that our search tool had ''real time'' information that could inform owners and other interested parties if a recall is outstanding on a vehicle. In our effort to improve the information received from recalling manufacturers, and so NHTSA could better understand and process recalls, we proposed to require certain additional items of information from recalling manufacturers. These additional items included an identification and description of the risk associated with the safety defect or noncompliance with a FMVSS, and, as to motor vehicle equipment recalls, the brand name, model name, and model number, of the equipment recalled. We also proposed that manufacturers be prohibited from including disclaimers in their part 573 information reports.

Similarly, as part of our effort to ensure we are apprised of information related to safety recalls, we proposed that manufacturers update their Part 573 Reports with information missing from the initial report, or newly updated information, within five working days of learning the information. We also proposed that, within 90 days of a recall's available remedy, the manufacturer review its Part 573 Report for completeness and accuracy and supplement or amend it as necessary to comply with part 573.

We proposed to require manufacturers to submit through a secure, agency-owned and managed web-based application, all recall-related reports, information, and associated documents. We explained that we believed this

would improve our efficiency and accuracy in collecting and processing important recalls information and then distributing it to the public. It would also reduce a current and significant allocation of agency resources spent translating and processing the same information that is currently submitted in a free text fashion, whether that text is delivered via a hard copy, mailed submission, or delivered electronically through email.

In order to ensure that owners are promptly notified of safety defects and failures to meet minimum safety standards, we proposed to specify that manufacturers notify owners and purchasers no later than 60 days after a safety defect or noncompliance decision is made. In the event the free remedy is not available at the time of notification, we proposed that manufacturers be required to issue a second notification to owners and purchasers once that remedy is available.

In an effort to encourage owners to have recall repairs made to their vehicles and vehicle equipment, we proposed additional requirements governing the content and formatting of owner notification letters and the envelopes in which they are mailed in an effort to improve the number of vehicles that receive a remedy under a recall. We proposed that all letters include ''URGENT SAFETY RECALL'' in all capital letters and in an enlarged font at the top of those letters, and that for vehicle recalls, the manufacturer place the VIN of the owner's vehicle affected by the safety defect or noncompliance, within the letter. To further emphasize the importance of the communication, and to distinguish it from other commercial communications, we proposed that the envelopes in which the letters are mailed be stamped with the logos of the National Highway Traffic Safety Administration and the U.S. Department of Transportation, along with a statement that the letter is an important safety recall notice issued in accordance with Federal law.

Lastly, we proposed to add a requirement for manufacturers to notify the agency in the event they file for bankruptcy. We explained that this requirement would help us preserve our ability to take necessary and appropriate measures to ensure recalling manufacturers, or others such as corporate successors, continue to honor obligations to provide free remedies to owners of unsafe vehicle and equipment products.

III. Scope of This Rulemaking

Today's final rule is limited in scope to amendments to the EWR requirements, the foreign defect reporting rule, and to the requirements associated with safety recall reporting, administration, and execution as delineated in parts 573 and 577 of Title 49 of the Code of Federal Regulations. Apart from the following changes noted below in the summary section, NHTSA intends to leave the remaining current EWR, foreign defect reporting regulations, and safety recalls implementing regulations parts 573, 577 and 579 unchanged.

IV. How the Final Rule Differs From the NPRM

A. How the Final Rule Differs From the NPRM as to the Early Warning Reporting and Foreign Defect Reporting Proposals

- We are implementing a one-year lead time from the date this final rule is published for the electronic-only submission of annual substantially similar vehicle listings, § 579.11(e).
- We are subdividing the light vehicle *Service Brakes* component code into *Foundation Braking Systems* and *Automatic Brake Controls.*

B. How the Final Rule Differs From the NPRM as to the Domestic Safety Recall Proposals

- We did not adopt the requirement that large, light vehicle manufacturers report recalled VINs to NHTSA.
- We adopted the alternative proposal that requires large, light vehicle manufacturers to provide a VIN-based recall lookup tool on their Internet Web sites that meets certain performance-based criteria.
- We did not adopt the prohibition against the use of disclaimers, or language that disavows the presence of a safety-related defect or noncompliance, in a manufacturer's Part 573 Information Report.
- We did not adopt the requirement that manufacturers review their Part 573 Information Reports for completeness and accuracy 90-days after launching the recall remedy campaign.
- We adopted with slight changes the requirement that a manufacturer update and submit new information to its Part 573 Information Report. Today's rule requires updates and new information within five (5) working days from when the manufacturer has confirmed the accuracy of the information, which is different than our proposal to require that the information be submitted within five (5) days of *becoming available.*
- We adopted the proposal to mandate the use of a specific label on the envelopes containing the manufacturer's notification to an owner, but agree with commenters that manufacturers have the discretion to decide where to place the label on the front of the envelope.
- We adopted the proposal to require vehicle manufacturers to place the vehicle's VIN in the notification to that vehicle's owner, but leave to their discretion where in that letter to place this information.

V. Agency Response to Comments and Decisions

A. Decisions and Responses to Comments on Early Warning Reporting and Foreign Defect Reporting

NHTSA received comments from 12 parties on proposals affecting EWR and Foreign Defect Reporting. These commenters were Advocates for Highway and Auto Safety (the Advocates), Alliance of Automobile Manufacturers (the Alliance), American Honda Motor Co, Inc. (Honda), American Suzuki Motor Co, Inc (Suzuki), Association of Global Automakers, Inc. (Global), Center for Auto Safety (CAS), Ford Motor Company (Ford), Law Office of Hogan Lovells US LLP representing Mercedes-Benz USA (MBUSA), Motor & Equipment Manufacturers Association (MEMA), National Association of Trailer Manufacturers (NATM), Quality Control Systems Corporation (QCSC), and Toyota Motor North America, Inc. (Toyota). The specific comments of each entity will be discussed below for each topic to which they responded.

1. Matters Considered in Adding Data Elements to Early Warning Reports

Under EWR, we endeavor to collect a body of information that may assist in the identification of potential safety-related defects in motor vehicles and motor vehicle equipment. When we believe that the EWR information may be refined or enhanced to further advance our goal of identifying safety defects, we consider factors that are relevant to the particular area of EWR under consideration. In view of our broad statutory authority to require reporting of information that may assist in the identification of potential safety-related defects, we do not believe that it is necessary or appropriate to identify a prescriptive list of factors for delineating particular data elements. Nonetheless, based on our experience, the following considerations, among other things, have been identified as relevant to evaluating whether or not

adding data elements to light vehicle, bus, emergency vehicle and medium-heavy vehicle reporting would assist in identifying safety-related defects:

- The importance of the data to motor vehicle safety.
- The maturity of a particular technology and its market penetration.
- Whether the current component categories are adequate to capture information related to proposed data elements.
- Whether ODI has investigated or been notified of vehicle recalls related to the proposed data elements.
- Whether VOQ complaints related to the data elements have been useful in opening investigations into potential safety-related defects and whether those investigations have resulted or may result in recalls.
- Whether manufacturers collect information on the proposed data elements.
- The burden on manufacturers.

We emphasize that the general approach of the EWR program is to collect data on numerous systems and components in a very wide range and volume of vehicles for the agency to then systematically review information, with the end result being the identification of a relatively small number of potential safety problems, compared to the amount of data collected and reviewed. These data are considered along with other information collected by and available to the agency in deciding whether to open investigations.

The following sections discuss the new EWR component codes that were proposed in the NPRM, the comments we received to each and our response.

2. Vehicle Type for Light Vehicle Aggregate Data

The EWR regulation requires light vehicle manufacturers producing 5,000 or more vehicles annually to submit production information including the make, the model, the model year, the type, the platform and the number of vehicles produced. 49 CFR 579.21(a). Manufacturers must provide the production as a cumulative total for the model year, unless production of the product has ceased. *Id.* While light vehicle manufacturers are required to provide the type of vehicle with their production, they are not required to provide the type of vehicle when they submit death and injury data pursuant to 49 CFR 579.21(b) or with aggregate data under 49 CFR 579.21(c).[3] The NPRM proposed to amend § 579.21(b) and (c) to require light vehicle manufacturers to provide the type of vehicle when they submit their death and injury data and aggregate data under those sections. We also proposed to amend the light vehicle reporting templates for the EWR death and injury and aggregate reports to reflect adding vehicle type and provided exemplar light vehicle templates in Appendix A.

We believe this change will assist ODI to identify potential safety-related defects by making light vehicle EWR data received internally consistent. Because light vehicle manufacturers providing quarterly EWR reports are not obligated to provide the vehicle type in their death and injury and aggregate EWR reports, NHTSA is unable to distinguish whether the light vehicle death and injury and aggregate data are associated with certain vehicle types such as passenger cars, multi-purpose vehicles, light trucks or incomplete vehicles. Without being able to isolate this information by vehicle type, ODI cannot match aggregate data accurately with production data.

The Advocates, the Alliance, Ford, and Toyota commented specifically on the proposal to amend § 579.21(b) and (c) to require light vehicle manufacturers to include the type code in the death/injury and aggregate data. The Advocates supported the addition and concurred with the agency's position that this would impose minimal burden on manufacturers. Toyota indicated that they could determine the vehicle type from vehicle model; while Ford indicated that including the type code would increase the number of records in their submissions from 18 to 33 (but did not object to the addition). The Alliance did not object to the proposal and believes the related costs are relatively modest. However, the Alliance offered the opinion, and Ford concurred, that creating a vehicle type ''UN'' for ''unknown'' may lead to a conflict in Artemis because there will be no production volume for model line ''unknown.'' The agency notes that a vehicle type ''UN'' will be an exception case for Death/Injury records where the VIN is not available; likewise, these records would be excluded from the data consistency check. The same goes for aggregate records—''unknown'' records will be excluded for data validation. This is similar to the current processing for Child Restraints in the case where the Production Year is 9999 (or unknown).

We believe the addition of the vehicle type code in paragraphs (a), (b), and (c) of § 579.21 will improve our ability to identify potential safety-related defects. No commenters objected to the inclusion of the type code in light vehicle reporting. Accordingly, NHTSA will adopt this proposal as written in the NPRM, with minor revisions to the wording of the regulatory text that do not change the meaning of the proposed text.

3. Reporting by Fuel and/or Propulsion System Type

Currently, the EWR regulation requires light vehicle manufacturers to report the required information by make, model and model year. 49 CFR 579.21(a), (b)(2), (c). The rule also requires light vehicle manufacturers to subdivide their EWR death and injury and aggregate reports by components. 49 CFR 579.21(b)(2), (c). Reporting by make, model and model year and component categories have remained unchanged since the EWR regulation was published in July 2002. Since that time, manufacturers have introduced new technologies to meet the demand for more fuel efficient vehicles. Currently, light vehicle manufacturers do not identify the specific fuel or propulsion system used in their vehicles. As use of these new technologies expands, we are concerned that the current EWR reporting scheme is not sufficiently sensitive to readily identify vehicles with different fuel and/or propulsion system types. For example, some models, such as the Toyota Camry, are offered with both conventional and hybrid propulsion systems.

The recently issued Corporate Average Fuel Economy (CAFE) standards will spur manufacturers to increasingly produce fuel efficient vehicles employing various technologies. Following the direction set by President Obama on May 21, 2010, NHTSA and the Environmental Protection Agency (EPA) have published final rules for Fuel Economy and Greenhouse Gas emissions regulations for model year (MY) 2017–2025 light-duty vehicles. NHTSA believes that to meet the new CAFE standards, manufacturers will increase their production of light vehicles with alternate fuel and/or propulsion systems that could raise new safety issues not currently accounted for in the EWR regulatory scheme.

Therefore, as the automotive industry begins to introduce and produce more vehicles with new propulsion systems,

[3] For light vehicles, type means the certification by a manufacturer pursuant to 49 CFR 567.4(g)(7) as to whether a vehicle is a passenger car, multipurpose passenger vehicle, or truck or a vehicle identified by its manufacturer as an incomplete vehicle pursuant to 48 CFR 568.4. *See* 49 CFR 579.4.

NHTSA believes now is an opportune time to start collecting EWR information to assist in identifying potential defects in these new systems. As currently configured, the EWR reporting structure may mask potential problems with these systems. NHTSA is currently unable to discern from EWR data whether a particular vehicle problem is unique to a particular fuel or propulsion system. Currently, problems with a particular make and model that may be unique to one fuel and/or propulsion system could be readily distinguished from problems that may apply to that make and model regardless of the fuel and/or propulsion system. The final rule will permit NHTSA to investigate safety concerns in many makes and models with similar fuel and/or propulsion systems (e.g., a battery problem in a plug-in electric vehicle or a hydrogen fuel cell problem that may extend to similarly equipped vehicles).

We believe that adding the appropriate fuel and/or propulsion system type to EWR will enhance NHTSA's ability to identify and address potential safety defects related to specific fuel and/or propulsion systems.

In the NPRM, the agency proposed to amend 49 CFR 579.21(a), (b), and (c) to require light vehicle manufacturers to provide the type of fuel and/or propulsion system when they submit their EWR data and to update accordingly the light vehicle reporting templates for the EWR production information, death and injury, and aggregate data to reflect adding fuel and/or propulsion type. Also, a new definition of ''fuel and/or propulsion system type'' was proposed for 49 CFR 579.4: *''fuel and/or propulsion system type* means the variety of fuel and/or propulsion systems used in a vehicle, as follows: compressed natural gas (CNG); compression ignition fuel (CIF); electric battery power (EBP); fuel-cell power (FCP); hybrid electric vehicle (HEV); hydrogen based power (HBP); plug-in hybrid (PHV); and spark ignition fuel (SIF).'' Manufacturers would identify the fuel and/or propulsion system on the EWR template in the appropriate field. In addition to amending § 579.4 to add ''fuel and/or propulsion system type'', the NPRM proposed definitions for each of the following fuel or propulsion system types:

- *Compressed natural gas (CNG)* means a system that uses compressed natural gas to propel a motor vehicle.
- *Compression ignition Fuel (CIF)* means a system that uses diesel or any diesel-based fuels to propel a motor vehicle. This includes biodiesel.
- *Electric battery power (EBP)* means a system that uses only batteries to power an electric motor to propel a motor vehicle.
- *Fuel-cell power (FCP)* means a system that uses fuel cells to generate electricity to power an electric motor to propel the vehicle.
- *Hybrid electric vehicle (HEV)* means a system that uses a combination of an electric motor and internal combustion engine to propel a motor vehicle.
- *Hydrogen based power (HBP)* means a system that uses hydrogen to propel a motor vehicle through means other than a fuel cell.
- *Plug-in hybrid (PHV)* means a system that combines an electric motor and an internal combustion engine to propel a motor vehicle and is capable of recharging its batteries by plugging in to an external electric current.
- *Spark ignition fuel (SIF)* means a system that uses gasoline, ethanol, or methanol based fuels to propel a motor vehicle.

We anticipated that the majority of vehicles produced by manufacturers would be captured by our proposed definitions. However, our proposal included the term ''other'' (OTH) to identify vehicle models employing a fuel and/or propulsion system that is not enumerated in our other proposed fuel and/or propulsion types. For example, the Dual fuel F–150 would be classified as ''Other,'' since it is propelled by either gasoline or CNG.

The proposed fuel and/or propulsion system types included most of the alternative fuels found in the Energy Policy and Conservation Act (EPCA), as amended, 49 U.S.C. 32901, but not all. Due to differences in the Corporate Average Fuel Economy (CAFE) and EWR programs, our proposed categories of fuel/propulsion systems differ slightly from the alternative fuels listed in section 32901. While EPCA encourages manufacturers to produce vehicles using alternative fuels, the EWR program has a different focus. In the context of alternative fuel vehicles, that focus is on potential problems that may occur within a fuel or propulsion system, which requires the agency to differentiate between propulsion technologies that are, or will be, available to consumers. For EWR purposes, there is no technical hardware difference between a vehicle with a spark ignition fuel engine capable of using a variety of fuels, such as ethanol or gasoline, or a mixture of fuels, such as E85 (ethanol/gasoline mixture) and a vehicle with a spark ignition fuel engine using gasoline only. While such a fuel distinction is appropriate for the CAFE program, EWR will not benefit from that level of detail because the specific fuel type being used will be unknown.

The Advocates, the Alliance, and Toyota commented on the addition of the fuel and/or propulsion type EWR codes. The Advocates supported the proposal, but asked that the agency address, in a separate rulemaking, linking the new EWR codes to the ''affected parts'' choices in the Vehicle Owners Questionnaire. The Advocates also indicated a desire to see a list of failure modes that can be chosen for each component. These comments are not within the scope of the current rulemaking and will not be addressed by this final rule. The Alliance and Toyota did not object to the addition of fuel and/or propulsion type codes, but sought clarification on how to report fuel and/or propulsion types that are unknown. The Alliance suggested a default of SIF, or whatever the base model version is for a model line not manufactured with a SIF system. Toyota stated that whatever approach is chosen for reporting an unknown must be simple enough to accomplish through, ''automatic means by way of programmatic mapping.'' The agency responds that if the attribute is ''unknown'' the entire record will be excluded from the data consistency check (validation). We expect that this will be a very infrequent occurrence. The EWR processing staff can always contact the manufacturer to seek clarification, if needed.

Based upon the foregoing and the lack of objection to our proposal from commenters, this final rule amends § 579.4 by adding the proposed definitions for ''fuel and/or propulsion system type'' in addition to § 579.21(a), (b)(2), and (c) as proposed. We have deleted the phrase ''in the context of reporting fuel and/or propulsion system type'' in the new definitions, however, as it is redundant to the introductory language in § 579.4(c) that states ''The following terms apply to this part.'' For clarity, we have changed the ''hydrogen based power (HBP)'' type to hydrogen combustion power (HCP). This change makes a clearer differentiation between this type and a fuel-cell power propulsion type. Also for clarity, we added the phrase ''but is not capable of recharging its batteries by plugging in to an external electric current'' to the definition of Hybrid electric vehicle (HEV) to make a clearer differentiation between this type and the Plug-in hybrid type.

4. New Component Categories for Light Vehicles, Buses, Emergency Vehicles, and Medium-Heavy Vehicles

The EWR regulation requires light and medium-heavy vehicle manufacturers to report the required information by

specific component categories. 49 CFR 579.21(b)(2), (c), (d) and 579.22(b), (c), (d). The component categories for each vehicle type have remained unchanged since the EWR regulation was published in July 2002. Since that time, new technologies, such as Electronic Stability Control (ESC), Roll Stability Control (RSC), Forward Collision Avoidance (FCA), Lane Departure Prevention (LDP), and Backover Prevention, have been introduced into the marketplace. As these new technologies are implemented, and demand for these products increases in the market place, we are concerned that the EWR component categories are unsuitable for capturing these newer technologies. As a result, NHTSA proposed to add component codes for ESC, FCA, LDP and Backover Prevention to the EWR reporting for light vehicles and ESC/RSC for buses, emergency vehicles, and medium and heavy vehicles. Each of these new component codes and the comments regarding each are addressed below.

Several commenters did not comment on the new component codes individually, but as a group. These commenters were CAS, Ford, Global, and Honda. CAS did not offer comments on the proposed codes, but asked for an expansion of the current codes for air bags. This request is outside the scope of the current rulemaking. Ford believes that the proposed codes are not appropriate for EWR and would require manual review of tens of thousands of EWR reports per quarter. Ford supports alternatives proposed by the Alliance.

Global believes that reporting problems will be caused by the fact that several systems share components stating:

> If an incident or claim implicates a shared component, the proposal states that the manufacturer should report data based upon the functionality of the component as reported in the underlying claim. Given the complex nature of these systems, it is not clear that assignment of the cause of an incident or claim to one of these systems will be possible. In addition, in order to deal with this type of situation, additional technical resources would be required to assess ''functionality'' and changes to manufacturer data systems will be required. These actions will require time and resources to complete. To accomplish the proposed narrowing of categories, manufacturers would be saddled with the substantial burden of performing individualized reviews of warranty claims in certain instances. For example, manual reviews of claims involving brake malfunction would be required to definitely determine whether a claim is related to the electronic stability control system. This type of activity would be unduly burdensome from both a time and resource perspective. This issue will be exacerbated if NHTSA continues to add new codes for emerging technology in the future.

Global also believes that NHTSA has underestimated the costs and burdens aspect of the proposal. Suzuki stated that it participated in the development of, and supports, the Global comments. Toyota stated that the new component categories raise ''significant problems in implementation'', noting the same concerns as the Alliance.

Honda commented that it has, ''no immediate concerns'' regarding introduction of the proposed new codes and provided a one-time cost estimate totaling 1,350 person hours and $135,000 to implement new codes.

The above general comments will be addressed in the following sections. Detailed response to comments on cost can be found in Section VIII.F.1.b.

QCSC did not address our proposed categories, but proposed its own: unintended acceleration, floor mats, and dividing air bags and seat belts into more defined sub-groups. This comment is outside the scope of this rulemaking and will not be addressed in this notice.

i. Stability Control Systems

In the NPRM, we proposed to add a new component code for light vehicles, buses, emergency vehicles and medium/heavy vehicles in 49 CFR 579.21(b)(2) and 49 CFR 579.22(b)(2) for ESC.[4] As discussed in the NPRM, ESC is now required for all light vehicles and presents known benefits for heavy vehicles. As a result, the number of vehicles using ESC is increasing rapidly and potentially could include the great majority of the vehicle fleet.

In addition to ESC, RSC systems are increasingly installed on heavy trucks. RSC detects a high lateral acceleration condition that could lead to a truck rolling over, and intervenes by automatically, applying the vehicle's brakes and/or reducing engine power and applying the engine retarder. We proposed to combine ESC and RSC in one EWR component code for medium and heavy trucks and proposed the new Heavy Vehicle Aggregate Template (Appendix B).

The EWR regulation currently does not have a specific component for ESC or RSC issues. *See* 49 CFR 579.21(b)(2) and 579.22(b)(2). Light vehicle manufacturers report ESC issues under ''03 service brake system'' and medium-heavy vehicle manufacturers report stability control issues under ''03 service brake, hydraulic'' and ''04 service brake, air'' because those definitions include stability control. As a result, potential stability control issues may be masked within the broader service brake category, making NHTSA unable to examine and detect potential safety concerns that may be associated directly with a vehicle's stability control system. The agency believes that stability control issues are likely to increase as vehicle manufacturers add stability control to their fleets. In our view, it is important to capture EWR data on this key safety component, supplementing NHTSA's traditional screening methods to assist in identifying potential safety issues sooner. Adding an ESC component category to light vehicles and a combined ESC/RSC component category to buses, emergency vehicles and medium-heavy vehicles reporting categories will allow NHTSA to capture data on this mandatory system on light vehicles and new system on medium-heavy trucks and analyze stability control data for potential defects.

The Alliance commented on the new ESC component code. While the Alliance agrees that ESC is very important for safety and has high market penetration, it opposed a new component code. It stated, ''The primary problem in attempting to create a component category exclusively of ESC is that it will often be very difficult for manufacturers to determine whether claims, consumer complaints, and other aggregate data that *might* relate to ESC actually *do* involve ESC.'' The Alliance believes, ''. . . it would be extremely difficult and costly—and would require a tremendous amount of additional time—for manufacturers to attempt to disaggregate items involving ESC from the ''brake'' category, particularly with respect to claims, consumer complaints, and warranty claims.'' The Alliance pointed out that it believes that consumers often do not know, ''whether the perceived problem is related to ESC, as opposed to other handling or brake issues,'' and that warranty claims may be impossible to assign to ESC because, ''ESC systems share components and software with other vehicle systems.'' The Alliance noted that NHTSA issued a legal interpretation in 2003 that manufacturers' reporting must be based on the face of the claim or complaint and not on any manufacturers' analysis or investigation of the claim or complaint.[5] It also notes that the

[4] Manufacturers may market or refer to ESC as electronic stability program, vehicle stability control, rollover stability control, vehicle dynamics integrated management system, or active skid and traction control, among others.

[5] Letter to Mr. Robert Strassburger from Jacqueline Glassman, Chief Counsel, March 25, 2003, stated in part, ''Reporting is to be based on the information in the complaint or claim, rather than on the manufacturer's assessment. Even if the manufacturer disagrees with the assertions of the

manufacturers have instituted long standing practices for processing claims and complaints based on this interpretation and, ''it would be extremely difficult, costly, and burdensome to attempt to separate reports of ESC issues from reports involving associated systems that utilize the same components.'' The Alliance then offered, as an alternative to the proposed ESC code, that the current ''service brake system'' category be divided into two new categories: ''foundation braking systems'' and ''automatic brake controls'', and proposed definitions for these terms.

The agency acknowledges that in some instances consumers may not perceive stability control problems during a crash or will be unable to distinguish stability control problems from problems with other components. This may occur when a consumer communicates through a complaint or a property damage claim to the manufacturer. Although there may be some of these instances, the agency believes that misidentification of stability control complaints will be rare. The agency receives vehicle owner questionnaires (consumer complaints) reporting potential problems with ESC. Furthermore, consumer complaint data represent only 5 percent and property damage claims represent less than 1 percent of the EWR aggregate data for the service brake component.

The bulk of the EWR data for the service brake component consists of warranty claims and field reports. Manufacturers likely have the capability to identify and report specific problems associated with stability control in warranty claims and field reports. Manufacturers of light vehicles have elaborate warranty systems that capture information about discrete components and service codes. Manufacturers also track issues identified by their representatives in the field. The agency still believes that with the ability to identify specific issues through service codes and field inspections, manufacturers should be able to code stability control issues appropriately. However, the agency did not intend to change its long-standing interpretation regarding coding claims and complaints. For such items, the manufacturer should use the information reported to the manufacturer by the consumer as the basis for its EWR codes. In the proposal, we intended that manufactures would, where possible on the face of the claim or complaint, consistent with our interpretation, categorize complaints and claims using the proposed new ESC code. Where that is not possible, codes would be assigned as appropriate by the manufacturer.

Adding a new component to the light vehicle, bus, emergency vehicle and medium-heavy vehicle EWR reporting is likely to create a one-time cost for manufacturers to amend their reporting template and revise their software systems to appropriately categorize the stability control system data. We do not believe this cost will be substantial or pose an undue burden on manufacturers.

In the agency's view, as discussed above, ESC is an important, required, component for light vehicle control and a malfunction can have an impact on vehicle safety. Capturing data on this new technology will assist the agency in identifying potential problems sooner. Because the number of vehicles with ESC is increasing rapidly and all light vehicles manufactured after September 1, 2011 must have ESC, we believe that it is appropriate for the agency to start collecting EWR data on this specific component.

The final rule will adopt, as we proposed, the ESC definition found in 49 CFR 571.126.S4 for light vehicles. The final rule will define ESC for buses, emergency vehicles, and medium-heavy vehicles as a system that has all the following attributes:

- Augments vehicle directional stability by applying and adjusting the vehicle brake torques individually at each wheel position on at least one front and at least one rear axle of the vehicles to induce correcting yaw moment to limit vehicle oversteer and to limit vehicle understeer;
- Enhances rollover stability by applying and adjusting the vehicle brake torques individually at each wheel position on at least one front and at least one rear axle of the vehicle to reduce lateral acceleration of a vehicle;
- Is computer-controlled with the computer using a closed-loop algorithm to induce correcting yaw moment and enhance rollover stability;
- Has a means to determine the vehicle's lateral acceleration;
- Has a means to determine the vehicle's yaw rate and to estimate its side slip or side slip derivative with respect to time;
- Has a means to estimate vehicle mass or, if applicable, combination vehicle mass;
- Has a means to monitor driver steering input;
- Has a means to modify engine torque, as necessary, to assist the driver in maintaining control of the vehicle and/or combination vehicle; and
- Can provide brake pressure to automatically apply on a truck tractor and modulate the brake torques of a towed semi-trailer.

As noted above, the agency does not intend for manufacturers to change long-standing practices and processes to implement the use of the new ESC code, but simply to use the code when, a warranty claim or field report indicates a concern with stability control and a claim or consumer compliant, on its face, indicates a concern with stability control systems. In cases where ESC is not obvious code(s) should be assigned as appears appropriate.

The agency believes dividing the current ''service brake system'' category into two new categories: ''foundation braking systems'' and ''automatic brake controls'', has merit, in addition to the new ESC code. This issue is discussed further in subsection *iii,* below.

For heavy vehicles, the agency proposed that issues with either an ESC or RSC system be reported in a combined ESC/RSC category. RSC has similar attributes related to ESC. The NPRM proposed that RSC be defined as a system that has the following attributes:

- Enhances rollover stability by applying and adjusting the vehicle brake torques to reduce lateral acceleration of a vehicle;
- Is computer-controlled with the computer using a closed-loop algorithm to enhance rollover stability;
- Has a means to determine the vehicle's lateral acceleration;
- Has a means to determine the vehicle mass or, if applicable, combination vehicle mass;[6]
- Has a means to modify engine torque, as necessary, to assist the driver in maintaining rollover stability of the vehicle and/or combination vehicle; and
- Can provide brake pressure to automatically apply on a truck tractor and modulate the brake torques of a towed semi-trailer.

There were no comments on the combined ESC/RSC category for buses, emergency vehicles, and medium and heavy vehicles. The only comment regarding heavy vehicle ESC was made by MEMA, who requested that the agency use, for heavy vehicles, the definition of ESC it proposed to the agency's NPRM on heavy vehicles ESC (Docket NHTSA–2012–0065 item 0041, August 21, 2012). The agency does not believe the definition for ESC as it

consumer/claimant after conducting its analysis, the manufacturer must still report the complaint or claim.'' See *http://www-odi.nhtsa.dot.gov/ewr/interpretations.cfm* and chose Alliance of Automobile Manufacturers March 25, 2003.

[6] The NPRM used ''the means'' in this element. We have changed it in the final rule for consistency with the other elements.

applies to heavy vehicles should be changed before the final rule is issued on that subject.

As proposed, this final rule amends 49 CFR 579.21(b)(2) to add ESC to the list of components in that section and amends 49 CFR 579.22(b)(2) to the combined ESC/RSC component code to the list of components in that section. It also amends 49 CFR 579.4(b) to add the regulatory definition of light vehicle ESC found in 49 CFR 571.126.S4,[7] adds the definition of ESC and RSC for buses, emergency vehicles, and medium-heavy vehicles as proposed, and amends the definition of ''service brake system'' to remove stability control from that definition.

ii. Forward Collision Avoidance and Lane Departure Prevention

An FCA system monitors and detects the presence of objects in a vehicle's forward travel lane and alerts the driver by means of an audible and/or visual warning of a potential impact with the object. FCA systems seek to warn drivers of stopped, decelerating or slower moving vehicles in the vehicle's lane of travel in order to avoid collisions. Some FCA systems may also assist with driver's braking or automatically brake to avoid collisions. An LDP system warns a driver that the vehicle is exiting a travel lane and may automatically provide steering input to assist the driver to maintain lane position.

NHTSA is encouraging deployment of these important crash avoidance systems by notifying consumers which vehicles offer them through the New Car Assessment Program (NCAP). Starting with model year 2011 vehicles, NHTSA recommends ESC, Forward Collision Warning and Lane Departure Warning systems that pass the NCAP performance tests on the Web site *www.safercar.gov.* The agency believes that adding these technologies in NCAP will increase consumer awareness of these beneficial technologies and spur market demand.

In the NPRM, the agency proposed two new categories, FCA and LDP, and definitions for each:

Forward collision avoidance system means a system that:

- Has an algorithm or software to determine distance and relative speed of an object or another vehicle directly in the forward lane of travel; and
- Provides an audible, visible, and/or haptic warning to the driver of a potential collision with an object in the vehicle's forward travel lane.

The system may also include a feature:

- Pre-charges the brakes prior to, or immediately after, a warning is issued to the driver;
- Closes all windows, retracts the seat belts, and/or moves forward any memory seats in order to protect the vehicle's occupants during or immediately after a warning is issued; or
- Applies any type of braking assist or input during or immediately after a warning is issued.

Lane departure prevention system means a system that:

- Has an algorithm or software to determine the vehicle's position relative to the lane markers and the vehicle's projected direction; and
- Provides an audible, visible, and/or haptic warning to the driver of unintended departure from a travel lane.

The system may also include a feature that:

- Applies the vehicle's stability control system to assist the driver to maintain lane position during or immediately after the warning is issued;
- Applies any type of steering input to assist the driver to maintain lane position during or immediately after the warning is issued; or
- Applies any type of braking pressure or input to assist the driver to maintain lane position during or immediately after the warning is issued.

We chose to make the EWR categories broader than the warning systems indicated in NCAP to attempt to capture advanced systems are they are implemented.

The Alliance and MBUSA commented on these two new categories. As with ESC the Alliance commented that ''it would be extremely difficult and costly for manufacturers to even attempt to separate reportable EWR items into these two categories.'' The Alliance further stated, ''While FCA and LDP have the potential to enhance motor vehicle safety, their contribution is not as significant as that of other components and systems currently specified in the regulation. As currently implemented, they are 'driver assistance systems', not 'safety systems.''' The Alliance believes that these two categories of systems are, ''not 'mature', and they have not significantly penetrated the market.'' MBUSA commented that the definitions of FCA and LDP are too broad. It believes that ''different components and subsystems will be captured by different OEMs depending on the technology used'' by each individual manufacturer and therefore the agency will not be able to compare reported rates among manufacturers.

The agency believes that these emerging crash avoidance technologies have been in development for some time and are appearing in the current light vehicle fleet. As these new technologies are implemented and demand increases, we are concerned that the EWR component categories currently in use will not capture them. NHTSA believes it is appropriate to add these technologies to EWR now. As discussed above for ESC, NHTSA intends that the manufacturers use the FCA and LDP code where, on its face, it is indicated by the claim or complaint. Otherwise these claims and complaints should be treated and processed as they are currently. The agency intends that systems that warn the driver of a possible crash situation or lane departure be treated along with systems that take action to intervene to prevent a crash or lane departure. This will allow the category to serve EWR as these systems mature and become even more prevalent.

Accordingly, this final rule adopts the FCA and LDP EWR reporting categories and their definitions as proposed.

iii. Segregation of ''Service Brakes'' Category Into Two New Categories, ''Foundation Brake Systems'' and ''Automatic Brake Controls''

In its comments to the NPRM the Alliance offered an alternative to our new category ESC in which the current Service Brakes category for light vehicles could be segregated into Foundation Brakes and Automatic Brake Controls. The Alliance said, in part, ''we understand the agency's desire to assure that the large number of reports of problems with respect to the foundation brakes do not inhibit its ability to identify problems with electronic/automatic brake components.'' We have carefully considered this approach and, while we are implementing the ESC, FCA and LDP categories, we believe the Alliance's suggestion to divide the

[7] FMVSS No. 126 defines Electronic Stability Control system or ESC system to mean a system that has all of the following attributes:

(1) That augments vehicle directional stability by applying and adjusting the vehicle brake torques individually to induce a correcting yaw moment to a vehicle;

(2) That is computer-controlled with the computer using a closed-loop algorithm to limit vehicle oversteer and to limit vehicle understeer;

(3) That has a means to determine the vehicle's yaw rate and to estimate its side slip or side slip derivative with respect to time;

(4) That has a means to monitor driver steering inputs;

(5) That has an algorithm to determine the need, and a means to modify engine torque, as necessary, to assist the driver in maintaining control of the vehicle; and

(6) That is operational over the full speed range of the vehicle (except at vehicle speeds less than 20 km/h (12.4 mph), when being driven in reverse, or during system initialization).

Service Brake category still has merit. As discussed in the section on ESC above, the agency believes that manufacturers are capable of assigning the new ESC category to almost 95 percent of the data required to be reported in EWR involving those systems. However, given that we do not want manufacturers to change the methods and processes by which they make the category assignments, dividing the Service Brake category as the Alliance suggested will assist the agency to also capture those reports. Therefore, in this final rule the current light vehicle Service Brakes category will be divided into discrete braking systems under the following two definitions:

Foundation Brake System means all components of the service braking system of a motor vehicle intended for the transfer of braking application force from the operator to the wheels of a vehicle, including components such as the brake pedal, master cylinder, fluid lines and hoses, brake calipers, wheel cylinders, brake discs, brake drums, brake pads, brake shoes, and other related equipment installed in a motor vehicle in order to comply with FMVSS Nos. 105, 121, 122, or 135 (except equipment relating specifically to the parking brake). The term includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Automatic Brake Controls means systems and devices for automatic control of the brake system, including but not limited to, brake-assist components (vacuum booster, hydraulic modulator, etc.), antilock braking systems, traction control systems, enhanced braking systems. The term includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Only the Automatic Brake Control definition differs from the Alliance's proposed definition. For clarity, we added ''brake-assist components.''

iv. Backover Prevention

In addition to adding component categories for ESC, FCA, and LDP, the NPRM proposed adding a component category for systems designed to mitigate backover crashes for light vehicles in 49 CFR 579.21(b)(2). We proposed to define a backover prevention system as one that has ''a visual image of the area directly behind a vehicle that is provided in a single location to the vehicle operator and by means of indirect vision.'' We proposed this new category because in 2010 the agency estimated that, on average, there are 292 fatalities and 18,000 injuries (3,000 of which NHTSA estimates are incapacitating) resulting from backover incidents every year. Of those, 228 fatalities and 17,000 injuries were attributed to backover incidents involving light vehicles under 10,000 pounds.[8] NHTSA also estimates that about 20 percent of MY 2010 light vehicles are equipped with some sort of image-based backover prevention system.[9]

Only the Alliance commented specifically on the proposed backover prevention category. The Alliance opposes the adoption of such a category because it believes, ''there is clearly no need for a separate category at the present time, before the agency has even adopted a final rule, and given the four-year lead time following promulgation of such a rule before it would be fully effective.'' The Alliance noted the same problem would exist with the backover prevention category as it described for ESC, FCA and LCP, namely, that many elements of the system are shared with other systems. The Alliance further stated that it, ''understands NHTSA's concern that various manufacturers code reports about problems with backover systems in various existing component categories,'' and suggested, as an alternative to the proposed new category, to revise the definition of the ''visibility'' category ''to require all such reports to be included in that category.'' The Alliance also objected to the use of the term ''backover prevention system'', since ''the systems in use today and those that would be required under the proposed amendment to FMVSS No. 111 are more properly characterized as 'rearward visibility systems,' since few, if any, of those systems would actually operate independently to 'prevent' a backover.''

The agency believes that, regardless of what form such a final rule might take, the number of vehicles utilizing some form of an image-based backover prevention system will increase over time. In fact, the agency is adding rearview camera systems as an allowed technology in its New Car Assessment Program (NCAP) while the final rule is being completed. These systems are likely to take on different trade names and incorporate additional functionality not present today. We would like the category to be able to accommodate current and future systems.

The agency believes, as with the other new categories, the manufacturers can capture those claims, notices, warranty claims, complaints, property damage claims or field reports that, on the face, are linked to a Backover Prevention category. The Alliance admits that manufacturers could identify these reports to place them in a revised Visibility category. The agency prefers to use the term ''backover prevention'', which includes systems that warn the driver as well as those that take action to prevent a backover, so that the new category captures newer, active, systems as they emerge. The agency believes these measures will enhance its ability to identify and address potential safety defects related to this important safety system that is already in the market.

After reviewing the comments received, the agency has decided to adopt the Backover Prevention category as proposed in the NPRM. This final rule will amend 49 CFR 579.21(b)(2) to add backover prevention systems to the list of components in this section and will amend the definition of ''visibility'' to remove any reference to exterior view image-based systems for light vehicles.

5. EWR Reporting Templates

The NPRM proposed to amend the EWR light vehicle production, death and injury, and aggregate reporting templates used by light vehicle manufacturers for their quarterly EWR submissions to add the new vehicle type, fuel and/or propulsion system type, ESC, FCA, LDP, and Backover Prevention system components. The NPRM likewise proposed amending the EWR bus, emergency vehicle and medium-heavy vehicle reporting templates to accept the new ESC/RSC component code.

Only the Alliance commented on the proposal to amend the reporting templates and that comment was only in the context that they objected to the addition of the new component codes that the templates would serve to report.

Based upon the foregoing, we believe the addition of the new component codes that we are adopting today is necessary. Accordingly, this final rule adopts the changes to the light vehicle EWR reporting templates as proposed, with slight modifications to accommodate the new component codes for Foundation Brake System and Automatic Brake Controls. Similarly,

[8] These estimates are from a December 7, 2010 NPRM proposing to amend FMVSS No. 111, *Rearview Mirrors,* to expand the current rear visibility requirements for all light vehicles under 10,000 pounds Gross Vehicle Weight Rating by specifying an area behind the vehicle that a driver must be able to see when the vehicle is in reverse. *See* 75 FR 76186.

[9] Preliminary Regulatory Impact Analysis, Backover Crash Avoidance Technologies, NPMT FMVSS 111, NHTSA, Office of Regulatory Analysis and Evaluation, National Center for Statistics and Analysis, Nov. 2010, Docket NHTSA–2010–0162.

this final rule adopts the proposed change to the Heavy Vehicle Aggregate Template to add the new ESC/RSC component code.

6. Electronic Submission of Annual Substantially Similar Vehicle Lists

The foreign defect reporting regulations, 49 CFR part 579, subpart B, require manufacturers selling or offering motor vehicles for sale in the United States to submit annually a document that identifies each model of motor vehicle that the manufacturer sells or plans to sell during the following year in a foreign country that the manufacturer believes is identical, or substantially similar, to a motor vehicle sold or offered for sale in the United States (or to a motor vehicle that is planned for sale in the United States in the following year) and each such identical or substantially similar vehicle sold or offered for sale in the United States. 49 CFR 579.11(e). Currently, manufacturers may submit this list to NHTSA by mail, facsimile or by email. 49 CFR 579.6. When a manufacturer notifies NHTSA of a safety recall or other safety campaign in a foreign country, the agency searches the manufacturer's substantially similar list for vehicles in the U.S. that may contain a similar problem as identified in the foreign recall or campaign.

Unlike EWR reports, manufacturers are not required to upload their substantially similar vehicle list (SSVL) directly to ODI's Artemis database. However, most vehicle manufacturers in practice do upload their SSVLs directly to Artemis through the agency's secure Internet server. The NPRM proposed to require that manufacturers upload their SSVLs to Artemis because submissions by mail, facsimile, or email cannot be uploaded to Artemis and are not readily searchable. Having the lists in Artemis would make it easier for ODI to match vehicles involved in a recall in another country to vehicles sold, or offered for sale, in the United States.

The Alliance, Ford and Global submitted comments concerning the proposal to amend § 579.6(b) to require that the annual SSVL under § 579.11(e) be uploaded directly to the Artemis database. Ford and the Alliance indicated that the proposed 180-day lead time is insufficient. They stated that creating complex corporate software approval processes needed to protect intellectual property from unauthorized release would require a lead time of at least12 months. Global indicated that the reporting burden could be reduced by defining the Foreign Markets data field as geographic regions (Asia, Europe, etc.). Global also requested that the list not be made public until the end of the affected model year, as the list may contain models that are planned for introduction during the upcoming year. The agency notes that although the width of the current FOREIGN_MARKETS data field on the Excel SSVL template is not defined, this field will allow an entry of up to 2,048 characters (per record). This level of detail is provided in the XML Schema definitions available on the safercar.gov Web site *(http://www-odi.nhtsa.dot.gov/ewr/XMLSchema/SubstantiallySimilarVehicles.xsd).* Examples of commonly accepted entries are: (1) CANADA, EUROPE, MIDDLE EAST, AFRICA, SOUTHEAST ASIA, CENTRAL & SOUTH AMERICA, OCEANA; (2) CANADA, EUROPE, ASIA; (3) EU, RUSSIA AND CIS, CENTRAL AND SOUTH AMERICA, OCEANIA, AFRICA, ASIA. Therefore, we believe no new geographic region definitions are needed.

After review and consideration of the comments, this final rule provides a lead time of one year from the date of the publication of this rule. This will be reflected in the effective date to implement the new EWR component codes that is one year after the publication date of this final rule.

B. Decisions and Responses to Comments on Domestic Safety Recalls Requirements

NHTSA received comments from twenty-two (22) parties for proposals affecting safety recalls reporting, administration, and execution. These commenters were Alliance of Automobile Manufacturers (the Alliance), Toyota Motor North America, Inc. (Toyota), The Truck & Engine Manufacturers Association (EMA), Safety Research & Strategies, Inc. (SRS), The Recreation Vehicle Industry Association, Inc. (RVIA), Quality Control Systems Corporation (QCSC), Harley Davidson Motor Company (Harley-Davidson), Ford Motor Company (Ford), American Suzuki Motor Corporation (Suzuki), R.L. Polk & Co. (Polk), The Law Office of Stephen Selander, PLLC (Selander), American Honda Motor Co., Inc. (Honda), The Rubber Manufacturers Association (RMA), The Motor & Equipment Manufacturers Association (MEMA), The National Association of Trailer Manufacturers (NATM), The Automotive Recyclers Association (ARA), The Center for Auto Safety (CAS), The Motorcycle Industry Council, Inc. (MIC), The Association of Global Automakers, Inc. (Global Automakers), Advocates for Highway and Auto Safety (the Advocates), Mercedes-Benz USA and Daimler AG (MBUSA), and The Juvenile Products Manufacturer's Association (JPMA).

For summary purposes, the term ''industry commenters'' refers to vehicle and equipment manufacturers and the trade associations that represent them, such as the Alliance and Global Automakers. The term ''safety advocate commenters'' refers to organizations such as CAS and the Advocates that help promote automotive and highway safety. In this section, we provide a general summary of those comments.

1. Public Availability of Vehicle Recall Completion Information

We received comments on our proposal to require large, light vehicle (including motorcycle) manufacturers to submit VIN information on vehicles for which those manufacturers conduct safety recalls, and to submit daily updates on changes in recall remedy status as to each VIN, to NHTSA and in support of our development of an enhanced recalls search tool on our Web site, *www.safercar.gov.* Comments were also received on our alternative proposal to not require these manufacturers to submit this information or daily updates to NHTSA, but to require that they offer comparable utility on their Web site or on a third-party Web site. Industry commenters opposed our primary proposal and supported the alternative whereas some safety advocate commenters said our primary proposal was sufficient. Some commenters did not favor either proposal, but offered suggestions and commentary focused on the breadth of coverage and functionality of any recall search tool we would require.

After carefully considering the comments, we are proceeding with the agency's alternative proposal that requires large, light vehicle (including motorcycle) manufacturers to provide a recalls lookup tool, by VIN, on their own Web sites or third party Web sites. We have specified certain performance-based criteria for these sites to ensure consistent and reliable search results to address a wide range and age of light motor vehicles and motorcycles. A summary of the comments received on this proposal, as well as our reasoning for our various decisions and requirements, follows below.

i. Who Is Required To Provide Publicly Accessible Vehicle Safety Recall Completion Information

We received a number of comments, both favorable and unfavorable, on the proposal to apply the provision to high

volume, light vehicle manufacturers, and not others.

QCSC, the Advocates, and CAS objected to our application of MAP–21's requirements concerning public availability of safety recall information to only large, light vehicle manufacturers. They maintained that by its own terms, the statute requires the publication of recall information searchable by make, model, and VIN, on the Internet for all motor vehicles. They emphasized that the statute requires that the information made publicly available must include, ''information about each recall that has not been completed for each vehicle.'' The words ''about each recall,'' and ''for each vehicle,'' they maintain, are unlimited in scope and necessarily mean each manufacturer must provide this information for each recall and every vehicle subject to a recall that has not been completed. According to the Advocates, in making all unremedied recalled vehicles subject to the information disclosure, the statute is directly requiring the vehicle manufacturer to supply the information for its recalled vehicles to the agency. The Advocates disagreed with the agency's interpretation that the statute's silence about whom must supply information leaves the agency discretion to decide to whom it applies. With regard to the VINs associated with recalled vehicles that are unremedied, they argued that Congress has decided that vehicle manufacturers must provide that information to be placed on the Internet and be publicly accessible.

The Advocates further commented that neither part 573 nor part 577 indicate that some manufacturers must comply with recall requirements, while others do not, and that recall requirements are not dependent upon particular classes, types, or volumes of vehicles produced by manufacturers. They noted that the purpose of part 573, to facilitate notification of owners, applies to manufacturers of cars, trucks and motorcycles, incomplete and complete vehicles, as well as importers. Thus, according to the Advocates, the agency's regulations do not support a limitation on the types of manufacturers that must provide the safety recall information required under MAP–21.

CAS opined that smaller manufacturers may, in fact, be more prone to defects and recalls. In support, CAS referenced a report it submitted to NHTSA 35 years ago in which it identified 27 defects in various British Leyland cars that CAS says resulted in over a dozen recalls. The group also commented that our proposal is inconsistent with the agency's position that it needs to be able to better monitor new and emerging technologies that are likely to be used by smaller companies like Fisker and Tesla.

The Advocates challenged the parallel we drew to the Early Warning (EWR) regulation that limits certain requirements based on manufacturer annual production. They noted that Section 31301(a) of MAP–21 relates to consumer information on the repair status of recalled vehicles which is separate from the non-recall incident data captured through EWR. The Advocates believe that Congress intended all motor vehicles with outstanding recalls to be publicly searchable by VIN, not just the vehicles of the largest manufacturers as determined by annual production.

MEMA and EMA agreed with our proposal to exclude medium and heavy vehicles. Both concurred with our rationale that owners and operators of these vehicles interface directly with vehicle manufacturers through their field personnel, to remedy all types of service issues, including safety recalls. Accordingly, there was little likelihood that a recalls search tool would be of value to this community and have a positive impact on completion rates for recalls concerning medium heavy applications.

We have considered the comments and decline to expand the category of vehicle manufacturers required to provide VIN and Internet-based recalls search functions at this time. Section 30301(a) of MAP–21 does not specify which manufacturers are subject to making safety recall information available on the Internet. Moreover, section 30301(b) states that the Secretary ''may'' initiate a rulemaking.

The Advocates and CAS did not dispute our analysis in the NPRM that the light vehicle manufacturers that meet our production thresholds manufactured (or imported) comprise the vast majority of all vehicles recalled. We have since conducted a ten-year analysis including recalls through December 2012, the last full year that data are available, and that analysis produced results evidencing that this same class of manufacturers manufactured almost 95 percent of the vehicles recalled.

The Advocates and CAS comments did not address or consider the benefits that reasonably could be anticipated from requiring other manufacturers to post recall information on the Internet. They did not provide any information on *de minimus* manufacturers.

The notice of proposed rulemaking would have applied a VIN submission requirement to manufacturers of 25,000 or more light vehicles, or manufacturers of 5,000 or more motorcycles manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce or imported into the United States annually. 77 FR 55621. Significantly, the notice of proposed rulemaking did not address manufacturers other than the light vehicle and motorcycle manufacturers it identified. 77 FR 55621. Other vehicle manufacturers apparently did not perceive themselves as potentially covered by the rule and did not comment. At this juncture, we do not have sufficient information to require other manufacturers to post recall information on the Internet. There would be questions, among others, about possible exemptions of *de minimus* manufacturers, updating frequency, and possible vendor services.

At this time, we are not making a decision on manufacturers other than those covered by the notice of proposed rulemaking. We are considering publishing another notice of proposed rulemaking and developing a record upon which to determine how to proceed with regard to the other vehicle manufacturers. We may consider, for example, how VIN look-up tools could benefit owners of other types of vehicles.

We reiterate that we are not prohibiting or preventing other manufacturers from providing an Internet based recalls search function. Any manufacturer may voluntarily provide this service, and some already do. Smaller manufacturers like Ferrari, Maserati, and Lotus now provide a VIN-based recalls lookup service through the Carfax Web site, yet they would not be required to do so by this rule. Although not required to do so, NHTSA encourages all manufacturers producing annually fewer than 25,000 vehicles (or fewer than 5,000 motorcycles) to create their own VIN-based recalls lookup service, and to provide for the electronic transfer of their recall information to NHTSA's *www.safercar.gov* Web site as specified in § 573.15(b)(12).

For the above reasons, the rule adopted today will apply to manufacturers of 25,000 or more light vehicles, or manufacturers of 5,000 or more motorcycles manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce or imported into the United States annually as originally proposed. Rather than adjust the text of § 573.6(c)(3) as proposed in the NPRM, we will add a new § 573.15 to accommodate today's requirement, as well as the performance criteria for the

manufacturer search tools that are discussed infra.[10]

ii. Decision To Adopt Alternative Proposal To Require Covered Manufacturers To Provide Vehicle Safety Recall Completion Information on Their Own or a Third Party's Internet Site

Industry commenters were decidedly against our primary proposal to require submission of VINs to NHTSA, and then to require daily updates to reflect a changed recall remedy status as to those VINs. These commenters said our proposal was costly, burdensome, subject to data integrity issues and service outages, and unnecessarily duplicative of the services many manufacturers already provide.

The Alliance commented that NHTSA's estimate of $51,200, for each large, light vehicle manufacturer to set up a VIN reporting system, was grossly underestimated. The Alliance calculated that it would cost each affected manufacturer $167,393.75 to setup the required computer systems. Based upon the Alliance's numbers, when multiplied by the number of light vehicle manufacturers affected by the proposal, the cost would total $4,854,418.75, more than three times NHTSA's one-time cost estimate of $1,484,800. The Alliance challenged our assessment that there would be no on-going costs to manufacturers to maintain their reporting systems, and said that based on information from their members, the average on-going cost per year would be $34,061.25 per manufacturer. Cumulatively, the on-going cost would be almost $1 million per annum. The Alliance further objected to our proposal because it did not consider the cost to tax-payers of establishing and maintaining this data system that would be required to accept hundreds of thousands of VINs, integrate substantial numbers of changes that the system receives each day, recover from inevitable service disruptions that will occur, and assure all the information is current and accurate.

By contrast, the same large, light vehicle manufacturers would each save an average of $71,773.75 under the alternative proposal, according to the Alliance. The Alliance multiplied this figure across the manufacturers that the NPRM identified would be affected by our proposal, for a combined savings in excess of $2 million. The Alliance also noted that each manufacturer could save approximately $30,000 in on-going costs per year, for a cumulative of almost $900,000 annually, if the alternative proposal was adopted.

MIC, MBUSA, Ford, and Honda also commented that the proposal was unjustifiably costly and inefficient. Honda estimated that the daily transfer of VINs between Honda and NHTSA would cost Honda a one-time approximate cost of $40,000, excluding labor costs. Polk commented on the complexity of learning the databases of all the vehicle manufacturers, and that Polk has a staff approaching 500 to operate its business of processing state title and registration data. Toyota said our proposal would require the submission of massive amounts of vehicle information that would be costly, unduly burdensome, impractical, and not advance safety goals.

Toyota said that it has operated a VIN-based recalls lookup tool for years and operation, data integrity, and security concerns are presented with the hosting of this type of service. Ford's comments aligned with Toyota's, and identified that extreme weather events, such as Hurricane Sandy, might interrupt the data connection between NHTSA and multiple manufacturers. Toyota commented that NHTSA would need to implement auditing safeguards to ensure NHTSA's database and Toyota's database are properly synchronized. Toyota explained that it utilizes one database that is accessed by multiple applications, and that this reduces the risk of syncing multiple databases, unlike the system NHTSA proposed.

Global Automakers commented that it would take NHTSA a considerable amount of time and funding to create, maintain, and operate a database of the size the agency proposed, and all of which would be a duplication of databases already in operation by many manufacturers and third party Web sites. The association further commented that smaller manufacturers often rely on recall completion data to be aggregated from multiple independent regional distributors, and that a requirement to update VIN repair status on a daily basis would be very burdensome and complicated for these manufacturers.

For its part, MEMA commented that although the impact and cost associated with our proposal do not directly impact its members as suppliers to vehicle manufacturers, those costs and burdens do have an indirect impact. It concurred with the vehicle manufacturers and their associations that the costs and burdens of our proposal were unnecessarily high, understated, and inconsistent with the concern in the GAO report that developing a centralized VIN database would require significant additional resources to fully implement. The group also made note that this report said ''most of the public are not aware of the existence of the SaferCar.gov Web site.'' Therefore, MEMA concluded, under a common sense, consumer point-of-view, the odds were that an individual would first visit the manufacturer's Web site before visiting *www.safercar.gov* for recalls information.

The industry commenters favored the alternative proposal to have light vehicle manufacturers host a VIN look-up on their or a third party's Web site and identified a number of benefits that the alternative proposal offered over the primary proposal.

The Alliance and Global Automakers echoed MEMA's comments saying that consumers are more familiar with the Web sites of their vehicle manufacturer, as opposed to NTHSA's Web site. Polk commented that between its Carfax Web site and the Web sites of the vehicle manufacturers, tens of millions of consumers are served each year.

The Alliance commented that manufacturer-hosted recall tools would provide more wide-ranging benefits by offering emissions recalls information, customer satisfaction campaigns, service campaign information, dealer locations, and vehicle service history. The Alliance noted that the availability of this other information could increase recall completion rates since dealers will remedy outstanding safety recalls when a consumer visits their dealer for some other service since the manufacturers' systems of records as to uncompleted recalls are shared with their respective dealerships.

Global Automakers, Ford, and Harley-Davidson both offered similar comments. Global Automakers noted that service campaigns and emissions recalls could also be offered through manufacturer Web sites. Global Automakers also added that typical consumers who need VIN-based recall results likely also need a complete ''snapshot'' of their vehicle history. Harley-Davidson added that remedy process information, dealer location and scheduling details could also be offered. Ford noted that it currently offers open safety recalls information well beyond the 24 month timeframe contemplated in our primary proposal, open safety recalls older than 24 months, emissions recalls, and customer satisfaction

[10] We mistakenly included a revision to section 573.4 in the regulatory text portion of our NPRM. This revision purported to add definitions of ''light vehicle'' and ''motorcycle'' to the definitions in that section. As we discussed in the preamble to the NPRM, *see* 77 FR at 55621, n.19, we are defining ''light vehicle'' as it is currently defined in 49 CFR 579.4, and ''motorcycle'' as it is defined in 49 CFR 571.3.

programs searchable by VIN on its Internet site.

Toyota commented that they could offer more than 24 months of recall information if allowed to provide this service through their own and currently operational Web site. MBUSA also noted that its Web site has recall information going back to 1976, significantly more than the 24 months of recall history that NHTSA proposed. The Alliance also suggested that instead of requiring just 2 years of historical VIN data, NHTSA instead request *at least* 2 years of data.

MBUSA, in favor of the alternative proposal, commented that manufacturer Web sites are inherently more accurate as vehicle manufacturers are the original source of both VIN information and recall completion status.

However, not all commenters were in favor of manufacturer-operated VIN look-up tools. The Advocates commented that any alternative method to satisfy Section 31301(a) of MAP–21 cannot be achieved with independent tools developed by the manufacturers as they could not ''include information about *each* recall that has not been completed for *each* vehicle.'' The Advocates noted that NHTSA could require manufacturers to satisfy this MAP–21 requirement, but only in addition to the NHTSA operated tool. The Advocates further commented that allowing manufacturers to operate their own VIN look-up tools would, in addition to being redundant to NHTSA's tool under the original proposal, also require NHTSA to constantly monitor their Web sites for adequacy and content.

We have considered the comments from industry and other groups. We have decided that the consumer awareness and recalls completion benefits we expected to achieve from our proposal can reasonably be expected to be achieved through the alternative proposal on which we requested comment. Further, the industry comments indicate that the alternative proposal is less costly and burdensome to the covered manufacturers since many of the manufacturers already have their own recalls look-up services online. It is also more cost effective and less burdensome to the tax-payers to adopt the alternative proposal, since the agency would not need to utilize its resources to support a VIN look-up feature that relies upon the manufacturer's datasets. The alternative proposal also reduces the risk of data inaccuracy and inconsistency that accompanies self-contained data systems. Accordingly, after consideration of the comments, we believe it more prudent to finalize the alternative proposal rather than our primary proposal.

We considered the industry commenters' criticisms that our estimations on costs were unreasonably low and short-sighted. While some comments did not provide support for their statement on costs or a break-down of stated criticism, we understand that requiring manufacturers to rearrange their data systems to report to NHTSA in the manner specified in our primary proposal, and then to provide an updated report daily, involves cost and burdens, and that the cost and burden are greater than what they are presently to provide owners with a recalls look-up service (or would be, in the case of manufacturers that do not presently have a recalls look-up service online).

We considered comments from the Alliance, Global Automakers, Polk, Harley-Davidson, Ford, Toyota, and other industry commenters, regarding the Web site features manufacturers can or do presently offer consumers. We agree that the information on activities beyond safety recalls that manufacturers can offer, and many already do, support the alternative proposal. We agree that information available to owners on these other activities could support NHTSA's goal of enhancing safety recalls completion rates. It is conceivable that an owner would respond to a non-safety recall notification or information, bring their vehicle to a dealership to have the work performed, and then any outstanding safety recall work could be performed at that time pursuant to typical manufacturer practices and policies of requiring dealers to check for outstanding safety recalls whenever a vehicle visits a dealership.

We agree that it is sensible for an owner or consumer to visit the manufacturer's Web site to learn more about a non-safety recall campaign or advisory on a vehicle, and then while searching be informed about an outstanding safety recall and take action to have their vehicle remedied. We considered the comments from MEMA, the Alliance, Global Automakers, and Polk regarding consumer's familiarity with manufacturer Web sites. We are persuaded by the commenters that the Web sites of large, light vehicle manufacturers are likely the first place an owner would look for VIN-specific information. For example, Toyota noted that their VIN search tool received 36,600 visits over a 7-month period, and over 70,000 visits in October 2012 alone. We also understand the risk that if an owner who does not find safety recall information on the manufacturer's site may not look further believing that only the manufacturer would have this information. This could be a consequence if we only required a manufacturer to provide VIN-specific information to us and did not require manufacturers to develop and maintain their own VIN-lookups.

We also considered the Advocates' technical argument that NHTSA can only require manufacturers to operate their own VIN look-up tools in conjunction with a NHTSA-operated tool. The Advocates claims Section 31301(a) of MAP–21 requires ''the Secretary of Transportation develop an internet based tool for dissemination of vehicle recall remedy information.'' We disagree with the Advocates MAP–21 interpretation as Section 31301(a) clearly states, ''the Secretary shall require that motor vehicle safety recall information—(1) be available to the public on the Internet.'' MAP–21 does not expressly require that NHTSA create a VIN based recalls look-up tool, only that it must ensure this information is made publicly available.

Therefore, we have decided to adopt the agency's alternative proposal to require light vehicle manufacturers that produce over 25,000 vehicles annually to make recall information available through a VIN look-up tool on their Web sites available to owners and consumers. The manufacturer's Web sites and VIN look-up tools must meet certain performance criteria, as discussed below. We are today amending 49 CFR part 573 to add a new § 573.15 that addresses and implements the requirements related to manufacturer online look-up tools reporting uncompleted safety recalls searchable by VIN.

iii. Scope of the Safety Recalls Information That Covered Vehicle Manufacturers Must Make Available

In the NPRM, we proposed to require daily updates on changes in recall remedy status for 10 years from the date a manufacturer first provided us the VIN list for a particular recall. We explained that we proposed this time frame because it is consistent with the statutory limitation on how long a manufacturer can be required to provide an owner a free remedy. That is, manufacturers are only obligated to provide a free remedy for vehicles that were bought by the first purchaser less than 10 calendar years from when the manufacturer notified its owners of the safety defect or noncompliance. *See* 49 U.S.C. 30120(g). In addition, we explained that in our experience very few vehicles can be expected to be presented for remedy under safety

recalls that are more than 10 years old, and that the corresponding utility and benefit of a look-up service for vehicles more than 10 years old is in our estimation limited.

We also proposed to require submission of VIN data for every vehicle covered by a recall filed within 24 months prior to the effective date of our VIN submission requirement in the NPRM. We explained that the Act contemplated this very ''look back'' activity through its express limitation that any implementing rulemaking conducted ''shall limit the information that must be available . . . to include only those recalls issued not more than 15 years prior to the enactment of this Act,'' *See* MAP–21 Act, Public Law 112–141, § 31301(b)(1), 126 Stat 405, 763 (July 6, 2012), and that we were within our discretion to set a requirement of two years' worth of safety recall completion information.

The Advocates disagreed with both of these proposals. As to the first, they said NHTSA did not present data to support this time limit and that the agency's rationale is in conflict with its safety mission. The Advocates argue for an indefinite time frame on grounds it is foreseeable that every subsequent purchaser and owner has an interest in knowing and accessing safety recall information, and that the agency did not explain why such purchasers and owners would not have an interest. They identify, as we did in a different context in the NPRM, that manufacturers are required to maintain records reflecting a vehicle's remedy status indefinitely. They state that by requiring information to be available about ''each recall that has not been completed for each vehicle,'' and not specifying any time limitation, Congress has spoken directly on the issue and we are foreclosed from setting a time constraint in rulemaking.

As for the two-year ''look back'' requirement, the Advocates and CAS asserted that the MAP–21 Act's requirement that recall information be available about ''each recall that has not been completed for each vehicle,'' effectively prohibits any limitation. In the Advocates' view, Section 31301(b) is intended to limit the extent of the burden on manufacturers required to develop an internet based vehicle recall status tool, but does not affect or reduce the obligation on the agency to develop a search tool under Section 31301(a).

The CAS also objected to a two-year look back provision. The group commented that by specifying a fifteen year limitation, the MAP–21 Act contemplated a more far-reaching scope than only two years. They claim our discretion to limit to two years is not consistent with the Act, and is not sufficient to inform and protect owners of vehicles of vehicles recalled as early as June 2010. To exclude thirteen years of recalls will adversely impact safety and is contrary to the statute according to the CAS.

We have considered the Advocates' and CAS's comments but disagree with their interpretation and perspective of what is or is not required under the MAP–21 Act. We do not agree that Congress intended that uncompleted recall remedy status information for the hundreds of millions of vehicles that have been or will be recalled be continuously updated, with no end, and a beginning that dates back to the inception of the construct of safety recalls in 1966.

In any event, because we have adopted the alternative proposal for covered manufacturers to make the recall information available on their Internet Web sites, we have decided to adjust the scope of the requirement to 15 years. Therefore, manufacturers that are required to make recall information available on the Internet must provide information on uncompleted recalls for at least 15 years from the date they first provided the list of covered VINs to their dealers for a particular recall.

Moreover, the proposal for manufacturers to provide data for a ''look-back'' is no longer relevant with the adoption of the alternative proposal for manufacturers to make the recall information public. Comments submitted by the manufacturers indicate that meeting the 15-year requirement we adopt today will not be onerous or burdensome. In fact, several manufacturers have commented that their services include recalls completion information for much more than the previous 24 months, which we originally proposed. Mercedes commented that their VIN-based recall Web site contains recall information going back to 1976, well past the 15 years we are establishing today.

We have amended 49 CFR part 573 as discussed previously to add a new § 573.15 that includes performance criteria specifying a minimum 15 year span of coverage.

iv. Miscellaneous Comments to the NPRM and Agency Responses

We received an assortment of comments, suggestions, and questions that did not fall neatly into the above categories relating to our primary or alternative proposals and the scope of those proposals. We summarize and address these points in this section.

QCSC commented that they did not understand how owners or prospective purchasers would identify themselves as such through NHTSA's proposed Web site. The comment is not entirely clear as to the reason or context for it, but we interpret it as a concern about personal privacy. In any event, we did not specify a requirement that users of our proposed recalls search service identify themselves in any manner, and it is not a performance requirement, as discussed further below, that we have set on the manufacturer or third party sites. As VIN-based search results would only display pertinent, outstanding recall information, without any information as to who owns a vehicle. Also, as discussed further below in this notice, we are not retaining the VIN that a user provides during a search initiated on our recalls look-up feature on our site, nor the result returned from the manufacturer's search tool. Therefore, we do not foresee any privacy implications. Many vehicle manufacturers already provide this very service, without requiring user identification. Therefore, we do not foresee the concerns raised by QCSC related to the mechanism of this identification.

With respect to our primary proposal to require manufacturers to submit recalls completion information by VIN on a daily basis, the Advocates commented that they agreed with the recall completion categories we proposed, but suggested that for the category ''Remedy Not Yet Available,'' we should include an option to sign up for an email alert when the remedy becomes available. Since we are not implementing our proposal, we will not adopt this recommendation. However, we agree that there is value in this proposal and would suggest the manufacturers required to make recall information available consider this proposal. We also suggest, but will not require, that manufacturers supply the expected date the remedy will be available when VIN-specific recall results show that a vehicle is included in a safety recall, but the remedy is not yet ready.

The Advocates also noted that quarterly reporting figures should be available to the public if the standard quarterly report forms will be discontinued for the largest light vehicle manufacturers. Also, the Advocates commented that VIN search results should display a copy of the latest quarterly report with a link to previous reports. Since we did not adopt the proposal that would have waived the quarterly reporting requirement for affected vehicle manufacturers, the

Advocates' comment is no longer relevant. Manufacturer quarterly reports will continue to be available online through *www.safercar.gov* as part of the manufacturer's recall file, as they are currently.

SRS requested that the agency include tire identification numbers (TIN) in its searchable database, and apply reporting requirements upon tire manufacturers. ARA submitted a similar comment regarding the required submission of recalled part numbers, remedy part numbers, and build sheets with textual part descriptions. ARA believes that this information, when submitted to NHTSA for each vehicle recall, should be available to the public as batch downloads so ''particular users will be able to integrate this data into their individual inventory management systems so that this information reaches all levels of the automotive supply chain in a streamlined manner.''

We considered the comments from SRS and ARA suggesting expanding the scope of this portion of our rulemaking to include certain aspects relevant to equipment recalls. At this time, we decline to expand the scope of the rule; the directive of MAP–21 is plainly limited to recalled vehicles.

MIC also suggested an alternative to NHTSA's alternative proposal. Citing its success in a foreign markets, MIC proposed that a recall document be placed with the motorcycle's other important documents, such as registration papers, at the time the motorcycle is remedied. This would enable the dealer, owner, the manufacturer, and NHTSA all to be advised of the recall repair. We considered MIC's suggestion, but we concluded that it would eliminate the ability for anyone with a 17-character VIN to quickly learn if the vehicle is subject to an outstanding recall. In MIC's proposal, a person shopping for a used motorcycle would not know if the lack of such a recall remedy document means the motorcycle is not subject to the recall, or it *is* subject to the recall but not yet remedied. That person would have to contact the motorcycle manufacturer to learn if any recalls were outstanding. We believe MIC's proposal does not offer the same level of value compared with the proposal we adopt today, where manufacturers will make recall information available through a VIN-based online recalls lookup service.

CAS commented that NHTSA's proposal did not address issues that arise with regional recalls. CAS noted that the VIN lookup proposal would only encompass recalled vehicles that are currently registered or originally sold in certain states where the recall is applicable. The proposal would not include vehicles that move from a non-covered state to a covered state after the initial VINs are uploaded to the system. However, to the extent that a manufacturer would learn of a vehicle's change of registration so that it would be subject to a safety recall, (for example, should it conduct an update of its registered owner list for a recall) we would expect that the VINs of any additional recalled vehicles would be loaded into its recalls search tool. This expectation is consistent with the requirement that if a manufacturer adjusts its recall population upward, it must also add the newly covered VINs to its search tool.

This final rule also requires manufacturers to make VINs affected by outstanding safety recalls searchable on their Web sites when those VINs become available on a list of current vehicle owners. This list must be compiled and maintained as required in 49 CFR 573.8(a). In other words, we will require that manufacturers load the VINs of recalled vehicles into their recalls search tools on or before the time that they have identified the corresponding list of owners of those vehicles. In our experience, the process of identifying the owners of vehicles based on state registration data takes, at most, a matter of weeks. Even in situations where this process may take longer, a manufacturer would be permitted to take, at most, 60 days to notify owners, due to our decision today to require owners be notified of safety recalls within 60 days of notifying NHTSA of the safety defect or noncompliance. Accordingly, the public will have at its fingertips the ability to search for uncompleted recalls on vehicles, in most cases, within weeks and, at most, within 60 days of the manufacturer's recall decision.

Both Global Automakers and MIC commented that smaller manufacturers often rely on recall completion data to be aggregated from multiple independent regional distributors. MIC believes the requirement to update VIN repair status on a daily basis would be very burdensome and complicated for these manufacturers.

We considered these comments from Global Automakers and MIC. We note that NHTSA did not require manufacturers to update their remedy information every single day; rather update any new information received each day. In the NPRM we did not expect manufacturers to alter the way or frequency they updated their own warranty and/or recall database. We simply requested that their most up-to-date status be transmitted to NHTSA each day.

v. Specific Criteria for Manufacturer Safety Recalls Lookup Completion Tools

In the NPRM, we solicited comment on requirements for the alternative proposal where manufacturers make the recall information available through their Internet Web sites. We indicated that any alternative must provide a comparable level of timely and accurate vehicle-specific recall information, across a comparable breadth and depth of vehicle applications, to our primary proposal where certain manufacturers submit VINs of vehicles affected by a recall and recall completion status information to NHTSA.

We also requested comment on issues that would assist the agency in setting performance based criteria for a requirement that manufacturers make the recall information available through their Internet Web sites. We sought comment on whether vehicle manufacturer VIN-driven recalls search tools located on their Web sites were in fact a realistic alternative given the many factors that affect the completeness, reliability, and timeliness of information provided by a manufacturer on the recall history of vehicles that it manufactured. We said we were concerned that not all vehicle manufacturers offer a VIN-driven service and some offer it only if the consumer is a registered user of the site with the manufacturer (a process that may or may not require input of personal information such as names, addresses, and phone numbers), as one example. Also, we noted that some sites include marketing and other material that is not relevant or distracts from the recall information, and that currency of the information as to whether a particular vehicle has been remedied varies between search tools, as other examples.

We said that any alternative must meet the MAP–21 Act's minimum requirements. That is, the tool must be: available to the public on the Internet; searchable by vehicle make, model, and VIN; in a format that preserves consumer privacy; and include information about each recall that has not been completed for each vehicle. We further said that while we would consider alternatives that may not be free of charge to dealers or owners, we were unlikely to adopt such alternatives.

We stated the alternative tool must be a VIN-based Internet look-up tool that includes recall completion information that is updated at least once daily, and that it must be a free service available

to the public, including dealers, owners, and any interested parties. We also proposed to adopt regulations in order to ensure individual manufacturer's Web sites offer a standardized look and functionality regardless of the manufacturer providing the service. We tentatively believed these rules would likely include items such as requiring a conspicuous hyperlink to the VIN-driven recall tool found on the manufacturer's main Web page (or similarly easy to locate Web page), prohibiting marketing or sales information in conjunction with the VIN recall tool, requiring straightforward ease-of-use without Web site registration or personal information other than a VIN, and making available the VIN specific recall information that was proposed under the primary proposal for a NHTSA Web site based VIN look-up tool.

Lastly, we said that after comments are received on this notice, we reserved the flexibility to develop and adopt an alternative based on outgrowths of our primary proposal or comments received in relation to that proposal or any alternatives presented.

No commenter objected to the proposal for NHTSA to develop performance based criteria for the alternative, manufacturer-controlled or operated, search tool. To the contrary, the Alliance, Global Automakers, and Toyota all commented that it would be reasonable for NHTSA to propose regulatory requirements to address manufacturer Web site concerns like not requiring Web site registration and not including marketing materials. Furthermore, Toyota, Ford, and Honda commented that NHTSA could link to manufacturer Web sites and VINs entered from NHTSA's Web site could even be forwarded to manufacturer Web sites for the results.

We considered the Alliance, Global Automakers, and Toyota's comments in this final rule. Consistent with our explanations in the NPRM, we believe a minimum set of performance criteria is necessary. To ensure the performance requirements of MAP–21 are met and to ensure consistent functionality and meet user expectations of performance no matter the source of the information or the particular brand of vehicle involved, we are setting requirements through a new regulatory § 573.15. These requirements are discussed later in this document.

We reiterate that today we are adopting our proposal that motor vehicle manufacturers that manufacture or import 25,000 or more light vehicles annually, or 5,000 or more motorcycles annually, establish on their Web sites a VIN-based safety recalls search mechanism available to the public. Specifically, a link to the manufacturer's safety recalls look-up function must be conspicuously placed on the main page of the manufacturer's United States' main Web site. However, where that link directs a user to enter a VIN and return a result, we leave to the discretion of the manufacturer. Manufacturers, for example, may choose to operate the search from their Web page, or choose to have the user redirected from the link on their main U.S. Web page to a third party's Web page. No matter where the search function is housed, the function must in all cases meet the minimum requirements of Section 31301(a) of MAP–21, as well as the performance requirements we discuss in further detail below. That is, the safety recalls search function must: (1) Be available to the public on the Internet; (2) be searchable by vehicle make and model and VIN; (3) be in a format that preserves consumer privacy; and (4) include information about each recall that has not been completed for each vehicle.

It must also meet the performance requirements enumerated below and that will be codified into a new § 573.15. These requirements were identified or proposed in our NPRM and developed after consideration of the comments received in response to our proposal.

(1) Be free of charge and not require users to register or submit information, other than a make, model, and a VIN, in order to obtain information on recalls;

(2) Have a hyperlink (Internet link) to it conspicuously placed on the manufacturer's main United States' Web page;

(3) Not include sales or marketing messages with the page for entering a make, model, and VIN, or with the page where the results are displayed;

(4) Allow users to search a vehicle's recall remedy status, and report that a recall has not been completed on that vehicle, as soon as possible and no later than the date when the manufacturer includes that vehicle on its list compiled for purposes of 49 CFR 573.8(a);

(5) Ensure safety recalls subject to § 573.15(b)(4) are conspicuously placed first, before any other information that is displayed;

(6) For vehicles that have been identified as covered by a safety recall, but for which the recall remedy is not yet available, state that the vehicle is covered by the safety recall and that the remedy is not yet available;

(7) Be updated at least once every seven (7) calendar days. The date of the last update must display on both the page for entering the make, model, and VIN to search for recall completion information and the results page;

(8) Where the search results in identification of a recall that has not been completed, the recall campaign number NHTSA assigned to the matter; state the date the defect or noncompliance was reported pursuant to part 573; provide a brief description of the safety defect or noncompliance identified in the manufacturer's information report filed pursuant to this Part; describe the risk to safety consistent with the manufacturer's description given in the terms required by parts 573 and 577; and describe the remedy program;

(9) At a minimum, include recall completion information for each vehicle covered by any safety recall for which the owner notification campaign started at any time within the previous fifteen (15) calendar years;

(10) State the earliest date for which recall completion information is available, either on the search page or on the results page, and provide information for all owner notification campaigns after that date;

(11) Instruct the user to contact the manufacturer if the user has questions or wishes to question the accuracy of any information, and provide a hyperlink or other contact information for doing so;

(12) Ensure, through adherence with technical specifications that NHTSA makes available through a secure area of its Web site *http://www.safercar.gov/Vehicle+Manufacturers/RecallsPortal,* the secure electronic transfer of the recall information and data required to be made publicly available by this section, to NHTSA for its use in displaying that information and data on its Web sites or other public portals.

We note that under these requirements manufacturers are required only to report results on uncompleted or ''open'' recalls. We encourage manufacturers to include information concerning completed recalls as part of their look-up tools. Completed recall information could be offered as part of a complete package of vehicle history information—such as information concerning emissions recalls, customer satisfaction campaigns and extended warranty programs—they may choose to provide their owners. However, we decline to require a report on completed recalls to avoid complicated performance requirements and to limit the burden on manufacturers. With future experience

and evaluation, and particularly if owner confusion should result from the lack of information on completed recalls, we may reconsider our decision and expand the requirements to include information on completed recalls.

Appendix C is an example of how a manufacturer's search function could display its results in accordance with the above criteria. This particular layout and display is not required, but is provided in the interest of giving manufacturers a visual sample.

The manufacturers subject to this requirement must have compliant Web sites available to the public no later than one year from the date of today's notice.

Although we have adopted the proposal for certain manufacturers to host recall information on their Web sites, the agency intends to offer a similar function to the public through its Web site, *www.safercar.gov.* NHTSA currently offers a reliable and current safety recalls search function that can be effectively and efficiently updated to incorporate a recalls search function by VIN. In our view, NHTSA should improve its utility in the interest of advancing recalls completion by adding a VIN look-up tool.

To be able to do so, however, requires cooperation from the manufacturers that are being required by this rule to develop or modify their software systems. As part of today's rule, these manufacturers must allow secure electronic transfer of manufacturer recall data, for one VIN at a time, to NHTSA's software applications. NHTSA's applications can identify a manufacturer by its world manufacturer identifier (WMI), given in the VIN, and make a secure communication with the manufacturer's system at a pre-specified uniform resource identifier (URI). NHTSA's software applications communicate with a manufacturer specific Application Programming Interface (API), at a given URI, using a predefined identification and key combination to securely identify NHTSA communication with the manufacturer system. This ensures only NHTSA applications can access the manufacturer data via this API on a secure Internet protocol.

The secure communication will be facilitated by following an agreed upon API specification (Representational State Transfer, REST, API specification) that will be available only to manufacturers registered to the new recalls portal we are finalizing.

Upon establishing a secure communication with each manufacturer's system, the NHTSA Web site application will make an API request with the specific VIN a user provides to NHTSA on its safercar.gov recall search tool. The manufacturer will be required to accept this API request and conduct a VIN lookup for recall related information in the manufacturer's system and respond with a machine readable response, which will be specified in the API technical specification. The response that is sent by the manufacturer will then be read by the NHTSA systems, without saving any information on the NHTSA systems for the given response, and the details of the VIN related recall information will be displayed to the requested user on the NHTSA Web site *www.safercar.gov,* as if the consumer accessed the manufacturer's Web site. Once the recalls results are displayed on the user's browser via the NHTSA Web site the NHTSA system does not save the VIN or results. The complete communication from the user's browser to the *www.safercar.gov* Web site, to the manufacturer's system to request the recall information via the API, and the response back from the manufacturer's system to the NHTSA system and then to the user's browser, will be protected by Secure Socket Layer (SSL) encryption using Hyper Text Transfer Protocol (HTTP).

A detailed technical specification for identifying the URI to support the REST API, required attributes of the API request, type and format of data attributes that are expected in the response packet will be detailed in a technical specification that will be published only to manufacturers with registered and password protected accounts in the recalls portal we are placing on *www.safercar.gov.*

In addition to the base configuration of the communication with the NHTSA systems, format of the requests, responses and the type of data that is expected from the manufacturer, the agency will publish the details on handling changes to the API, NHTSA requests for identification, and any changes to the data requests and responses, in the safety recalls portal that is accessible only to manufacturers with registered accounts.

In order to provide consumers and other users of our Web site this service, we are including in our performance requirements above a requirement that manufacturers provide to us the necessary API protocols required for NHTSA to access the manufacturer's VIN-based recall data.

The recall information obtained by users using the *www.safercar.gov* Web site will not be retained or maintained by NHTSA. Moreover, NHTSA will not capture, retain or maintain any VINs entered into its database before or after making the API requests with the manufacturer systems. If a user submits multiple requests for the same VIN, then NHTSA's system submits the identical number of requests to the respective manufacturer via the secure API to obtain the associated, latest recall information for that VIN. NHTSA will not have and will not require access to any data other than the recall data related to a given VIN. Manufacturers may design, and we anticipate that they will design, their systems so that any attempt to access any information that is not mentioned in the technical specification of the API will not be accepted by those systems.

NHTSA intends to host a workshop in the early part of 2014 to work with the manufacturers to develop this interface. We will publish a **Federal Register** notice to announce the dates and times and locations of any workshops. We intend to offer both in-person and virtual workshops through technologies such as Webex or Webinar.

2. Requirements Related to the Information Required To Be Submitted in a Part 573 Defect and Noncompliance Information Report

In the NPRM, we proposed to add three items to the current requirements related to the information that a manufacturer is required to submit when notifying and informing NHTSA of a safety defect or noncompliance decision pursuant to part 573. First, we proposed that manufacturers include a description of the risk in their report. Second, for equipment recalls, we proposed manufacturers include the equipment brand name, model name, model number. Third, we proposed to prohibit disclaimers that a manufacturer has made a safety defect of noncompliance decision.

i. An Identification and Description of the Risk Associated With the Safety Defect or Noncompliance with FMVSS

After reviewing the few comments we received on this matter, we will adopt this proposal as written in the NPRM and now require the description of the risk associated with the safety defect or FMVSS noncompliance be included in the Part 573 Information Report. This important safety information will better communicate to the public and NHTSA the actual safety risk, without chance of misinterpretation.

The Alliance and Toyota supported this proposal noting that this requirement would better align part 573 with part 577 which requires this information in recall owner notification letters. Selander supported this proposal and noted that this requirement should

not cause any additional burden to manufacturers since part 577 already requires this same information.

The Advocates also supported this proposal while suggesting that this newly required information should also be made available to the public.

MEMA commented that they are opposed to this proposal as the risk to safety '' . . . in the first filing can be, and usually is, inconclusive (or even hypothetical), especially for original equipment suppliers.'' MEMA is concerned that this proposal could lead to an overstatement of risk to cover many possibilities.

We agree with the Advocates that it would be helpful to have the manufacturer's description of the risk be included in the recall summary information posted on NHTSA's Web site and available to the public. Manufacturers will be required to provide this information as part of the new form that manufacturers will be completing when notifying NHTSA of safety defect and noncompliance decisions. This is discussed below in section *3. Internet Submission of Recall-Related Reports, Information, and Associated Documents and Recall Reporting Templates.*

We appreciate the concern MEMA identified, however, we feel the benefits of sharing a manufacturer's description of the risk outweigh the smaller risk that a manufacturer on a particular recall may identify risk that may or may not hold true over time or with further study. We would rather err on the side of information than silence, and it is certainly true that a manufacturer, at least with respect to a safety defect, must have considered risk and determined that risk to be unreasonable before filing a 573 report. We do not believe it furthers the mission of information and transparency to withhold this information in the event a manufacturer's description of risk might possibly change.

Accordingly, we are revising the terms of paragraph (c)(5) of § 573.6 to specify that the manufacturer filing a part 573 shall ''identify and describe the risk to motor vehicle safety reasonably related to the defect or noncompliance consistent with its evaluation of risk required by 49 CFR 577.5(f).''

ii. As to Motor Vehicle Equipment Recalls, the Brand Name, Model Name, and Model Number of the Equipment Recalled

After reviewing the comments received on this proposal, we will adopt this regulation as proposed in the NPRM. The addition of equipment brand name, model name, and model number information in Part 573 Information Reports will greatly aid the public and NHTSA in better identifying recalled motor vehicle equipment.

MEMA commented that this proposal does not appear to be problematic and most equipment manufacturers already provide this information in their Part 573 Information Reports.

Both the Advocates and Selander supported this proposal through their comments. The Law office of Stephen Selander suggested that we also require the ''sale date'' of the equipment in the event the manufacturer is not certain of the dates of manufacturer.

We are declining to adopt Selander's suggestion regarding the capture of recalled equipment sale dates. While this is possibly helpful in a small number of cases, we have not received a large quantity of Part 573 Information Reports where the manufacturers are uncertain of the date, or range of dates, they produced the equipment. In such cases, NHTSA is able to ascertain if necessary this information through its investigative authority. Accordingly, such a requirement is not justified at this time.

Therefore, today's rule amends paragraph (c)(2)(iii) of 49 CFR 573.6 to additionally require the ''brand (or trade) name, model name, model number, as applicable, and any other information necessary'' to describe the equipment being recalled.

iii. Disclaimers in Part 573 Defect and Noncompliance Information Report

After careful review of the many comments received on this proposal, we have decided not to adopt the prohibition against disclaimers in manufacturers' Part 573 Information Reports. Most industry commenters, including the Alliance, Global Automakers, Toyota, Honda, Harley-Davidson, MIC, and others, criticized our proposal to prohibit disclaimers. The Advocates commented in support of this proposal noting that disclaimers ''introduce confusion into the public record.'' RMA's position was neutral but suggested we ensure that manufacturers could still state their intention to file an inconsequential petition, when needed.

The Alliance, Toyota, and JPMA, commented that the prohibition amounted to an unconstitutional form of compelled speech and violated their First Amendment rights to speak truthfully. The Alliance commented that disclaimers amount to a ''truthful statement of the manufacturer's position'' and indicate a settlement made between the manufacturer and NHTSA in order to effectuate a safety recall and free remedy. They said they strongly object to this proposal '' . . . to silence disagreement with NHTSA about whether a given condition is a safety-related defect, and apparently to deem every part 573 report to be an implicit manufacturer determination of the existence of a safety-related defect.''

Harley-Davidson commented that manufacturers should not be restricted to openly communicate the circumstances surrounding a decision to conduct a safety recall because NHTSA desires that these reports be made publicly available. For example, Harley-Davidson may want to communicate that a failure rate is relatively low or that, in the manufacturer's judgment, the safety risk is uncertain or minimal. MEMA offered a similar sentiment, saying that NHTSA should not prohibit factual and accurate statements simply because Part 573 Information Reports are published for a different audience. Harley-Davidson, Global Automakers, and MEMA commented that manufacturers should be allowed to include disclaimers since manufacturers are required to explain the circumstances of a recall decision in the chronology portion of the Part 573 Information Report, and may identify communications with NHTSA that would imply the manufacturer and the agency did not agree on the particular issue. MIC commented that they believe they should be allowed to communicate additional information, ''outside of government purview,'' in the recall notification that consumers receive.

Industry commenters also added that prohibiting disclaimers would ultimately hurt consumers by delaying recalls and their associated free remedies. Both the Alliance and Global Automakers claimed that this proposal would limit NHTSA's ability to negotiate a settlement in cases where the manufacturer and NHTSA disagree on the risk to safety. Honda noted that these disclaimers are a benefit to consumers and allow two parties, NHTSA and the manufacturer, to reach a compromise and avoid litigation. Selander offered a similar sentiment and noted that manufacturers may not be willing to reach a safety defect decision if forced to affirmatively admit a safety defect, and in contravention of a position they may want to take in a subsequent product liability action. Honda said that disclaimers might be a practical way to address wear items that may fail earlier than expected and whose failure may cause a safety risk. Toyota commented that we did not provide discussion on resolving investigations where ''legitimate, good faith differences exist'' between the manufacturer and NHTSA.

MIC, Selander, and the Alliance commented that consumers are generally savvy enough not to be confused by disclaimers, and should have available to them all the information the manufacturer wishes to provide to understand the manufacturer's report.

The Alliance commented that Part 573 Information Reports containing disclaimers are not *technically* ''Part 573 Reports,'' as part 573 only applies if a manufacturer has determined that a safety related defect or noncompliance exists. Selander commented to add that simply because Part 573 Information Reports are required in the event of a safety defect decision, it ''should not mean that a safety recall cannot be conducted in the absence of such a determination.'' Instead, Selander proposed that NHTSA could require certain language in any disclaimer that would indicate the disclaimer does not constitute an agreement between NHTSA and the manufacturer.

We have considered the above comments and while we disagree with some of the industry comments, we have concluded that the prohibition we proposed is unnecessary. The Part 573 Information Report is a communication from the manufacturer to the agency, and not to the consumer who rarely, if ever, will see it. Because the agency has decided not to adopt the proposal, we do not need to address comments specifically objecting to this proposal. Instead, we explain the agency's decision not to adopt the prohibition on disclaimers, while responding to some comments where necessary to state the rationale for the agency's decision.

Harley-Davidson, Global Automakers, and MEMA's comments identifying that the requisite chronology of events in a part 573 report may contain information that expressly or implicitly identifies a disagreement between the manufacturer and the agency over the nature or severity of an issue are accurate. In some cases one or more of the principal events that yielded the recall decision is or was the opening of an agency investigation, or the agency's continued pursuit of a matter despite the manufacturer's protests that the issue did not rise to the level of a safety defect, as one example.

We note that the recall notification that the manufacturer must send to the vehicle owner under part 577 may not, under that regulation's longstanding language, contain any disclaimer that implies there is no safety defect or noncompliance present in the owner's vehicle or item of replacement equipment, as it may cause owner confusion. 49 CFR 577.8. Moreover, we note that part 577 prescribes specific statements that must be included in notifications to vehicle owners without any alteration to the prescribed language. *See* 49 CFR 577.5(b), 577.5(c)(1), and 577(c)(2). A notification that does not conform to these requirements is a violation of the Motor Vehicle Safety Act. 49 CFR 577.9. We have made a minor change to 49 CFR 577.5(a) to make clear that these provisions of part 577 apply in any case in which the manufacturer files a defect or noncompliance information report under part 573.

We also agree that consumers are best served when safety recalls are announced and free remedies are administered as quickly as possible, irrespective of whether we and a manufacturer have reached an accord over the nature or severity of the issue that results in a safety recall. In addition, there have been NHTSA investigations and then recalls where the manufacturer and the agency are at odds over the alleged defect and/or its risk to safety. In these cases, we agree it may be better for the motoring public if NHTSA maintains the flexibility to negotiate a safety recall and a free remedy is offered as opposed to engaging in protracted litigation that would potentially delay any remedy. Accordingly, we have declined to adopt the proposal to prohibit disclaimers.

3. Internet Submission of Recall-Related Reports, Information, and Associated Documents and Recall Reporting Templates

In the NPRM we proposed to change the mechanism by which manufacturers notify NHTSA of decisions to recall and file the required Part 573 Information Reports, and to supplant the current methods that manufacturers use to submit such reports, which may include hard copies or electronic submissions received via our email *RMD.ODI@dot.gov* account. We proposed to develop and implement a web-based, Internet portal to be accessed through our Web site *www.safercar.gov*, and that all manufacturers would use to notify and provide required recalls information. Through this portal, manufacturers would not only file new part 573 reports, but would update and amend those reports, file quarterly reports on the progress of their recall campaigns, submit copies of representative communications they have issued to owners and dealers, and conduct the host of other routine filings and communications with the agency attendant to a safety recall campaign. We explained that the process and functionality would be similar to what many manufacturers are currently performing in compliance with EWR requirements, and that we would issue passwords to those manufacturers without EWR passwords whereas present EWR accountholders could use their EWR passwords. We further explained that we intended to offer manufacturers the ability to track any submissions they make, and to send a submitter a confirmation message to the manufacturer's registered email account confirming our receipt of any submission.

We shared and requested comment on five different Part 573 Report forms, or templates, to be used for notifying the agency of a recall decision and providing the information required or desired about the decision, the products affected, the nature of the defect or noncompliance, the manufacturer's plans for notification and remedy, and other information required or typically provided in a Part 573 Information Report. We also shared a standardized form for providing quarterly report information and requested comment on it.

We received comments on our proposal from the Alliance, Global Automakers, CAS, EMA, Honda, Harley-Davidson, MBUSA, and RMA. Most commenters expressed general support for our proposal, but several requested clarification on and offered suggestions as to the templates and utility of the portal.

The Alliance, Global Automakers, the Advocates, and CAS all commented in support of our proposal to implement an online recalls portal in order to standardize recall reporting. Honda expressed support for this proposal while requesting more flexibility to add other relevant information as needed. Toyota suggested that NHTSA should not require information fields that are not required to be completed under part 573, and requested a method by which to track updates made to a manufacturer's Part 573 Information Report. The Alliance suggested that for fields requesting voluntary information, the form should clarify that the information is not mandated by part 573. This group also suggested a workshop in order to ensure manufacturers understand how the new system works.

The EMA offered three suggestions as to how NHTSA could improve its recall document templates. First, they suggested the quarterly report template should have a ''Save Report'' button so manufacturers could save working copies of their quarterly reports before submitting them to NHTSA. Second, they suggested a change from the text-

entry box on the Part 573 Information Report marked ''Number of above vehicles containing the defect/noncompliance.'' The EMA noted that part 573 requires the *percentage* of vehicles that is believed to actually contain the defect or noncompliance, not the number of vehicles. Third, the group suggested elimination of the VIN range text-entry fields in the Part 573 Information Reports, or at least made optional. The EMA claimed that safety defects or noncompliances rarely affect heavy-duty vehicle with a sequential VIN range. It is more common for recalled heavy-duty vehicles to have discontinuous VINs due to their customized production.

Honda, Harley-Davidson, and MBUSA commented that the new web-based recalls portal proposal conflicts with the statutory requirement to submit Part 573 Information Reports via U.S. certified mail. MBUSA suggested NHTSA either amend the statute prior to the implementation of this rule or allow manufacturers to, one time, submit via certified mail their intention to use online reporting going forward.

RMA also suggested a change to the Part 573 Information Report for tires. It was suggested the phrase ''tire make'' be changed to ''tire brand'' as it is more common in the industry. Also, RMA suggested a change from the term ''tire model'' to the more commonly used ''tire line.''

Harley-Davidson criticized this proposal claiming it will increase the burden for manufacturers as these forms will only allow two company representatives to access the system. This restriction, it commented, will cause manufacturer representatives to have to circulate rough drafts outside of the online recalls ports, finalize the draft, and then paste all the information into NHTSA's Web site.

After review and consideration of the comments received, we have decided to adopt, with slight changes, the proposal to require manufacturers to submit their part 573 notification through a web-based Internet portal. A visual sample of this online recalls portal, implementing many of the suggested changes, can be found in Appendix D. We address the comments received below.

We have considered Harley-Davidson's comment but do not see how the implementation of an online recalls system will add burden to a manufacturer's workflow. Through our regular communications with manufacturers, we understand that draft versions of Part 573 Information Reports and other recalls-related submissions are circulated for approval through the various levels of management and legal staff within a manufacturer's structure. In other words, we fail to see, as a practical matter, how the requirement to put this information onto an electronic form is any different than what machinations occur prior to a manufacturer's creating a final paper copy that they either submit in hard copy or via a PDF that they then email.

As to the various comments questioning our ability to change the mechanism by which manufacturers notify NHTSA of safety recall decisions and file information, there is no statutory prohibition from specifying an additional means of notification, particularly where that means (online submission) is at a minimum equivalent to or more efficient than certified mail and advances common safety goals. If a manufacturer submits a perfected part 573 notification report through the agency's web-based online portal, the agency will waive the requirement to submit by certified mail.

For these reasons, as proposed in the NPRM, we are amending § 573.9, ''Address for submitting required reports and other information,'' to require submission of these reports through NHTSA's online recalls portal. Given that the Safety Act was not changed to remove the requirement that manufacturers notify NHTSA by certified mail when they make a safety defect or noncompliance decision, manufacturers may continue to also submit a printed copy of the completed online form after the form has been submitted and accepted by the agency. We will design our system to allow manufacturers to download and print a copy of this material.

We agree with the Alliance's suggestion that we host a workshop to assist manufacturers in using the portal, tracking submissions, and learning what to expect from NHTSA in terms of submission confirmations and what will be published on its Web site from the information a manufacturer supplies. We will publish a public notice in the **Federal Register** setting forth dates for training and workshops, to be hosted at U.S. Department of Transportation headquarters in Washington, DC and via electronic meeting services such as Webex and Webinar services.

As to the Alliance and Toyota's comments on optional information requested on the templates, but not required by part 573's reporting requirements, we disagree that omitting this information in the forms, if a manufacturer is willing to supply it, is an ideal solution. The more information a manufacturer can supply concerning its decision and its notification and remedy campaign the better informed owners and NHTSA are. Nevertheless, we do appreciate the sentiment that the form should be clear about what information is required by part 573 and what is not. Therefore, we will use an asterisk (''*'') to indicate a field for which information is mandatory at the time the report is first filed or that is required within five (5) business days of when a manufacturer confirms it. We will adjust the templates to specifically note that an asterisk next to a field means that field's information is required by regulation.

We agree with Honda's recommendation that there be other methods of adding pertinent information to a manufacturer's recall documentation. We have amended the proposed template to provide several free form text-entry boxes in the Part 573 Information Report as well as options to upload miscellaneous documents to the recall file. Manufacturers should not be, and will not be, limited in the amount of information they can supply to better support the recall description.

We also agree with Toyota's recommendation that a manufacturer's changes and updates to their submissions be tracked. We will design the system to ensure that online form updates and changes can be tracked through the new online recalls portal so manufacturers can see when changes were made to their report, like a change in the recall population or a re-evaluation of the remedy program. We will also design the system to allow manufacturers to download and print a copy of this material.

In regard to comments regarding the type of information and the format that it will be displayed on the agency's Internet Web page, we believe such issues are outside the scope of this rulemaking and inherently internal agency decisions. We do not anticipate that the information will be different from what the agency currently displays in relation to recalls campaigns on *www.safercar.gov.* Moreover, the agency will not disclose information that it is prohibited by law to release to the public such as personal identifying information or confidential business information. Additionally, we intend to continue to offer the public the option to access the complete version of information a manufacturer submitted (minus information we are prohibited from publishing, such as confidential materials). We note that offering the public this access via *www.safercar.gov* enhances our transparency and furthers the agency in meeting its obligations under the Freedom of Information Act (FOIA).

In the NPRM, we proposed a 60-day lead time from the date the final rule is published. We acknowledge that this lead time was probably too short to launch a complex, new online Web site that serves the public, manufacturers, and NHTSA personnel. Our commitment to offer training workshops for manufacturers will take time to arrange and conduct, with additional time possibly required to incorporate any adjustments that become apparent as a result of those workshops. Accordingly, we are changing the effective date of the requirement that manufacturers notify and file Part 573 Information Reports and other recalls-related information pursuant to 49 CFR 573.9 from 180 days to one year from today's notice.

With respect to EMA's suggestions, we agree with two of its three recommendations. We will, therefore, adopt the quarterly report ''Save Report'' option, so that a user can insert information, save it, and then return to it at a later time to complete the report. And we will correct the error we made in requesting the number of vehicles believed to be defective, as opposed to the regulation's requirement of an identification of the percentage of vehicles believed to be defective. We do not agree with the third recommendation, that the VIN range fields be eliminated. While not needed for every vehicle recall, we do receive many part 573 reports where the affected vehicles fall within a particular VIN range. In these cases, it is useful to identify the VIN range so affected owners can more easily determine whether their vehicle is affected by the safety defect or noncompliance. We note that the VIN range text-entry fields are already optional, because they do not apply to every manufacturer or every recall.

We will adopt RMA's recommendation to use terminology more consistent with industry usage for the Part 573 Information Report applicable to tires. Accordingly, the term ''tire make'' will be changed to ''tire brand,'' and the term ''tire model'' will be changed to ''tire line.''

Given that we are not adopting our proposal to require high volume light vehicle manufacturers to submit the VINs of recalled vehicles to us, we confirm that we will not require an electronic list of VINs. Therefore, the NPRM's Appendix C, Form C1 is eliminated.

For these reasons, as proposed in the NPRM, we are amending § 573.9, ''Address for submitting required reports and other information,'' to require submission of these reports through NHTSA's Internet web-based recalls portal.

4. Amendments to Defect and Noncompliance Notification Requirements Under Part 577

In the NPRM, we proposed four changes to the requirements found within 49 CFR part 577, the implementing regulation governing, among other things, the content, timing, and manner of owner and dealer notifications that manufacturers issue on recall campaigns. First, we proposed to add language to § 577.7(a)(1) to require that manufacturers notify owners and purchasers no later than sixty (60) days after they notify NHTSA that a defect or noncompliance exists and, should the free remedy not be available at the time of notification, manufacturers issue a second notification to owners and purchasers once the remedy is available. Second, we proposed to amend § 577.5(a) to require that all owner notification letters include ''URGENT SAFETY RECALL'' in all capital letters and in an enlarged font at the top of the notification letter. Third, for vehicle recalls, we proposed to amend § 577.5(b) to require that the manufacturer place the VIN of the owner's vehicle covered by the notification within the body of the letter. Fourth, we proposed to amend § 577.5(a) to require that the envelopes in which the letters are mailed be stamped with the logos of the U.S. Department of Transportation and NHTSA, in blue or black text, along with a statement in red text, that the letter is an important safety recall notice issued in accordance with federal law. We have decided to adopt all four of our proposals.

In addition, during the course of our review of the regulatory text of § 577.5(a) in connection with some of these proposals, we noticed small adjustments that could be made to that text to make the requirements imposed under that section clearer. For example, the section currently requires that manufacturers mark the outside of recall notification envelopes with ''a notation that includes the words ''SAFETY,'' ''RECALL,'' and ''NOTICE.'' Read literally, this would allow for recall envelopes to be marked ''RECALL of SAFETY NOTICE,'' or other nonsensical wording. In order to clarify what is required, we are revising the regulatory text to specify that the envelopes must be marked with the phrase ''SAFETY RECALL NOTICE.''

i. 60-Day Requirement to Mail Part 577 Owner Notification Letters

In the NPRM, the agency proposed to set a fixed date by which a manufacturer must provide notice to owners and purchasers of the existence of a safety-related defect or noncompliance with a Federal motor vehicle safety standard pursuant to the owner notification provisions of the Safety Act, 49 U.S.C. §§ 30118 and 30119. 77 FR 55606, 55626. Under these statutory provisions, manufacturers must provide notification to owners, purchasers, and dealers if the manufacturer decides or the agency determines that a noncompliance or safety-related defect exists in a motor vehicle or item of motor vehicle equipment. Currently, at a minimum, manufacturers must provide these notifications within a reasonable time after filing a report under part 573. 49 U.S.C. 30119 and 49 CFR 577.7 (a)(1). For agency-ordered notifications associated with agency ordered recalls, the agency has defined reasonable time to mean within 60 days of the manufacturer's receipt of the order, unless the Administrator orders a different timeframe. 49 CFR 577.7(b). In addition, the agency proposed to require that in cases where the remedy was unavailable within 60 days, the manufacturer will need to send an ''interim'' notice to owners and purchasers. 77 FR at 55626.

The Alliance, Global Automakers, Toyota, EMA, Harley-Davidson, MIC, MEMA, the Advocates, RMA, and NATM all commented on our proposal to require manufacturers to notify owners of recalled products within sixty (60) days from when they file their Part 573 Information Report with the agency.

The Advocates supported our proposal, agreeing it is reasonable to align the time frame for notifying owners and purchasers with the current timeframe for agency-ordered notifications under 49 CFR 577.7(b)(1). The Advocates also noted that NHTSA should allow even earlier notifications in cases of ''significantly dangerous recalls.'' NATM commented that our proposal will create additional requirements for its member companies, but NATM feels they will not represent an undue burden. RMA commented that the regulation text for this proposal, ''[b]e furnished no later than 60 days from the date'' is vague as to the word ''furnished.'' RMA noted that it is not clear whether the notification must be mailed within 60 days or received within 60 days.

Industry commenters criticized this proposal as too burdensome, costly, and potentially confusing and anxiety

provoking to owners. Global Automakers commented that customer call centers could be overwhelmed with concerned customers who are informed their vehicles are being recalled, but for which there is not a remedy available. MEMA commented that they do not believe this proposal will achieve any safety benefit, but will burden the industry and confuse vehicle owners. MEMA commented that requiring owner notification before a remedy is available and where there is not critical safety information to convey or the information will do little to reduce the risk of injury serves no obvious safety benefit. The association opined that this could confuse or annoy an owner and detract from the significance of the recall. If the interim notice contains no safety information necessary to prevent imminent harm, MEMA posits, an owner may conclude that if the remedy is not available the recall must not be important. Using the example of check engine warning light that could warn against any number of failures, MEMA claimed overly cautious owners may stop their vehicles out of an abundance of caution, when the real reason for the check engine light is something entirely unrelated to a safety recall.

The Alliance commented that our proposal to require manufacturers to identify vehicles on their Web sites for which the recall remedy is not yet available, reduces the purported owner notification and awareness benefits of our proposal.

Some of these commenters said that they do not object to establishing a sixty (60) day time frame to mail owner notification letters, but this time frame should be flexible to allow for situations where the safety risk cannot be reduced by the owner or parts are not available for remedy. For example, MBUSA commented that it did not object to the proposal under certain circumstances and, for example, where the remedy is available within sixty (60) days or where the owner can take steps to reduce the safety risk. Global Automakers commented similarly that an exception should be made when parts availability and remediation network issues [11] justify an extension to a sixty day time frame. Selander suggested that in cases where the recall remedy is not available within sixty (60) days, the manufacturer contact NHTSA to determine whether an interim notice should be provided to owners.

[11] We understand ''remediation network issues'' to mean limitations to the capacity of a dealer network to implement a recall repair, as noted in Global Automaker's comments at page 5.

The Alliance commented that they oppose this proposal and believe that NHTSA should use its case-by-case approach to determine if interim notifications are appropriate for a given recall. The Alliance and Toyota opined that in their view this approach has worked well for decades. Toyota said NHTSA has not provided any discussion as what has changed at this point in time to explain the change. The Alliance, Toyota and EMA commented that NHTSA proposed a similar ''two-step notification'' rule in 1995, but chose not to implement the rule after receiving comments. The Alliance noted that in this same rulemaking, NHTSA amended part 577 to allow for it to order manufacturers to provide notification on a certain date after considering risk factors, such as when the safety risk is severe or the owner can minimize the risk. The Alliance pointed out that, ''NHTSA has never issued an order pursuant to that authority'' and has instead worked with manufacturers cooperatively to assure owners receive notification in a reasonable time. The group said its members have been mailing owner letters as requested, regardless of any factors outlined in § 577.5(a)(1) or any other policy considerations. The Alliance concluded that this proposal simply codifies this RMD policy.

The Alliance and EMA noted that it is not appropriate to draw a parallel between this proposal and the regulation that outlines NHTSA-ordered recalls. *See* 49 CFR 577.7(b). The Alliance noted that the agency has discretion in these cases to extend or shorten the 60-day time period for owner notifications. EMA commented that NHTSA-ordered recalls are rare and have never occurred for heavy-duty vehicles.

The Alliance took issue with our assertion in the NPRM that an owner's awareness and ability to make an informed judgment should not be subordinated by a manufacturer's commercial interest in providing a smooth campaign.

The Alliance speculated that consumers will be confused and frustrated, possibly resulting in reduced recall completion rates. Toyota echoed this latter point. Toyota submitted information from its examination of seven recalls, three of which required interim owner notification letters and four that did not. Toyota measured the recall completion rates at each recall's six-month mark and found that recalls utilizing an interim owner letter had an average 40.5% completion rate, as compared to an average 61.2% completion average for those that did not require an interim notice. Toyota admitted that a variety of factors can affect the completion rate of any given recall.

MEMA commented that requiring interim notifications when a remedy is not available may have a negative impact on sufficiency of the remedy. They forecasted that vehicle manufacturers will not want to issue multiple notifications due to cost and that there will be added pressure upon suppliers to make the remedy available sooner compressing the time it would otherwise take to properly develop and manufacture the recall remedy. This added pressure could have the unintended consequence of releasing less effective remedies, MEMA posited. It could also impact business relationships between manufacturers and suppliers, with manufacturers taking their business elsewhere if a supplier cannot accommodate a manufacturer's demands.

Selander commented that manufacturers generally notify owners quickly when an imminent safety risk is present.

The Alliance and Toyota commented that any required interim notification letters should not be required to follow all of part 577's requirements for notifications to owners and purchasers. As one example, the required language about contacting a dealer to schedule the recall remedy could be a point of distinct confusion when a remedy is not, in reality, available. Toyota noted that some owners may confuse a remedy notice with an earlier issued interim letter, and dispose of the letter. Toyota also commented that the proposals regarding the format of recall notification envelopes should only be applied to the remedy notices.

The Alliance also tied this proposal to our other proposal requiring vehicle manufacturers to offer a VIN-based recalls lookup tool on their Web site. The Alliance commented that the requirement to host a recalls look-up tool on manufacturers' own Web sites further reduces the need to restrict owner notification letters to 60 days from the date the manufacturer notifies NHTSA.

We have carefully considered all of the comments we received. The agency has decided to adopt the amendment to 49 CFR 577.5(a) and 577.7(a)(1) as proposed to achieve the goal of prompt notice to owners and purchasers. That is, manufacturers must notify owners and purchasers no later than sixty (60) days from the date the manufacturer files its defect or noncompliant information report pursuant to the requirements of 49 U.S.C. 30119 and 49

CFR part 573. And in cases where the remedy is unavailable within sixty (60) days, the manufacturer will be required to send an ''interim'' notice to owners and purchasers. To clarify, this requires manufacturers to mail their owner notification letters within sixty (60) days, not ensure that each owner or purchaser receives their notification within sixty (60) days. The latter is largely outside of the vehicle manufacturer's control and relies upon uncontrollable factors like mail delivery inconsistencies and delays.

NHTSA and industry commenters disagree when owners and purchasers should be notified about a safety defect or failure to comply with minimum safety standards. In general the industry agrees with NHTSA that notification of a safety-related defect is important and should be expeditious, yet maintains that it is appropriate to withhold such notification until the recalling manufacturer is ready to execute the recall remedy. In our view, we do not believe it is unreasonable for a manufacturer to notify an owner or purchaser within sixty (60) days of the existence of a safety defect or noncompliance, even if the remedy is not yet available. Owners should be promptly made aware of critical safety issues in order to make an informed judgment and to take measures to protect themselves and others from the risks and consequences associated with a safety defect or noncompliance.

We do not disagree with manufacturers that our implementation of a 60-day notification requirement on all safety recalls may cause concern for some owners, and it may also create minor annoyance with dealers and manufacturers who respond to owner contacts when a remedy is not available at the time the manufacturer notifies the owner of the recall. However, we must balance the risks of these concerns with an owner's right to be properly informed and empowered to make his or her decision about using the vehicle or equipment while waiting for a remedy to become available. We simply do not agree with the industry commenters that owners are better off being uninformed about critical safety risks when recall remedies, irrespective of the reason, are delayed beyond sixty (60) days from the time of a manufacturer's recall decision.

The industry speculates, without any support, that sixty (60) day notices will create owner confusion or frustration that would reduce completion rates. We do not agree. Unlike 20 years ago when we last considered this issue, with today's technology, the public is made aware of safety defects immediately following a manufacturer's submission of a part 573 report. News media regularly report a defect or noncompliance through the Internet, twitter, blogs, email notifications, television and print when the part 573 report is filed with NHTSA, which is well before the owner or purchaser receives the owner notification letter from the manufacturer. With such media attention, owners and purchasers are regularly informed of safety recalls involving their vehicles, which to NHTSA's knowledge have not created inordinate owner confusion or frustration. Because owners often become aware of recalls soon after the filing of a part 573 report, under the case-by-case approach, owners and purchasers are often left without the benefit of safety information from the manufacturer for long periods of time, relying only upon media reports. In the agency's view, it is this lengthy period of silence between the owner's knowledge of the existence of a safety defect and the manufacturer's notification where owner confusion or frustration can arise. With silence from manufacturers, this appears more confusing and frustrating to consumers than interim notifications from manufacturers, advising owners or purchasers with explicit information about the recall remedy, and what can be done before the remedy is available. Contrary to the industry, we believe owner and consumer confusion could be alleviated by the prompt notification to owners and purchasers within sixty (60) days of filing a Part 573.

Several comments questioned the need for this amendment and opined that past practices of allowing manufacturers full discretion to decide when they notify owners has worked well for decades. We disagree that the current process has worked well, as our recent experience has shown that the case-by-case approach has become unreliable. Indeed, a number of manufacturers have taken a significant amount of time after the determination of a defect to notify owners of critical safety defects. An examination of recalls between 2001 and 2010 found that a full 25 percent of recalls took longer than 60 days before owners were notified. Considering that the agency processes an average of 650 recalls a year, this is significant. It amounts to hundreds of recalls a year impacting millions of owners, on which manufacturers have taken months to notify owners of safety critical problems. While NHTSA has not exercised its authority to order a manufacturer to issue an owner notification by a date certain, we are not persuaded that maintaining the status quo will adequately inform owners of the risks surrounding a safety related defect. Instead of an approach that may leave owners unaware of critical safety information for potentially long periods of time, we believe an approach of a date certain is warranted because it provides safety information with uniformity and regularity to the owner notification process.

Also, we have in the past, currently, and expect in the future, to have safety recalls where due to the nature of the remedy, the size of the recall population, or some combination of other factors, the recall's launch is delayed many months or even a year. If we were to apply the case-by-case approach the industry recommends and follow it to its logical conclusion, owners may not receive any notification from a manufacturer about a safety risk for many months simply because there is nothing the manufacturer can do about the problem.

As to the assertion that a recalls look-up tool reduces the need for prompt notification because owners will have at their fingertips information that will inform of a recall, we agree that a recalls look-up tool is an excellent resource for owner information, but it is not a substitute for the manufacturer's required notification under 49 U.S.C. 30119. Furthermore, a VIN-based online recalls lookup tool will not assist owners of defective equipment, child seats, or tires. In many cases, only mailed notification letters to registered owners will succeed in alerting the owner to the recall.

Several commenters indicated manufacturers uniformly agree to agency requests to expedite owner notifications, and challenge the agency to identify cases where manufacturers have not acceded to requests. We do not agree with this assessment. Our experience has been very different. We have had numerous incidents where manufacturers have not easily agreed to agency requests to notify within sixty (60) days.

When we last considered interim notices in a 1995 rulemaking, we agreed to consider recalls on a case-by-case basis to determine if a particular recall warranted an interim recall notification letter mailing. *See* 60 FR 17254. We declined to institute a proposed thirty (30) day notification requirement. Since that time, we have reconsidered such an approach and, for the reasons expressed above, have arrived at a different conclusion.

The case-by-case approach that industry advocates places the burden on NHTSA to use its limited administrative resources to ascertain facts and make

assessments on owner notification as to each of the 650 recalls (on average) we process each year. It requires the agency to affirmatively object to a manufacturer's plans, then justify our objection to the manufacturer, and engage in a discussion approaching negotiation over timing. We simply do not have the resources to conduct 650 (or thereabouts) individual assessments a year, and believe it could lead to inconsistent decision-making.

We do not disagree with the assertion that manufacturers generally notify owners more quickly in recalls involving imminent threats. And, even if we did, as the industry commenters have noted, we have at our discretion a separate regulatory provision under § 577.5(b) to address those cases. Nevertheless, we do not agree that because manufacturers generally may react and notify more quickly in these cases, that this discharges the requirement of providing owners reasonably prompt notification on recalls at large or obviates the pervasive issue of manufacturers delaying notifications until remedies are available.

We note that our proposal, to require owner notification within sixty (60) days does not prevent manufacturers from notifying more quickly. We encourage manufacturers to mail affected owners as early as the manufacturer can reasonably do so.

The Alliance and Toyota commented that strict adherence to part 577's requirements on content should be reconsidered, and that the contents of those notifications be determined on a case-by-case basis. We do not agree that individualized assessments and decisions are necessary. We believe that the regulation's requirements are sufficiently flexible so as to permit a manufacturer to inform the owner, at the very least, that a remedy is under development and not yet available, and that the owner can expect to receive another notification from the manufacturer when the remedy is available. Many manufacturers have issued such interim notifications without any requirement to do so. Since manufacturers must submit draft notifications to the agency for review, any individual issues to the extent they exist can be addressed and managed then.

Toyota commented that the label NHTSA proposed for recall notification envelopes as well as some part 577 verbiage should only be placed on the remedy notice, as they help motivate owners to seek the recall remedy. We do not agree. Interim notifications are as important as notifications in which a free remedy is ready and available. A primary objective of owner notification is to inform the owner of the defect (or noncompliance) and its risk. This information is safety critical and so we believe use of the logo, as well as the current part 577 owner letter verbiage, to be equally as applicable to interim notices.

Accordingly, after review and consideration of the comments, the agency has decided to adopt the amendment to 49 CFR 577.5(a)(1) as proposed to achieve the statutory goal of prompt notice to owners and purchasers, while providing flexibility to manufacturers in unusual circumstances.

ii. ''IMPORTANT SAFETY RECALL'' on Owner Notification Letters

Our proposal to add the phrase ''URGENT SAFETY RECALL'' to the top of all part 577 owner notification letters received comments from: the Advocates, NATM, Honda, the Alliance, Selander, and MEMA.

The Advocates expressed general support for this proposal. Global Automakers and Honda both expressed support for this proposal. Both suggested the word ''Important'' or ''Urgent'' be used consistently on the envelope and letter, but expressed no preference as to which word is selected.

The Alliance and Selander both commented that the phrase ''URGENT SAFETY RECALL'' should not be placed on interim notification letters as there would be no urgent action the owner could take if the remedy is not yet available.

We agree that the term ''urgent'' could be fairly construed to imply immediate action from the owner is expected. Accordingly, after reviewing and considering comments for this proposal, we will adopt the proposal with this slight modification. We will amend § 577.5(a) to require the phrase ''IMPORTANT SAFETY RECALL'' instead of the proposed phrase ''URGENT SAFTEY RECALL.''

iii. Inclusion of Vehicle Identification Numbers in Owner Notification Letters

The Alliance, the Advocates, NATM, Honda, EMA, Global Automakers, and MEMA all commented on our proposal to require the owner's VIN be printed at the top of the owner notification letter.

The Alliance and the Advocates supported this proposal. Honda and EMA expressed concern regarding the fixed location of the VIN at the top of the owner letter. Honda explained that their owners receive standardized letters, but that the owner's name and address only appear on a VIN Information Change Card (VICC), which is visible through the envelope window. Honda noted that matching up a custom-printed owner letter with each owner's VICC would double the cost of their owner notification mailings. MEMA and EMA raised the issue of owners that have multiple vehicles affected by a recall, as is the case with many commercial fleets or rental car companies. EMA suggested allowing manufacturers to attach a separate list of VINs.

Global Automakers commented that they do not support the placement of the owner's VIN on both the owner notification letter and the envelope. MEMA commented that this proposal would add to the administrative and printing burdens for smaller manufacturers. MEMA added that there was no assurance that these new requirement will draw any more attention than the current owner notification requirements.

We decided to adopt the proposal to amend § 577(b) to require manufacturers add the VIN of the affected vehicle, but in view of the comments over location, will not dictate the location of that information, and only require that it be in a conspicuous location. We reiterate that we proposed only that the VIN be on the notification; we did not propose to require it to be on the envelope.

We also reiterate that adding the VIN to the notification letter was a suggestion the GAO provided based upon focus group research it conducted. We continue to support this recommendation and do not believe the cost associated with it is onerous.

On the issue of multiple VINs associated with one owner, we leave it to the discretion of the manufacturer as to how it informs the owner that they have multiple vehicles affected, so long as whatever approach is taken demonstrates that the notification is complete. We agree with EMA that one approach is to provide a list of VINs with the notification. Another approach may be to, instead of printing a single VIN on the letter, include a list of multiple vehicles and VINs that are impacted. We take no position on the approach a manufacturer takes to meet the requirement to place affected VINs in a conspicuous place in the owner notification letter.

After review and consideration of the comments, we have decided to adopt the proposal to add the VIN(s) of the affected vehicle to the owner notification letter, but permit the manufacturer to determine a place on the letter, as long as it meets the requirement that it is in a conspicuous location within the notification.

Therefore, we are amending 49 CFR 577.5(b) accordingly.

iv. Inclusion of Standardized Label on Owner Notification Letter Envelopes

Our proposal to amend 49 CFR 577.5(a) to add a standardized label to the owner notification envelope received comments from the Alliance, Toyota, and Selander who agreed that such a label will help separate important safety recall notifications from other marketing mailers. The Alliance, EMA and RVIA suggested changes in the location of the label. We proposed that this label be located on the front, lower-left corner of the envelope. The Alliance suggested that a single location not be specified in the rule, but left to the discretion of each manufacturer. EMA suggested that the label be as close to the bottom left corner as possible. The RVIA suggested that manufacturers be allowed to place the label on one side or the other, at their discretion.

Honda, Global Automakers, and EMA suggested changes to the proposed lead time for this proposal. Honda supported this proposal while noting that a change from a sixty (60) day lead time to a phase-in period would allow the use of existing inventory. Global Automakers agreed that a sixty (60) day lead time would create the wasteful expense of destroying old supplies. EMA also requested a longer lead time for this proposal, preferably a one-year lead time to coordinate the implementation of new envelopes.

The Alliance commented that the NPRM preamble referenced the phrase ''Important Safety Recall Notice,'' whereas the label image reads ''Important Safety Recall Information.'' MEMA commented that requiring the label on envelopes and the notification letter may create an administrative and printing cost burden for smaller manufacturers, and argued that it is not clear that this proposal will have any impact on recall completion.

We have decided to adopt the proposal to amend § 577.5(a) to require the label on the front of the envelope with a slight modification. We agree with the Alliance that the precise location of the label on the front of the envelope does not need to be specified. Today's final rule leaves the label's placement to the discretion of the manufacturer so long as it is not obscured by postage or other labeling or stamping. We also understand the need for a longer lead time to avoid unnecessary waste and cost. We believe a phased-in lead time of six (6) months from the date the final rule is reasonable and provides more than sufficient time for manufacturers to use their existing supplies and order new stock. Also, should NHTSA change or update the label in the future, we will ensure manufacturers are given proper notice through the NHTSA Online Recalls Portal. We will also ensure manufacturers are given ample time to make the necessary changes.

We thank the Alliance for its comment identifying the inconsistency in language used in our NPRM's preamble and the image of the label we provide in the Appendices. We clarify that the label image is correct and should read ''Important Safety Recall Information.'' An example of the standardized label can be found in Appendix E.

We appreciate MEMA's questioning the need or benefit of the label. As an initial matter, we clarify that the label is only required on the envelope, and not the letter, as MEMA's comment appears to suggest. We agree it is not certain that this label will have the positive impacts we expect. Nevertheless, we believe increase recalls completion rates is an important objective and merits industry taking this small step in expectation of increasing recall completion rates and thereby reducing risks of injuries and death to motorists.

5. Requirements for Manufacturers to Keep NHTSA Informed of Changes and Updates in Defect and Noncompliance Information Reports

In the NPRM, we proposed to amend § 573.6(b) in two respects. We proposed that manufacturers supply information not available at the time of their initial report, and information that later becomes updated or changed, within five working days of when that information becomes available. We also proposed that manufacturers complete a 90-day review of their Part 573 Reports for completeness and accuracy.

i. Submission of Information Not Available at the Time of the Initial Part 573 Report, and Amended Information, Within Five Working Days

Our proposal, for manufacturers to supply missing and amended Part 573 Information Reports within five working days, received comments from The Alliance, the Advocates, Selander, MEMA, MBUSA, and Global Automakers.

The Advocates supported this proposal agreeing it would increase the accuracy and timeliness of reports. The Alliance, EMA, and MBUSA commented that they do not object to the proposal. Global Automakers felt five working days was not sufficient or reasonable and proposed the requirement be set at 10 working days.

The Alliance, Toyota, and MEMA all requested clarification as to the term ''becomes available'' since information becomes available to different levels of the company at different times. The Alliance commented that information needs to be confirmed before being submitted to NHTSA. Toyota noted that the person with the newly available information might not be the decision-maker. Toyota also suggested that the regulatory text be changed to allow the manufacturer, through its normal process, to supply the information once it has confirmed the accuracy of the information. MEMA also suggested updated information should be submitted within five working days after a manufacturer's good faith determination.

MEMA requested that § 573.6(c)(4), the requirement that specifies the percentage of vehicles estimated to actually contain the defect or noncompliance be omitted from this proposal. MEMA noted that this percentage is a ''moving target'' and can change frequently. MEMA believes the burden to update this could be substantial.

After review and consideration of the comments, we concur with these comments with the exception of Global Automakers' request to extend the timeframe from five working days to 10 working days.

We will strike the requirement to update within five working days as it applies to the requirement to report the percentage of vehicles estimated to actually contain the defect or noncompliance found in paragraph (c)(4) of § 573.6. Unlike other elements required to be reported in § 573.6, such as the identity of the products being recalled, the size of the population, and the manufacturer's planned dates for notifying owners, the agency's and the public's need for an update of this percentage figure is not as vital after the initial report is filed.

We do not agree with Honda's assessment that five working days is an insufficient amount of time for a manufacturer to update the agency with new or changed information. A time frame of five working days is consistent with the amount of time manufacturers have to submit their initial Part 573 Information Report.

Accordingly, we will amend § 573.6(b) to require new or missing Part 573 Report information to be submitted within five working days of when the accuracy of the information has been confirmed. In addition, in order to clarify that the requirement to update

applies to safety recalls, and not to other campaigns a manufacturer may conduct that are not subject to the requirements of part 573, we are today making a technical correction to specify that a manufacturer must provide the NHTSA assigned ''recall'' number when informing of changes and updates.

ii. 90-Day Review of Part 573 Information Report for Completeness and Accuracy

In the NPRM, we proposed to require that 90 days after making the remedy available manufacturers review their Part 573 Information Report for completeness and accuracy. We received comments from the Advocates, the Alliance, Toyota, Harley-Davidson, and EMA on our proposal.

A number of the comments reflected that the purpose of this proposal is achieved largely through our proposal to require any changes or updates to part 573 reports be submitted within five working days. Harley-Davidson and EMA, for example, commented that this proposal is too burdensome and unnecessary. Harley-Davidson noted that the proposal to supply new or updated part 573 information within five days renders this 90-day certification duplicative. EMA echoed this comment and added that a 90-day certification would effectively close out a Part 573 Information Report and forestall any updates to the report.

The Alliance and Toyota commented that they do not oppose this proposal, however they do not believe a separate submission is the most efficient way to achieve the goal of ensuring accurate Part 573 information. The Alliance and Toyota suggested that this 90-day certification be added to a manufacturer's first quarterly report.

MBUSA commented that they worry this proposal could ''. . . establish an unworkable requirement to 'certify' the completeness and accuracy of the Part 573 Report.'' MBUSA suggested that the regulatory text be changed so that manufacturers only certify as to the accuracy of the report based on the information the manufacturer has available at that time.

MEMA commented that NHTSA does not have the statutory authority to implement this proposal. MEMA added that the authority given to NHTSA in MAP–21, to promulgate rules requiring manufacturers certify the accuracy and completeness of information reported to NHTSA, only applies to defect or noncompliance investigations, not Part 573 Information Reports.

We do not agree with MEMA's view that we do not have the authority to make this change. We have considerable discretion to determine the contents of manufacturer notifications to us, as well as establishing the timing for those notifications. See 49 U.S.C. 30119. It is illogical to hold that we would not similarly have the discretion to decide when changes or updates would be required to be submitted.

Nevertheless, after considering comments, we agree that the change to require submission of additional or changed information within five working days does, for the most part, address our concerns that safety recall information be timely submitted so that we, and the public, remain properly informed. Accordingly, we have not adopted this proposal.

6. Requirement To Notify NHTSA in the Event of Filing of Bankruptcy Petition of a Recalling Manufacturer

In the NPRM, our proposal to amend part 573 to add new § 573.16 to require manufacturers to notify NHTSA in the event of filing a bankruptcy petition, received comment from one party. The Advocates commented favorably and said they agree that this regulation will allow NHTSA to protect the interests of owners and consumers of recalled vehicles and equipment. Accordingly, we are adopting the proposal as written.

VI. Lead Time

We understand that manufacturers need lead time to modify their existing EWR databases and software. Today's amendments that require some lead time include the requirement for light vehicle manufacturers to provide the vehicle type and fuel and/or propulsion system type in their quarterly EWR submissions as well as the addition of Stability Control systems, FCA, LDP, Foundation Brake Systems, Automatic Braking Controls and Backover Prevention components to EWR reporting. Because manufacturers will need time to modify existing EWR databases and software to conform their systems to meet the today's amendments, the lead time will be one year from the date the final rule is published. We believe one year is an adequate amount of time for manufacturers to comply with today's amendments. Accordingly, the effective date for the amendments to light vehicle type, light vehicle fuel and/or propulsion system reporting and components, including the electronic submission of substantially similar vehicle listings, will be the first reporting quarter that is one year from the date the final rule is published.

We understand that adopting today's regulations requiring larger vehicle manufacturers to supply VIN information electronically on their Web sites and in the manner specified will require those manufacturers to modify or adjust their existing databases and software. We further understand that the requirements to file online Part 573 Reports and quarterly reports (where applicable) using the forms prescribed will also necessitate some lead time, including time for manufacturers to register and be provided passwords and to conduct training of staff. The effective date for these requirements will be one year from the date the final rule is published. However, we look forward to working with manufacturers to test the system prior to the effective date for these requirements.

For the requirement that part 577 owner notification letter envelopes contain a new label with the logos of the U.S. Department of Transportation and NHTSA, we will allow a lead time of 180 days from the date of the final rule publication for manufacturers to ensure all envelopes being mailed contain this label. However, we encourage manufacturers to adopt this requirement as soon as practicable, within those 180 days.

For the remaining requirements affecting requirements under parts 573 and 577, we believe a shorter lead time is appropriate because the new requirements do not involve changes to technology or investment of additional resources. Accordingly, the effective date for all remaining requirements that are newly adopted will be 60 days after the date the final rule is published.

VII. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

VIII. Rulemaking Analyses and Notices

A. Regulatory Policies and Procedures

Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies require this agency to make determinations as to whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the aforementioned Executive Orders. Executive Order 12866 defines a ''significant regulatory

action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This document was reviewed under E.O. 12866, E.O. 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking has been determined to be not ''significant'' under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. The effects of these amendments have been analyzed in a Final Regulatory Evaluation, available in the docket of this rulemaking action. The amendments being made with this document that relate to adding reporting fields for light vehicle and medium-heavy vehicle manufacturers (including the new requirement to split the service brake category into two new categories) would place only a minimal burden on EWR manufacturers through a one-time adjustment to their EWR databases and software. The agency estimates that the amendments will result in a one-time burden of $83,981 per light vehicle manufacturer and $14,888 per bus, emergency vehicle, and medium-heavy vehicle manufacturer (in 2011 dollars).

In addition, the amendments being made by this rule that relate to new requirements that certain vehicle manufacturers make safety recall information available on the Internet will result in a one-time burden of $26,455 for each of the nine (9) vehicle manufacturers that do not currently offer look-up tools. Each of these nine (9) manufacturers will also incur an annual cost burden of $30,000 to maintain these systems. An additional eighteen (18) light vehicle manufacturers who already operate these newly required database systems will each incur a one-time burden of $7,010 to support the exchange of safety recall information to NHTSA's Web site *www.safercar.gov*. The agency also estimates an annual cost burden of $133,930 per manufacturer for the amendments to part 577 to notify owners and purchaser of recalled motor vehicles and motor vehicle equipment.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This rule would affect all motor vehicle and motor vehicle equipment manufacturers. The changes to the EWR regulations, the foreign defect reporting regulation, defect and noncompliance information reports, and defect and noncompliance notifications would affect manufacturers of light vehicles, buses, emergency vehicles, medium-heavy vehicles, motorcycles and trailers, tires and motor vehicle equipment.

In order to determine if any of these manufacturers are small entities under the RFA, NHTSA reviewed the North American Industry Classification System (NAICS) codes. Business entities are defined as small businesses using the NAICS code, for Small Business Administration (SBA) assistance. One of the criteria for determining size, as stated in 13 CFR 121.201, is the number of employees in the firm. For establishments primarily engaged in manufacturing or assembling automobiles and light and medium-heavy duty trucks, buses, new tires, or motor vehicle body manufacturing, the firm must have less than 1,000 employees to be classified as a small business. For establishments manufacturing the safety systems for which reporting will be required, the firm must have less than 750 employees to be classified as a small business. For establishments manufacturing truck trailers, motorcycles, child restraints, re-tread tires, other vehicles equipment and alterers, and second-stage manufacturers, the firm must have less than 500 employees to be classified as a small business. In determining the number of employees, all employees from the parent company and its subsidiaries are considered and compared to the 1,000 employee threshold. Many of the bus companies are owned by other larger companies.

The agency separately published a Final Regulatory Evaluation that includes a regulatory flexibility analysis. That document sets forth in detail the agency's analysis and is located in the docket.

The agency believes that there are a substantial number of small businesses that will be affected by the amendments to the Early Warning Rule, the Foreign Defect Reporting Rule, the Defect and Noncompliance Information Reports, and Defect and Noncompliance Notification; however, we do not believe that the requirements, which involve reporting and recordkeeping, will amount to a significant impact as discussed in the Cost section of the Final Regulatory Evaluation. As explained in section V.B.1.i above, in this rule the agency is not requiring smaller manufacturers to establish an online VIN-lookup system, which accounts for many of the new estimated costs burdens.

In summary, as stated in the agency's Final Regulatory Evaluation, these amendments will not have a significant economic impact on a substantial number of small businesses. For the reasons stated in the Final Regulatory Evaluation, the agency believes that the amendments to Part 573, Part 577 and 579 will not have a significant economic impact on vehicle manufacturers, and motor vehicle equipment manufacturers including tire manufacturers affected by this rule. Accordingly, I certify that this final rule would not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of ''regulatory policies that have federalism implications.'' The Executive Order defines this phrase to include regulations ''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.'' The agency has analyzed this rule in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The changes made by this final rule only affect a rule that regulates submission and disclosure of information by manufacturers of motor vehicles and motor vehicle equipment, which does not have substantial direct effect on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

D. Unfunded Mandates Reform Act

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 expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). Today's requirements would not result in expenditures by State, local or tribal governments. Our requirements only apply to motor vehicle and equipment manufacturers. The changes are estimated to result in a one-time cost of about $12.7 million for EWR and Part 573 changes and about $7.77 million annually in recurring costs to manufacturers for notifying owners and purchasers of recalls under the changes to Part 577, as well as the maintenance of manufacturer VIN-based recalls lookup tools. This rule does not result in expenditures by motor vehicles and equipment manufacturers of more than $130 million annually and, therefore, does not require an assessment per the Unfunded Mandates Reform Act of 1995.

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, ''Civil Justice Reform'' [12] the agency has considered whether this rule would have any retroactive effect. We conclude that it would not have a retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

[12] *See* 61 FR 4729 (February 7, 1996).

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. An Information Collection Request (ICR) for the proposed revisions to the existing information collections was submitted to the Office of Management and Budget (OMB) for review and comment in conjunction with the publication of the NPRM. NHTSA and OMB received one comment, from the Alliance, in response to the ICR. That comment, and the agency's responses, are discussed in Section V, above. In light of the differences between today's final rule and the proposal, an amended ICR is being submitted to OMB for review and comment. The ICR describes the nature of the information collections and their expected burden.

The collection of information associated with the existing part 579 is titled ''Reporting of Information and Documents About Potential Defects'' and has been assigned OMB Control Number 2127–0616. This collection was approved by OMB. The collection of information associated with the existing part 573 and portions of part 577 is titled, ''Defect and Noncompliance Reporting and Notification.'' This collection was approved by OMB and has been assigned OMB Control Number 2127–0004.

1. Part 579 Collections

When NHTSA most recently requested renewal of the information collection associated with part 579, the agency estimated that the collection of information would result in 2,355 responses, with a total of 82,391 burden hours on affected manufacturers. These estimates were based on 2006 EWR data. The agency has published two amendments to the EWR regulation since then which will affect the reporting burden on manufacturers. On May 29, 2007, the agency eliminated the requirement to produce hard copies of a subset of field reports known as ''product evaluation reports.'' 72 FR 29435. On September 17, 2009, NHTSA issued a final rule that modified the reporting thresholds for quarterly EWR reports. 74 FR 47740. The reporting threshold for light vehicle, medium-heavy vehicle (excluding buses and emergency vehicles), motorcycle, and trailer manufacturers was changed from an annual production of 500 vehicles to an annual production of 5,000 vehicles. The reporting threshold for emergency vehicles stayed the same, but the reporting threshold for bus manufacturers was changed from an annual production of 500 vehicles to an annual production of 100 vehicles.

The net effect of all of these changes to the various reporting thresholds for the different vehicle types was to reduce the overall number of manufacturers required to report certain information and the amount of information those manufacturers are required to report. Because these changes will affect the burden on manufacturers, our burden hour estimates need to be adjusted.

a. Adjusted Estimates for Current Information Collections

In the EWR Final Regulatory Evaluation (July 2002, NHTSA docket #8677), it was assumed that reviewing and/or processing would be required for death and injury claims/notices, property damage claims, non-dealer field reports, and foreign death claims. It was also assumed that customer complaints, warranty claims, and dealer field reports would not impose incremental burden hours since computer systems were set up to automatically count these aggregate data points. Table 1 below shows the number of documents submitted in 2011 by reporting type.

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Table 1

Number of Documents Submitted by Manufacturer in 2011

Category of Claims	Light Vehicles	Heavy, Med Vehicles	Trailers	Motorcycles	Emergency Vehicles	Buses	Tires	Child Restraints	Equipment Mfr.	Mfrs. Below Threshold	Totals
Injury Fatality	5,341	75	10	99	1	6	84	413	7	5	**6,041**
Property Damage*	9,162	354	3	16	0	43	1,824	NA	NA	NA	**11,402**
Warranty Claims	Aggregate Data										
Consumer Complaints	Aggregate Data										
Mfr. Field Reports	57,856	5,987	28	1,390	5	390	NA	2,918	NA	NA	**68,574**
Dealer Field Reports	Aggregate Data										
Foreign Death Claims	38	0	1	1	0	0	1	0	0	0	**41**
Totals:	**72,397**	**6,416**	**42**	**1,506**	**6**	**439**	**1,909**	**3,331**	**7**	**5**	**86,058**

* Property damage claims are aggregate data but are counted differently because they require more time to manually review.

The agency assumed that a total of 5 minutes would be required to process each report with the exception of foreign death claims. For these, it would require 15 minutes. Multiplying this average number of minutes times the number of documents NHTSA receives in each reporting category will yield burden hours (see Table 2).

Table 2

Estimated Annual Burden Hours Using 2011 EWR Data

Category of Claims	Light Vehicles	Heavy, Med vehicles	Trailers	Motorcycles	Emergency Vehicles	Buses	Tires	Child Restraints	Equipment Mfr.	Mfrs. Below Threshold	**Totals**
Injury Fatality	445	6	1	8	0	1	7	34	1	0	**503**
Property Damage*	764	30	0	1	0	4	152	NA	NA	NA	**950**
Warranty Claims	Aggregate Data										
Consumer Complaints	Aggregate Data										
Mfr. Field Reports	4,821	499	2	116	0	33	NA	243	NA	NA	**5,715**
Dealer Field Reports	Aggregate Data										
Foreign Death Claims	10	0	0	0	0	0	0	0	0	0	**10**
Totals:	**6,039**	**535**	**4**	**126**	**1**	**37**	**159**	**278**	**1**	**0**	**7,178**

* Property damage claims are aggregate data but are counted differently because they require more time to manually review.

The burden hours associated with aggregate data submissions for customer complaints, warranty claims, and dealer field reports are included in reporting and computer maintenance hours. The burden hours for computer maintenance are calculated by multiplying the hours of computer use (for a given category) by the number of manufacturers reporting in a category. Similarly, reporting burden hours are calculated by multiplying hours used to report for a given category by the number of manufacturers for the category. Using these methods and the number of manufacturers who reported in 2011, we have estimated the burden hours for reporting cost and computer maintenance (see Table 3).

Table 3

Estimated Annual Burden Hours for Reporting and Computer Maintenance

Vehicle/Equipment Category	Number of Manufacturer Reporting in 2011	Quarterly Hours to Report per Manufacturer	Annual Burden Hours for Reporting	Hours for Computer Maintenance per Manufacturer	Annual Burden Hours for Computer Maintenance
Light Vehicles	40	8	1,280	347	13,880
Medium-Heavy Vehicles	30	5	600	86.5	2,595
Trailers	68	1	272	86.5	5,882
Motorcycles	21	2	168	86.5	1,817
Emergency Vehicles	8	5	160	86.5	692
Buses	29	5	580	86.5	2,509
Tires	38	5	760	86.5	3,287
Child Restraint	29	1	116	86.5	2,509
Vehicle Equipment	5	1	20		
Total			3,956		33,170

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Thus, the total burden hours for EWR death and injury data, aggregate data and non-dealer field reports is 7,178 (Table 2) + 3,956 (Table 3) + 33,170 (Table 3) = 44,304 burden hours.

In order to provide the information required for foreign safety campaigns, manufacturers must (1) determine whether vehicles or equipment that are covered by a foreign safety recall or other safety campaign are identical or substantially similar to vehicles or equipment sold in the United States, (2) prepare and submit reports of these campaigns to the agency, and (3) where a determination or notice has been made in a language other than English, translate the determination or notice into English before transmitting it to the agency. NHTSA estimated that preparing and submitting each foreign defect report (foreign recall campaign) would require 1 hour of clerical staff and that translation of determinations into English would require 2 hours of technical staff (**Note:** this assumes that all foreign campaign reports would require translation, which is unlikely). NHTSA received 104 foreign recall reports in 2011 which results in 104 hours for preparation and submission of the reports (104 defect reports × 1 hour clerical = 104 hours) and 208 hours for technical time (104 foreign recall reports × 2 hours technical = 208 hours.)

With respect to the burden of determining identical or substantially similar vehicles or equipment to those sold in the United States, manufacturers of motor vehicles are required to submit not later than November 1 of each year, a document that identifies foreign products and their domestic counterparts. NHTSA continues to estimate that the annual list could be developed with 8 hours of professional staff time. NHTSA has received lists from 85 manufacturers for 2011, resulting in 680 burden hours (85 vehicle manufacturers × 8 hours = 680 hours).

Therefore, the total annual hour burden on manufacturers for reporting foreign safety campaigns and substantially similar vehicles/equipment is 992 hours (680 hours professional time + 104 hours clerical time + 208 hours technical time).

Section 579.5 also requires manufacturers to submit notices, bulletins, customer satisfaction campaigns, consumer advisories and other communications that are sent to more than one dealer or owner. Manufacturers are required to submit this information monthly. However, the burden hours associated with this information were inadvertently not included in the overall burden hours calculated and submitted when the agency most recently requested renewal of the information collection. Therefore, we have estimated the burden hours necessary for manufacturers to comply with this requirement.

Section 579.5 does not require manufacturer to create these documents. Manufacturers are only required to send copies to NHTSA. Therefore, the burden hours are only those associated with collecting the documents, preparing them for mailing, and sending them to NHTSA. Manufacturers are required to submit the documents within 5 working days after the end of the month in which they were issued. Manufacturers are allowed to submit them by mail, by facsimile or by email. Most manufacturers submit them by email (about 75 percent), some manufacturers send in paper copies by mail and others send in electronic copies on disk by mail.

NHTSA receives about 7,000 notices a year. We estimate that it takes about 5 minutes to collect, prepare and send a notice to NHTSA. Therefore, we estimate that it takes 7,000 documents × 5 minutes = 35,000 minutes or 584 hours for manufacturers to submit notices as required under Part 579.5.

Based on the foregoing, we estimate the burden hours for manufacturer to comply with the current EWR requirements, the foreign campaign requirements and the Part 579.5 requirements total 45,880 burden hours (44,304 hours for EWR requirements + 992 hours for foreign campaign requirements + 584 hours for Part 579.5).

b. New Collections

NHTSA estimates there will be a one-time increase of 27,016 burden hours on those reporting under Part 579, Subpart C associated with the requirements in today's final rule. Adding vehicle type, fuel and/or propulsion system type, and

four new components (stability control, FCA, LDP, and backover prevention[13]) to the vehicle EWR reporting is likely to create a one-time cost for manufacturers to amend their reporting template and revise their software system to appropriately categorize the data. We estimate that one-time cost to revise EWR databases and software finalized in today's rule would involve two weeks of a computer programmer's time and 8 hours of a manager's time per one component or fuel/propulsion element. Thus, an increase in burden hours for light vehicle manufacturers will be 80 hours × 6 EWR codes [14] to add to the template = 480 hours for a computer programmer and 8 hours × 6 = 48 hours for a computer manager or 528 burden hours. For bus, emergency vehicle and medium/heavy vehicle manufacturers, we estimate 80 hours for computer programmers and 8 hours for computer manager to add the stability control and/or RSC component. There are currently 40 light vehicle manufacturers and 67 bus (29), emergency vehicle (8) and medium-heavy vehicle (30) manufacturers which would be affected by today's final rule. The additional burden hours for light vehicle manufacturers would be 528 × 40 = 21,120 more burden hours. For bus, emergency vehicle and medium/heavy vehicle manufacturers, we estimate an additional 88 × 67 = 5,896 burden hours. For these reasons, NHTSA estimates industry will incur a one-time increase of 27,016 more burden hours to implement these requirements.

As for today's changes to part 579, subpart B, we believe the burden associated with adding a requirement that manufacturers supply the list of substantially similar vehicles electronically will be minimal. The agency believes the electronic submission of annual substantially similar vehicle information will take an additional hour for an IT technician to submit their lists to NHTSA. There are about 85 substantially similar vehicle list submissions per year and about 80 percent are already submitted electronically. Thus, we estimate that manufacturers will incur about 17 additional burden hours per year to submit substantially similar vehicle lists electronically. We estimate there will be increase of 17 burden hours on those reporting under part 579, subpart B.

We estimate that the total burden hours associated with the part 579 requirements would be 45,880 hours for current reporting requirements plus 27,016 hours for new requirements plus 17 hours for the electronic submission of substantially similar list, for a total of 72,913 burden hours.

Apart from the burden hours estimated above, several of our requirements in this final rule involve investment as well as recurring costs. We estimate these costs as follows:

We estimate there will be a one-time cost for the manufacturers to revise their data categorization and collection process and software systems to report vehicle type, fuel and/or propulsion system type, and the new components: ESC (for light vehicles), ESC/RSC (for medium and heavy vehicles), FCW, LDW, and Backover Prevention on the amended templates. Once EWR systems are revised, additional on-going burdens should be negligible as manufacturers already have established EWR operations.

In the NPRM we estimated that the one-time cost incurred per manufacturer to revise the EWR collection and categorization process, databases and software systems to report the new categories on the amended template would include 2 weeks of a computer programmer's time for, and 8 hours of a manager's time. Based on $113 per hour for a computer programmer and $166 per hour for a manager, we estimated the following cost for each of the 40 light vehicle manufacturers that submit EWR information: $113 per hour/computer programmer × 80 hours × 6 = $54,240; $166 per hour/manager × 8 hours × 6 = $7,968. Thus, the estimated total cost for each of the 40 light vehicle manufacturers to revise the collection process, databases and software systems to add vehicle type, fuel and/or propulsion system type, and the ESC, FCW, LDW and backover prevention components to the amended EWR template amounts to: $54,240 computer programming cost + $7,968 managerial cost = $62,208 per light vehicle manufacturer. This amounted to a total cost of $2,488,320 for the 40 light vehicle manufacturers.

Based on the same costs per hour to revise the EWR template, we estimated, in the NPRM, the following cost for each of the 67 manufacturers of buses (29), emergency vehicles (8), and medium/heavy vehicles (30) that report EWR information, as follows: $113 per hour/computer programmer × 80 hours × 1 stability control component = $9,040; $166 per hour/manager × 8 hours × 1 stability control and/or RSC component = $1,328. Thus, the estimated total cost for each of the 67 manufacturers of buses, emergency vehicles and medium/heavy vehicles to revise the data categorization and collection process, databases and software systems to add the stability control and/or RSC component to the amended EWR template amounts to $9,040 computer programming cost + $1,328 managerial cost = $10,368 per manufacturer. This amounted to a total cost of $694,656 for the 67 manufacturers of buses, emergency vehicles, and medium/heavy vehicles.

The Alliance stated, in its comment to the NPRM (its Appendix C) and its comment to the ICR, that the agency had ''grossly underestimated the costs of the proposed amendments'' to the EWR components. The Alliance estimated costs of $337,516 per manufacturer for a light vehicle manufacturer total of $13 million for 40 light vehicle manufacturers. However, Alliance based its estimate on an incorrect reading of the NPRM which would have required manual review and expert judgment on each record to place records into the new categories. As we explained in Section V of this notice, the agency did not intend for manufacturers to change the automated processes they use to submit EWR data. Therefore, we cannot rely on the Alliance's estimate of costs. Honda commented to the NPRM that it had no difficulties with the new EWR categories and it estimated a total of $135,000 and 1,350 person hours for a one-time change to the reporting process to accommodate the new categories. Honda's cost estimate is more than twice the agency's estimate. However, Honda did not submit details of its estimate based on labor categories and labor rates, so we cannot evaluate where we differ. In light of the comments received, we reconsidered our estimates and have revised the estimates to include a range of 80 to 120 hours per change for the computer programmer's time, with no change in the management level. Thus our revised cost estimate is that the one-time cost incurred per manufacturer to revise the EWR collection and categorization process, databases and software systems to report the new information on the amended template will include two to three weeks of a computer programmer's time, and eight hours of a manager's time. Based on $113 per hour for a computer programmer and $166 per hour for a manager, we estimate the following cost for each of the 40 light vehicle manufacturers that submit EWR information: $113 per hour/computer

[13] Splitting the ''service brake'' category into ''foundation brake'' and ''automatic brake controls'' is not included in this analysis because simply dividing already collected information into two categories rather than one does not increase the burden hours or cost of collecting and reporting the information.

[14] vehicle type, 4 components and fuel/propulsion

programmer × 80 to 120 hours × 6 EWR codes to add to the template = $54,240 to $81,360; $166 per hour/manager × 8 hours × 6 = $7,968. Thus, the estimated total cost for each of the 40 light vehicle manufacturers to revise the collection process, databases and software systems to add vehicle type, fuel and/or propulsion system type, and the ESC, FCW, LDW and backover prevention components to the amended EWR template amounts to: $54,240 to $81,360 computer programming cost + $7,968 managerial cost = $62,208 to $89,328 per light vehicle manufacturer. This amounts to a total cost of $2,488,320 to $3,573,120 for the 40 light vehicle manufacturers.

Based on the same costs per hour to revise the EWR template, we revise our estimate of cost for each of the 67 manufacturers of buses (29), emergency vehicles (8), and medium/heavy vehicles (30) that report EWR information, as follows: $113 per hour/computer programmer × 80 hours to 120 × 1 stability control component = $9,040 to $13,560; $166 per hour/manager × 8 hours × 1 stability control and/or RSC component = $1,328. Thus, the estimated total cost for each of the 67 manufacturers of buses, emergency vehicles and medium/heavy vehicles to revise the data categorization and collection process, databases and software systems to add the stability control and/or RSC component to the amended EWR template amounts to $9,040 to $13,560 computer programming cost + $1,328 managerial cost = $10,368 to $14,888 per manufacturer. This amounts to a total cost of $694,656 to $997,496 for the 67 manufacturers of buses, emergency vehicles, and medium/heavy vehicles.

Thus, we estimate that the upper bound of the one-time cost for each of the 40 light vehicle manufacturers affected by the final rule, at $89,328 per manufacturer; plus the upper bound of the one-time cost for each of the 67 manufacturers of buses (29), emergency vehicles (8), and medium/heavy vehicles (30), at $14,888 per manufacturer, amounts to a total of $4.57 million for all of these manufacturers to revise the collection and categorization processes, database, and software systems to report on the amended template.

The agency will incur costs to implement software modifications to the EWR database. The IT development hours incurred by the contractor to the agency for these changes is estimated to be approximately 470 hours. Using an average hourly rate for labor cost of $109 for IT labor, the total cost for the 470 hours incurred by the agency's contract labor amounts to $51,230.

2. Parts 573 and 577 Collections

The approved information collection associated with part 573 and portions of part 577 presently holds an estimated annual burden of 21,370 hours associated with an estimated 175 respondents per year. The control number for these collections is OMB Control Number 2127–0004. For information concerning how we calculated these estimates please see the **Federal Register** Notices 76 FR 17186 (March 28, 2011) and 76 FR 34803 (June 14, 2011).

We are revising these estimates today. First, for several of the collections currently covered by this clearance, we have more current information on which to base our estimates, and so we are making adjustments to those estimates to more accurately assess burden and cost. Second, some of the proposals we are adopting through today's notice are new collections that impose additional burden and cost.

a. Adjusted Estimates for Current Information Collections

Our prior estimates of the number of manufacturers each year that would be required to provide information under part 573, the number of recalls for which part 573 information collection requirements would need to be met, and the number of burden hours associated with the requirements currently covered by this information collection require adjustment as explained below.

Based on then current information, we calculated in 2011 for purposes of renewing our clearance, an average of 650 part 573 information reports were filed with NHTSA each year by approximately 175 distinct manufacturers (MFRs). More recent years' recall data reflect higher recall volumes as well as increased participation by separate and distinct manufacturers. In consideration of newer figures, we are adjusting our estimate to 280 distinct manufacturers filing an average of 680 Part 573 Information Reports each year.

We continue to estimate that it takes a manufacturer an average of 4 hours to complete each notification report to NHTSA and that maintenance of the required owner, purchaser, dealer and distributors lists requires 8 hours a year per manufacturer. Accordingly, the subtotal estimate of annual burden hours related to the reporting to NHTSA of a safety defect or noncompliance and maintenance of owner and purchaser lists is 4,960 hours annually ((680 notices × 4 hours/report) + (280 MFRs × 8 hours)).

In addition, we continue to estimate an additional 2 hours will be needed to add to a manufacturer's information report details relating to the manufacturer's intended schedule for notifying its dealers and distributors, and tailoring its notifications to dealers and distributors in accordance with the requirements of 49 CFR 577.13. This would total to an estimated 1,360 hours annually (680 notices × 2 hours/report).

In the event a manufacturer supplied the defect or noncompliant product to independent dealers through independent distributors, that manufacturer is required to include in its notifications to those distributors an instruction that the distributors are to then provide copies of the manufacturer's notification of the defect or noncompliance to all known distributors or retail outlets further down the distribution chain within five working days. *See* 49 CFR 577.8(c)(2)(iv). As a practical matter, this requirement would only apply to equipment manufacturers since vehicle manufacturers generally sell and lease vehicles through a dealer network, and not through independent distributors. We believe our previous estimate of roughly 90 equipment recalls per year needs to be adjusted to 80 equipment recalls per year to better reflect recent recall figures. Although the distributors are not technically under any regulatory requirement to follow that instruction, we expect that they will, and have estimated the burden associated with these notifications (identifying retail outlets, making copies of the manufacturer's notice, and mailing) to be 5 hours per recall campaign. Assuming an average of 3 distributors per equipment item, (which is a liberal estimate given that many equipment manufacturers do not use independent distributors) the total number of burden hours associated with this third party notification burden is approximately 1,200 hours per year (80 recalls × 3 distributors × 5 hours).

As for the burden linked with a manufacturer's preparation of and notification concerning its reimbursement for pre-notification remedies, consistent with previous estimates (*see* 69 FR 11477 (March 10, 2004)), we continue to estimate that preparing a plan for reimbursement takes approximately 8 hours annually, and that an additional 2 hours per year is spent tailoring the plan to particular defect and noncompliance notifications to NHTSA and adding tailored language about the plan to a particular safety recall's owner notification letters. In

sum, these required activities add an additional 3,600 annual burden hours ((280 manufacturers × 8 hours) + (680 recalls × 2 hours)).

The Act and Part 573 also contain numerous information collection requirements specific to tire recall and remedy campaigns, as well as a statutory and regulatory reporting requirement that anyone that knowingly and intentionally sells or leases a defective or noncompliant tire notify NHTSA of that activity.

Manufacturers are required to include specific information relative to tire disposal in the notifications they provide NHTSA concerning identification of a safety defect or noncompliance with FMVSS in their tires, as well as in the notifications they issue to their dealers or other tire outlets participating in the recall campaign. *See* 49 CFR 573.6(c)(9). We previously estimated about 10 tire recall campaigns per year; however, we are adjusting this figure to 15 tire campaigns per year to better reflect recent figures. We estimate that the inclusion of this additional information will require an additional two hours of effort beyond the subtotal above associated with non-tire recall campaigns. This additional effort consists of one hour for the NHTSA notification and one hour for the dealer notification for a total of 30 burden hours (15 tire recalls a year × 2 hours per recall).

Manufacturer owned or controlled dealers are required to notify the manufacturer and provide certain information should they deviate from the manufacturer's disposal plan. Consistent with our previous analysis, we continue to ascribe zero burden hours to this requirement since to date no such reports have been provided and our original expectation that dealers would comply with manufacturers' plans has proven true.

Accordingly, we estimate 30 burden hours a year will be spent complying with the tire recall campaign requirements found in 49 CFR 573.6(c)(9).

Additionally, because the agency has yet to receive a single report of a defective or noncompliant tire being intentionally sold or leased in the fourteen years since this rule was proposed, our previous estimate of zero burden hours remains unchanged with this notice.

NHTSA's supporting information for the current Part 577 information collection did not include estimates of the burden linked with the requirement to notify owners and purchasers of a safety recall. Today, we estimate that burden. We estimate that it takes manufacturers an average of 8 hours to draft their notification letters, submit them to NHTSA for review, and then finalize them for mailing to their affected owners and purchasers. We calculate that the Part 577 requirements result in 5,440 burden hours annually (8 hours per recall × 680 recalls per year).

b. New Collections Associated With the Final Rule

We estimate that today's final rule, which amends many of the reporting and recordkeeping requirements, will increase the costs and burdens of the associated collections of information. We summarize these changes and our estimates of the associated cost and burden in this section.

We recognize that our regulation to require owner notifications within 60 days of filing a part 573 report will increase the burden hours associated with the requirement to notify owners and purchasers of a safety recall. We calculated that about 25 percent of past recalls did not include an owner notification mailing within 60 days of the filing of the part 573 report. Under the requirements, manufacturers will have to send two letters in these cases: an interim notification of the defect or noncompliance within 60 days and a supplemental letter notifying owners and purchasers of the available remedy. Accordingly, we estimate that 1,360 burden hours will be added by this 60-day interim notification requirement (680 recalls × .25 = 170 recalls; 170 recalls times 8 hours per recall = 1,360 hours). Therefore we calculate the total burden created by part 577 to notify owners and purchasers of defective vehicles or motor vehicle equipment at 6,800 hours (5,440 + 1,360).

As for costs associated with notifying owners and purchasers of recalls, we estimate this costs $1.50 per notification on average. This cost estimate includes the costs of printing, mailing, as well as the costs vehicle manufacturers may pay to third-party vendors to acquire the names and addresses of the current registered owners from state and territory departments of motor vehicles. In reviewing recent recall figures, we determined that an estimated 20 million letters are mailed yearly totaling $30,000,000 ($1.50 per letter × 20,000,000 letters). The changes to part 577 requiring a manufacturer to notify their affected customers within 60 days would add an additional $7,500,000 (20,000,000 letters × .25 requiring interim owner notifications = 5,000,000 letters; 5,000,000 × $1.50 = $7,500,000). In total we estimate that the part 577 requirements along with the new requirement to require notifications within 60 days will cost manufacturers a total of $37,500,000 annually ($30,000,000 owner notification letters + $7,500,000 interim notification letters = $37,500,000).

In the NPRM we estimated several new burdens hour calculations due to the proposed requirement that large, light vehicle manufacturers will transmit the VINs of recalled vehicles to NHTSA, and update the repair status of those VINs on a daily basis. The Alliance submitted a comment to us and OMB that this proposal was unnecessarily burdensome and costly, and that our estimates were unrealistically low. The Alliance's concerns, as well as others submitted in response to our NPRM presenting similar objections, were summarized in much detail earlier in this document, and we do not repeat them here. We are not adopting this proposal, and therefore any costs or burdens we earlier calculated are no longer applicable. Accordingly, we have removed from our cost and burden analysis here those costs and burdens we calculated and on which we requested comment in the NPRM. In their place, we estimate the costs and burdens associated with the alternative proposal that we are adopting today.

We estimated 172 burden hours for compiling an initial VIN list that would be transmitted to NHTSA's database. As we are not implementing this proposal, we have removed the 172 hours we calculated for this burden. We have also removed the 12,180 burden hours calculated for the one-time investments these manufacturers were estimated to spend configuring their computer systems to transmit VINs to NHTSA.

Because we are not requiring manufacturers to transmit VINs to NHTSA and update the repair status of recalled vehicles on a daily basis, we believe the burden associated with the added requirement that manufacturers make available on the internet the VINs associated with their recalled vehicles will be minimal. As discussed earlier, manufacturers are already required to have ready at the agency's request a list of VINs for vehicles covered by each recall. They must also have the status of the remedy of each vehicle on that list at the end of each quarterly reporting period, and so they will know the vehicles (and associated VINs) that have not been remedied and be able to provide updated information. They must, as a practical matter, and in order to meet the requirement that they identify current owners based on State registration data (which is accessed using VINs), be able to provide the States with a list of VINs, and, more

than likely, that list would be in an electronic format that can be transferred readily to each State for its use in compiling its list of owner names and addresses associated with each VIN. Any added burden, therefore, is reduced to time and costs associated with making this data available online as well as in a format that adheres to the Web site guidelines NHTSA is establishing in this final rule.

Many of the large, light vehicle manufacturers covered by this requirement already operate VIN-based safety recall search tools online, either directly sourced or through a third party. At the time the NPRM was published in 2012, twenty-nine (29) light vehicle manufacturers met or exceeded the production volumes used to determine applicability to this new requirement. Using newly updated production figures, we have revised the number of affected manufacturers down to twenty-seven (27). We expect the count of manufacturers to fluctuate given the ever-changing nature of production volumes.

Based on comments received from our NPRM and online research we have conducted, 18 of the 27 manufacturers impacted by this rule already provide a VIN-based recalls lookup service on their Web site, or through a third party Web site like *www.carfax.com.* We found that nine manufacturers do not currently offer this service online so they will bear a higher burden to implement this service. As noted above, we believe that manufacturers already maintain electronic copies of VIN lists as a practical matter of business, so their only burden would be the time associated with updating their Web sites with this functionality.

To establish a VIN-based recalls lookup service, we estimate that each of these nine manufacturers will spend a total of 12 hours creating the infrastructure needed to add a VIN-based recalls lookup service to their Web sites. These 12 hours includes the time needed for a senior developer to setup and configure the server (8 hours) and for a mid-level developer to test the security and connectivity of the system (4 hours). We estimate these burdens total 108 hours (9 MFRs × 12 hours). We estimate the costs of these burden hours will be $5,000 per manufacturer.[15] We estimate that the total cost to the industry from these one-time infrastructure expenses will total $45,000 (9 MFRs × $5,000).

We estimate that each of these nine manufacturers will also incur labor burdens related to the setup of their online recalls tools. Each manufacturer will need to establish requirements, analysis, and designs for their new recalls lookup tool. Also, additional burdens will stem from: the creation of the VIN search interface; database setup to host the recall information; data refresh procedures to populate recall information; server side VIN code lookup and recall status retrieval; integration with existing manufacturer Web site; and application testing. We estimate that these tasks will be performed by a software solution architect (15 hours), a senior web application developer (30 hours), and a mid-level software developer/tester (103 hours), totaling 148 burden hours per manufacturer. We estimate these burdens to total 1,332 hours (9 MFRs × 148 hours). We estimate the costs of these burden hours will be $14,445 per manufacturer.[16] We estimate that the total cost to the industry from these one-time setup expenses will total $130,005 (9MFRs × $14,445).

We also believe these nine manufacturers, who do not currently operate a VIN-based recalls lookup system, will incur certain recurring burdens on an annual basis. We estimate that 100 burden hours will be spent on system and database administrator support. These 100 burden hours includes: backup data management and monitoring; database management, updates, and log management; and data transfer, archiving, quality assurance, and cleanup procedures. We estimate another 100 burden hours will be incurred on web/application developer support. These burdens include: operating system and security patch management; application/web server management; and application server system and log files management. We estimate these burdens to total 1,800 hours each year after the first year (9 MFRs × 200 hours). We estimate the recurring costs of these burden hours will be $30,000 per manufacturer.[17] We estimate that the total cost to the industry from these recurring expenses will total $270,000 in the first year, and recurring on an annual basis (9MFRs × $30,000).

All 27 manufacturers impacted by this requirement will be required to meet certain technical access requirements that we have specified in the final rule preamble. These requirements will also allow for NHTSA to provide search results, when requested, to online users of NHTSA's *www.safercar.gov* Web site. We included the following software development burdens in our estimate: requirements analysis; API design; API code development; securing the API with a NHTSA key; testing; and API deployment. We estimate these tasks will be performed by a software solution architect (6 hours), a senior web application developer (16 hours), and a mid-level software developer/tester (50 hours), totaling 72 burden hours per manufacturer. We estimate this burden to total 1,944 burden hours (27 MFRs × 72 hours). We estimate that the cost of these burden hours will be $7,010 per manufacturer.[18] We estimate that the total one-time cost to the industry from these technical access requirements will total $189,270 (27 MFRs × $7,010).

Also, we estimate that the one-time VIN list creation, related to the recall campaigns from the past 15 years, will require 60 burden hours. This estimate includes the time needed to for software development (24 hours), data preparation (24 hours), and file naming (12 hours). We calculate that this burden will only be incurred one-time since manufacturers should only need to perform this ''seeding'' of recalls completion information on older recalls one time. We do not have the data, and comments received in response to our NPRM almost universally did not inform, how far back those search tools reached. Accordingly, we assume that all 27 manufacturers will incur this burden. We calculate a total one-time burden of 1,620 hours total (27 MFRs × 60 hours) associated with this requirement on manufacturers to provide access to 15 years of recalls completion data.

This new requirement will allow these 27 manufacturers to update each recalled vehicle's repair status no less than every 7 days, for 15 years from the date the VIN is known to be included in the recall. This ongoing requirement to update the status of a VIN for 15 years will add an additional recurring burden on top of the one-time burden to implement and operate these online

[15] $2,000 (to purchase and configure physical servers) + $1,600 (to obtain requisite licenses needed for operating systems, application servers, and database servers) + $1,000 (8 burden hours for server setup and configuration at the rate of $125/hr) + $400 (4 burden hours for security and connectivity testing at the rate of $100/hr) = $5,000

[16] $1,875 (15 burden hours at the software solution architect rate of $125/hr) + $3,300 (30 burden hours at the senior web application developer rate of $110/hr) + $9,270 (103 burden hours at the mid-level software developer/tester rate of $90/hr) = $14,445

[17] $8,000 (for data center hosting for the physical server) + $12,000 (for system and database administrator support) + $10,000 (for web/application developer support) = $30,000

[18] $750 (6 burden hours at the software solution architect rate of $125/hr) + $1,760 (16 burden hours at the senior web application developer rate of $110/hr) + $4,500 (50 burden hours at the mid-level software developer/tester rate of $90/hr) = $7,010

search tools. We calculate that 8 affected motorcycle manufacturers will now make recalled VINs available for an average of 2 recalls each year and 19 affected light vehicle manufacturers will make recalled VINs available for an average of 8 recalls each year. We believe it will take no more than 1 hour, and potentially much less with automated systems, to update the VIN status of vehicles that have been remedied under the manufacturer's remedy program. We estimate this will add an additional 8,736 burden hours per year (1 hour × 2 recalls × 52 weeks × 8 MFRs + 1 hour × 8 recalls × 52 weeks × 19 MFRs) to support the requirement to update the recalls completion status of each VIN in a recall at least weekly for 15 years.

Our original proposal, for manufacturers to submit VINs electronically to NHTSA, reduced the burden hours associated with quarterly reporting by 3,760 hours annually. As quarterly reporting requirements will not change with the alternative proposal we are adopting today, quarterly reporting burdens will remain at 12,000 burden hours (3,000 quarterly reports × 4 hours/report).

As to the new requirement that manufacturers utilize NHTSA's new online recalls portal for the submission of all recall documents, we believe there will be minimal burden. Manufacturers typically produce their Part 573 reports by entering the needed data into a computer word processor, emailing and/or printing and mailing their report. NHTSA's new online recalls portal will simply replace the manufacturer's data entry method and delivery with a standardized online form. We do believe there will be some unmeasured burden reduction by having a centralized Web site where manufacturers can find assistance in conducting their recall and upload all of their recall documents. However, we do estimate a small burden of 2 hours annually in order to set up their recalls portal account with the pertinent contact information and maintaining/updating their account information as needed. We estimate this will require a total of 560 hours annually (2 hours × 280 MFRs).

We recognize that manufacturers will incur additional burden in meeting the new requirement to submit changes or additions to the information supplied in an earlier part 573 report. In our experience, roughly 10 percent of safety recalls involve a change or addition to the information supplied in a 573 Report. The vast majority of these changes or additions are to only a single, discrete, informational component, such as a change in the number of products to be recalled or a change in the manufacturer's estimation of when it will begin its owner and dealer notifications. As such, these amended reports are relatively simple and straightforward and will require little time to submit through NHTSA's new online recalls portal.

In view of the fact that the requirement to inform NHTSA of a change or update in these recall components is new, we will liberally assume that the number of amended reports will double. Therefore, we assume that 20 percent of Part 573 reports will involve a change or addition. At 30 minutes per amended report, this will add an additional 68 burden hours per year (680 recalls × .20 = 136 recalls; 136/2 = 68 hours).

As for the active review of the Part 573 Information Report conducted within 90 days of the recall's available remedy, we have not adopted this proposal as part of this final rule. This proposal was calculated to add 340 hours each year, but this amount has been removed from our estimate.

As to the requirement that manufacturers notify NHTSA in the event of a bankruptcy, we expect this notification to take an estimated 2 hours to draft and submit to NHTSA. We estimate that only 10 manufacturers might submit such a notice to NHTSA each year, so we calculate the total burden at 20 hours (10 MFRs × 2 hours).

Due to the initial burdens associated with the new requirement that certain vehicle manufacturers make publicly available recall completion information, searchable by VIN, our burden estimate is higher for the first year of this rule. The part 573 and part 577 requirements found in this rule will require 46,138 burden hours in the first year of this rule and then 41,134 hours each subsequent year. Due to this range of estimates, we are including the higher estimate of 46,138 burden hours in our ICR. Accordingly, the requirements of this final rule will result in an additional 24,748 burden hours a year, for a total of 46,138 burden hours for OMB Control Number 2127–0004.

We estimate the incremental costs associated with today's amendments total $12.7 million ($4.57 million for EWR + $634,275 for Part 573 VIN changes + $7.5 million in recall notification letters) in the first year. We estimate $7.5 million recurring costs annually in the second and subsequent years for recall notification letters and $270,000 recurring costs annually for nine manufacturers to service and maintain their online VIN based recalls lookup tools, for a total of $7.77 million recurring costs annually.

G. Executive Order 13045

Executive Order 13045 applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rulemaking is not economically significant.

H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in or about April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

I. Data Quality Act

Section 515 of the FY 2001 Treasury and General Government Appropriations Act (Pub. L. 106–554, section 515, codified at 44 U.S.C. 3516 historical and statutory note), commonly referred to as the Data Quality Act, directed OMB to establish government-wide standards in the form of guidelines designed to maximize the ''quality,'' ''objectivity,'' ''utility,'' and ''integrity'' of information that Federal agencies disseminate to the public. As noted in the EWR final rule (67 FR 45822), NHTSA has reviewed its data collection, generation, and dissemination processes in order to ensure that agency information meets the standards articulated in the OMB and DOT guidelines. Where a rule change is requiring additional reporting by manufacturers, the new requirements will serve to improve the quality of the data NHTSA receives under the EWR rule, enabling the agency to be more efficient and productive in proactively searching for potential safety concerns as mandated through the TREAD Act.

J. Executive Order 13609: Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides, in part:

> The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S.

agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

We requested public comment on whether (a) ''regulatory approaches taken by foreign governments'' concerning the subject matter of this rulemaking and (b) the above policy statement, have any implications for this rulemaking. We did not receive any comments in response to this section.

K. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Parts 573, 577, and 579

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

Regulatory Text

In consideration of the foregoing, NHTSA requests that 49 CFR parts 573, 577, and 579 be amended as set forth below:

PART 573—DEFECT AND NONCOMPLIANCE RESPONSIBILITY AND REPORTS

■ 1. Revise the authority citation for part 573 to read as follows:

Authority: 49 U.S.C. 30102, 30103, 30116–30121, 30166, Pub. L. 112–141, 126 Stat. 405; delegation of authority at 49 CFR 1.95 and 49 CFR 501.8.

■ 2. Amend § 573.6 by revising paragraphs (b), (c)(2)(iii), and (c)(5) to read as follows:

§ 573.6 Defect and noncompliance information report.

* * * * *

(b) Each report shall be submitted not more than 5 working days after a defect in a vehicle or item of equipment has been determined to be safety related, or a noncompliance with a motor vehicle safety standard has been determined to exist. At a minimum, information required by paragraphs (c)(1), (2), and (5) of this section shall be submitted in the initial report. The remainder of the information required by paragraph (c) of this section that is not available within the five-day period shall be submitted within 5 working days after the manufacturer has confirmed the accuracy of the information. In addition, each manufacturer shall amend information required by paragraphs (c)(2), (3), and (8)(i) or (ii) within 5 working days after it has new information that updates or corrects information that was previously reported. Each manufacturer submitting new information relative to a previously submitted report shall refer to the recall campaign number when a number has been assigned by the NHTSA.

(c) * * *

(2) * * *

(iii) In the case of items of motor vehicle equipment, the identification shall be by the generic name of the component (tires, child seating systems, axles, etc.), part number (for tires, a range of tire identification numbers, as required by *49 CFR 574.5*), size and function if applicable, the inclusive dates (month and year) of manufacture if available, brand (or trade) name, model name, model number, as applicable, and any other information necessary to describe the items.

* * * * *

(5) A description of the defect or noncompliance, including both a brief summary and a detailed description, with graphic aids as necessary, of the nature and physical location (if applicable) of the defect or noncompliance. In addition, the manufacturer shall identify and describe the risk to motor vehicle safety reasonably related to the defect or noncompliance consistent with its evaluation of risk required by 49 CFR 577.5(f).

* * * * *

■ 3. Revise § 573.9 to read as follows:

§ 573.9 Address for submitting required reports and other information.

All submissions, except as otherwise required by this part, shall be submitted to NHTSA on the Internet Web page *http://www.safercar.gov/Vehicle+Manufacturers.* A manufacturer must use the templates provided at this Web page for all submissions required under this section. Defect and noncompliance information reports required by § 573.6 of this part shall be submitted using one of the following forms, depending upon the type of product that is the subject of the report: ''Defect and/or Noncompliance Information Report Form—Vehicles;'' ''Defect and/or Noncompliance Information Report Form—Equipment;'' ''Defect and/or Noncompliance Information Report Form—Tires;'' ''Defect and/or Noncompliance Information Report Form—Child Restraints;'' ''Defect and/or Noncompliance Information Report—Vehicle Alterers.'' Reports required under § 573.7 of this part shall be submitted using the form, ''Quarterly Report Form'' also located at this Web page.

■ 4. Add § 573.15 to read as follows:

§ 573.15 Public Availability of Motor Vehicle Recall Information.

(a) *General*—Manufacturers that have manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States 25,000 or more light vehicles or 5,000 or more motorcycles in the current calendar year or the prior calendar year shall make motor vehicle safety recall information applicable to the vehicles they manufactured available to the public on the Internet. The information shall be in a format that is searchable by vehicle make and model and vehicle identification number (VIN), that preserves consumer privacy, and that includes information about each recall that has not been completed for each vehicle.

(b) *Specific requirements*—The system that manufacturers use to provide the information as specified in paragraph (a) of this section must also meet the following requirements:

(1) Be free of charge and not require users to register or submit information, other than a make, model, and a VIN, in order to obtain information on recalls;

(2) Have a hyperlink (Internet link) to it conspicuously placed on the manufacturer's main United States' Web page;

(3) Not include sales or marketing messages with the page for entering a make, model, and VIN, or with the page where the results are displayed;

(4) Allow users to search a vehicle's recall remedy status, and report that a recall has not been completed on that vehicle, as soon as possible and no later than the date when the manufacturer includes that vehicle on its list compiled for purposes of 49 CFR 573.8(a);

(5) Ensure safety recalls subject to paragraph (b)(4) of this section are conspicuously placed first, before any other information that is displayed;

(6) For vehicles that have been identified as covered by a safety recall, but for which the recall remedy is not yet available, state that the vehicle is covered by the safety recall and that the remedy is not yet available;

(7) Be updated at least once every seven (7) calendar days. The date of the last update must display on both the page for entering the make, model, and VIN to search for recall completion information and the results page;

(8) Where the search results in identification of a recall that has not been completed, state the recall campaign number NHTSA assigned to the matter; state the date the defect or noncompliance was reported pursuant to part 573; provide a brief description of the safety defect or noncompliance identified in the manufacturer's information report filed pursuant to this part; describe the risk to safety consistent with the manufacturer's description given in the terms required by parts 573 and 577; and describe the remedy program;

(9) At a minimum, include recall completion information for each vehicle covered by any safety recall for which the owner notification campaign started at any time within the previous fifteen (15) calendar years;

(10) State the earliest date for which recall completion information is available, either on the search page or on the results page, and provide information for all owner notification campaigns after that date;

(11) Instruct the user to contact the manufacturer if the user has questions or wishes to question the accuracy of any information, and provide a hyperlink or other contact information for doing so;

(12) Ensure, through adherence with technical specifications that NHTSA makes available through a secure area of its Web site *http://www.safercar.gov/Vehicle+Manufacturers/RecallsPortal,* the secure electronic transfer of the recall information and data required to be made publicly available by this section, to NHTSA for its use in displaying that information and data on its Web sites or other public portals.

■ 5. Add § 573.16 as follows:

§ 573.16 Reporting bankruptcy petition.

Each manufacturer that files a bankruptcy petition, or is the subject of an involuntary petition for which relief has been ordered, pursuant to Title 11 of the United States Code, 11 U.S.C. 101 et seq., shall provide NHTSA a report as specified below.

(a) The name of the court, the docket number, and the name, address and telephone number of the manufacturer's legal representative;

(b) A copy of the bankruptcy petition;

(c) A list of the recalls for which the manufacturer filed a ''Defect and noncompliance information report'' with NHTSA pursuant to 49 CFR 573.6; and

(d) The information specified in 49 CFR 573.7(b) for each recall listed pursuant to paragraph (c) of this section.

(e) Each report pursuant to this section must be received by NHTSA not more than 5 working days after the date the petition is filed in the United States Bankruptcy Court. Reports shall be addressed to the Associate Administrator for Enforcement, National Highway Traffic Safety Administration, Attention: Recall Management Division (NVS–215), 1200 New Jersey Ave. SE., Washington, DC 20590, or submitted as an attachment to an email message to *RMD.ODI@dot.gov* in a portable document format (.pdf).

PART 577—DEFECT AND NONCOMPLIANCE NOTIFICATION

■ 6. Revise the authority citation for part 577 to read as follows:

Authority: 49 U.S.C. 30102, 30103, 30116–121, 30166; delegation of authority at 49 CFR 1.95 and 49 CFR 501.8.

■ 7. Amend § 577.5 by revising paragraphs (a) and (b) to read as follows:

§ 577.5 Notification pursuant to a manufacturer's decision.

(a) When a manufacturer of motor vehicles or replacement equipment determines that any motor vehicle or item of replacement equipment produced by the manufacturer contains a defect that relates to motor vehicle safety, or fails to conform to an applicable Federal motor vehicle safety standard, or the manufacturer files a defect or noncompliance information report under 49 CFR part 573, the manufacturer shall provide notification in accordance with § 577.7(a), unless the manufacturer is exempted by the Administrator (pursuant to 49 U.S.C. 30118(d) or 30120(h)) from giving such notification. The notification shall contain the information specified in this section. The information required by paragraphs (b) and (c) of this section shall be presented in the form and order specified. The information required by paragraphs (d) through (h) of this section may be presented in any order. Except as authorized by the Administrator, the manufacturer shall submit a copy of its proposed owner notification letter, including any provisions or attachments related to reimbursement, to NHTSA's Recall Management Division (NVS–215) no fewer than five (5) Federal Government business days before it intends to begin mailing it to owners. The manufacturer shall mark the outside of each envelope in which it sends an owner notification letter with a notation that includes the phrase ''SAFETY RECALL NOTICE,'' all in capital letters and in a type that is larger than that used in the address section, and is also distinguishable from the other type in a manner other than size. It shall also imprint on the outside of this envelope a label, one inch by three inches in size and located on the front of the envelope. The label to be used is located at *http://www.safercar.gov/Vehicle+Manufacturers/RecallsPortal/SafetyRecallLabel.* This label shall not be used for any purpose other than compliance with this paragraph by any entity outside of the Department of Transportation. Except where the format of the envelope has been previously approved by NHTSA's Recall Management Division (NVS–215), each manufacturer must submit the envelope format it intends to use to that division at least five Federal Government business days before mailing the notification to owners. Submission of envelopes and proposed owner notification letters shall be made by the means identified in 49 CFR 573.9. Notification sent to an owner whose address is in the Commonwealth of Puerto Rico shall be written in both English and Spanish.

(b) At the top of the notification, there must be the statement ''IMPORTANT SAFETY RECALL,'' in all capital letters and in a type size that is larger than that used in the remainder of the letter. Then immediately below, for vehicle recalls, there must be the statement ''This notice applies to your vehicle, (manufacturer to insert VIN for the particular vehicle).'' If VIN placement is not possible in this location, the VIN must then be placed in another conspicuous location within the notification. Immediately below the foregoing, there must be the opening statement: ''This notice is sent to you in accordance with the National Traffic and Motor Vehicle Safety Act.''

* * * * *

■ 8. Amend § 577.7 by revising the first sentence of paragraph (a)(1) and adding a second sentence to read as follows:

§ 577.7 Time and manner of notification.

(a) * * *

(1) Be furnished no later than 60 days from the date the manufacturer files its defect or noncompliance information report under part 573. In the event that the remedy for the defect or noncompliance is not available at the time of notification, the manufacturer shall issue a second notification in accordance with the requirements of

this part once that remedy is available.
* * *

* * * * *

PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

■ 9. Revise the authority citation for part 579 to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.95 and 49 CFR 501.8.

Subpart A—General

■ 10. Amend § 579.4 in paragraph (c) by:
■ a. Adding in alphabetical order definitions of ''Automatic brake controls,'' ''Backover prevention system,'' ''Compressed natural gas (CNG),'' ''Compression ignition fuel (CIF),'' ''Electric battery power (EBP),'' ''Electronic stability control'';
■ b. Redesignating paragraphs (1) and (2) in the definition of ''Equipment'' as paragraphs (i) and (ii);
■ c. Adding in alphabetical order definitions of ''Forward collision avoidance system,'' ''Fuel and/or propulsion system type,'' ''Fuel-cell power (FCP),'' ''Hybrid electric vehicle (HEV),'' ''Hydrogen combustion power (HCP),'' ''Lane departure prevention system,''
■ d. Redesignating paragraphs (1) through (4) in the definition of ''Minimal specificity'' as paragraphs (i) through (iv);
■ e. Adding in alphabetical order definitions of ''Plug-in hybrid (PHV)'' and ''Roll stability control'';
■ f. Revising the definition of ''Service brake system''; and
■ g. Adding in alphabetical order definitions of ''Spark ignition fuel (SIF)'' and ''Visibility''.

The additions and revision read as follows:

§ 579.4 Terminology.

* * * * *

(c). * * *

Automatic brake controls means systems and devices for automatic control of the braking system, including but not limited to, brake-assist components (vacuum booster, hydraulic modulator, etc.), antilock braking systems, traction control systems, and enhanced braking systems. The term includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

* * * * *

Backover prevention system means a system that has a visual image of the area directly behind a vehicle that is provided in a single location to the vehicle operator and by means of indirect vision.

* * * * *

Compressed natural gas (CNG) means a system that uses compressed natural gas to propel a motor vehicle.

Compression ignition fuel (CIF) means a system that uses diesel or any diesel-based fuels to propel a motor vehicle. This includes biodiesel.

* * * * *

Electric battery power (EBP) means a system that uses only batteries to power an electric motor to propel a motor vehicle.

* * * * *

Electronic stability control system for light vehicles is used as defined in S4. of § 571.126 of this chapter.

Electronic stability control system for buses, emergency vehicles, and medium/heavy vehicles means a system that has all the following attributes:

(i) Augments vehicle directional stability by applying and adjusting the vehicle brake torques individually at each wheel position on at least one front and at least one rear axle of the vehicle to induce correcting yaw moment to limit vehicle oversteer and to limit vehicle understeer;

(ii) Enhances rollover stability by applying and adjusting the vehicle brake torques individually at each wheel position on at least one front and at least one rear axle of the vehicle to reduce lateral acceleration of a vehicle;

(iii) Is computer-controlled with the computer using a closed-loop algorithm to induce correcting yaw moment and enhance rollover stability;

(iv) Has a means to determine the vehicle's lateral acceleration;

(v) Has a means to determine the vehicle's yaw rate and to estimate its side slip or side slip derivative with respect to time;

(vi) Has a means to estimate vehicle mass or, if applicable, combination vehicle mass;

(vii) Has a means to monitor driver steering input;

(viii) Has a means to modify engine torque, as necessary, to assist the driver in maintaining control of the vehicle and/or combination vehicle; and

(ix) Can provide brake pressure to automatically apply on a truck tractor and modulate the brake torques of a towed semi-trailer.

* * * * *

Forward collision avoidance system means

(i) A system that:

(A) Has an algorithm or software to determine distance and relative speed of an object or another vehicle directly in the forward lane of travel; and

(B) Provides an audible, visible, and/or haptic warning to the driver of a potential collision with an object in the vehicle's forward travel lane.

(ii) The system may also include a feature that:

(A) Pre-charges the brakes prior to, or immediately after, a warning is issued to the driver;

(B) Closes all windows, retracts the seat belts, and/or moves forward any memory seats in order to protect the vehicle's occupants during or immediately after a warning is issued; or

(C) Applies any type of braking assist or input during or immediately after a warning is issued.

* * * * *

Foundation brake system means all components of the service braking system of a motor vehicle intended for the transfer of braking application force from the operator to the wheels of a vehicle, including components such as the brake pedal, master cylinder, fluid lines and hoses, brake calipers, wheel cylinders, brake discs, brake drums, brake pads, brake shoes, and other related equipment installed in a motor vehicle in order to comply with FMVSS Nos. 105, 121, 122, or 135 (except equipment relating specifically to the parking brake). The term includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Fuel and/or propulsion system type means the variety of fuel and/or propulsion systems used in a motor vehicle, as follows: compressed natural gas (CNG); compression ignition fuel (CIF); electric battery power (EBP); fuel-cell power (FCP); hybrid electric vehicle (HEV); hydrogen combustion power (HCP); plug-in hybrid (PHV); spark ignition fuel (SIF); and other (OTH).

Fuel-cell power (FCP) means a system that uses fuel cells to generate electricity to power an electric motor to propel a motor vehicle.

* * * * *

Hybrid electric vehicle (HEV) means a system that uses a combination of an electric motor and internal combustion engine to propel a motor vehicle but is not capable of recharging its batteries by plugging in to an external electric current.

Hydrogen combustion power (HCP) means a system that uses hydrogen to

propel a vehicle through means other than a fuel cell.

* * * * *

Lane departure prevention system means

(i) A system that:

(A) Has an algorithm or software to determine the vehicle's position relative to the lane markers and the vehicle's projected direction; and

(B) Provides an audible, visible, and/or haptic warning to the driver of unintended departure from a travel lane.

(ii) The system may also include a feature that:

(A) Applies the vehicle's stability control system to assist the driver to maintain lane position during or immediately after the warning is issued;

(B) Applies any type of steering input to assist the driver to maintain lane position during or immediately after the warning is issued; or

(C) Applies any type of braking pressure or input to assist the driver to maintain lane position during or immediately after the warning is issued.

* * * * *

Plug-in hybrid (PHV) means a system that combines an electric motor and an internal combustion engine to propel a motor vehicle and is capable of recharging its batteries by plugging in to an external electric current.

* * * * *

Roll stability control system means a system that:

(i) Enhances rollover stability by applying and adjusting the vehicle brake torques to reduce lateral acceleration of a vehicle;

(ii) Is computer-controlled with the computer using a closed-loop algorithm to enhance rollover stability;

(iii) Has a means to determine the vehicle's lateral acceleration;

(iv) Has a means to determine the vehicle mass or, if applicable, combination vehicle mass;

(v) Has a means to modify engine torque, as necessary, to assist the driver in maintaining rollover stability of the vehicle and/or combination vehicle; and

(vi) Can provide brake pressure to automatically apply on a truck tractor and modulate the brake torques of a towed semi-trailer.

* * * * *

Service brake system means all components of the service braking system of a motor vehicle intended for the transfer of braking application force from the operator to the wheels of a vehicle, including the foundation braking system, such as the brake pedal, master cylinder, fluid lines and hoses, braking assist components, brake calipers, wheel cylinders, brake discs, brake drums, brake pads, brake shoes, and other related equipment installed in a motor vehicle in order to comply with FMVSS Nos. 105, 121, 122, or 135 (except equipment relating specifically to a parking brake). This term also includes systems and devices for automatic control of the brake system such as antilock braking, traction control, and enhanced braking, but does not include systems or devices necessary only for electronic stability control, or roll stability control. The term includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

* * * * *

Spark ignition fuel (SIF) means, in the context of reporting fuel and/or propulsion system type, a system that uses gasoline, ethanol, or methanol based fuels to propel a motor vehicle.

* * * * *

Visibility means the systems and components of a motor vehicle through which a driver views the surroundings of the vehicle including windshield, side windows, back window, and rear view mirrors, and systems and components used to wash and wipe windshields and back windows. This term includes those vehicular systems and components that can affect the ability of the driver to clearly see the roadway and surrounding area, such as the systems and components identified in FMVSS Nos. 103, 104, and 111. This term also includes the defogger, defroster system, the heater core, blower fan, windshield wiper systems, mirrors, windows and glazing material, heads-up display (HUD) systems, and exterior view-based television systems for medium-heavy vehicles, but does not include exterior view-based television systems for light vehicles which are defined under ''Backover prevention system'' and exterior lighting systems which are defined under ''Lighting.'' This term includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

* * * * *

■ 11. Amend § 579.6 by redesignating paragraph (b) as paragraph (b)(1) and adding paragraph (b)(2) to read as follows:

§ 579.6 Address for submitting reports and other information.

* * * * *

(b) * * *

(2) The annual list of substantially similar vehicles submitted pursuant to § 579.11(e) of this part shall be submitted to NHTSA's early warning data repository identified on NHTSA's Web page *http://www-odi.nhtsa.dot.gov/ewr/ewr.cfm.* A manufacturer shall use the template provided at the early warning Web site, also identified on NHTSA's Web page *http://www-odi.nhtsa.dot.gov/ewr/xls.cfm,* for submitting the list.

* * * * *

Subpart C—Reporting of Early Warning Information

■ 12. Amend § 579.21 by:

■ a. Revising the first sentence of paragraph (a);

■ b. Revising the first sentence of paragraph (b)(2);

■ c. Revising the first sentence of paragraph (c); and

■ d. Adding a fifth sentence to paragraph (c).

The revisions and addition read as follows:

§ 579.21 Reporting requirements for manufacturers of 5,000 or more light vehicles annually.

* * * * *

(a) *Production information.* Information that states the manufacturer's name, the quarterly reporting period, the make, the model, the model year, the type, the platform, the fuel and/or propulsion system type coded as follows: CNG (compressed natural gas), CIF (compression ignition fuel), EBP (electric battery power), FCP (fuel-cell power), HEV (hybrid electric vehicle), HCP (hydrogen combustion power), PHV (plug-in hybrid), SIF (spark ignition fuel) and OTH (Other), and the number of vehicles produced.

* * *

(b) * * *

(2) For each incident described in paragraph (b)(1) of this section, the manufacturer shall separately report the make, model, model year, the type, the fuel and/or propulsion system type (as specified in paragraph (a)), and VIN of the vehicle, the incident date, the number of deaths, the number of injuries for incidents occurring in the United States, the State or foreign country where the incident occurred, each system or component of the vehicle that allegedly contributed to the incident, and whether the incident involved a fire or rollover, coded as follows: 01 steering system, 02 suspension system, 03 foundation brake system, 04 automatic brake controls, 05 parking brake, 06 engine and engine cooling system, 07 fuel system, 10

power train, 11 electrical system, 12 exterior lighting, 13 visibility, 14 air bags, 15 seat belts, 16 structure, 17 latch, 18 vehicle speed control, 19 tires, 20 wheels, 22 seats, 23 fire, 24 rollover, 25 electronic stability control system, 26 forward collision avoidance system, 27 lane departure prevention system, 28 backover prevention system, 98 where a system or component not covered by categories 01 through 22 or 25 through 28, is specified in the claim or notice, and 99 where no system or component of the vehicle is specified in the claim or notice. * * *

(c) *Numbers of property damage claims, consumer complaints, warranty claims, and field reports.* Separate reports on the numbers of those property damage claims, consumer complaints, warranty claims, and field reports which involve the systems and components that are specified in codes 01 through 22, or 25 through 28 in paragraph (b)(2) of this section, or a fire (code 23), or rollover (code 24). * * * For each report, the manufacturer shall separately state the vehicle type and fuel and/or propulsion system type if the manufacturer stated more than one vehicle type or fuel and/or propulsion system type for a particular make, model, model year in paragraph (a) of this section.

* * * * *

■ 13. Amend § 579.22 by:

■ a. Revising the first sentence of paragraph (b)(2);

■ b. Revising the first sentence of paragraph (c); and

■ c. Revising the first sentence of paragraph (d).

The revisions read as follows:

§ 579.22 Reporting requirements for manufacturers of 100 or more buses, manufacturers of 500 or more emergency vehicles and manufacturers of 5,000 or more medium-heavy vehicles (other than buses and emergency vehicles) annually.

* * * * *

(b) * * *

(2) For each incident described in paragraph (b)(1) of this section, the manufacturer shall separately report the make, model, model year, and VIN of the bus, emergency vehicle or medium-heavy vehicle, the incident date, the number of deaths, the number of injuries for incidents occurring in the United States, the State or foreign country where the incident occurred, each system or component of the vehicle that allegedly contributed to the incident, and whether the incident involved a fire or rollover, coded as follows: 01 steering system, 02 suspension system, 03 service brake system, hydraulic, 04 service brake system, air, 05 parking brake, 06 engine and engine cooling system, 07 fuel system, gasoline, 08 fuel system, diesel, 09 fuel system, other, 10 power train, 11 electrical, 12 exterior lighting, 13 visibility, 14 air bags, 15 seat belts, 16 structure, 17 latch, 18 vehicle speed control, 19 tires, 20 wheels, 21 trailer hitch, 22 seats, 23 fire, 24 rollover, 25 electronic stability control system and/or roll stability control system, 98 where a system or component not covered by categories 01 through 22 or 25 is specified in the claim or notice, and 99 where no system or component of the vehicle is specified in the claim or notice. * * *

(c) *Numbers of property damage claims, consumer complaints, warranty claims, and field reports.* Separate reports on the numbers of those property damage claims, consumer complaints, warranty claims, and field reports which involve the systems and components that are specified in codes 01 through 22, or 25 in paragraph (b)(2) of this section, or a fire (code 23), or rollover (code 24). * * *

(d) *Copies of field reports.* For all buses, emergency vehicles and medium-heavy vehicles manufactured during a model year covered by the reporting period and the nine model years prior to the earliest model year in the reporting period, a copy of each field report (other than a dealer report or a product evaluation report) involving one or more of the systems or components identified in paragraph (b)(2) of this section, or fire, or rollover, containing any assessment of an alleged failure, malfunction, lack of durability, or other performance problem of a motor vehicle or item of motor vehicle equipment (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period. * * *

Note: The following appendices will not appear in the Code of Federal Regulations.

BILLING CODE 4910–59–P

Appendix A

Figure 1 Amended Light Vehicle Production Template showing new columns D and E.

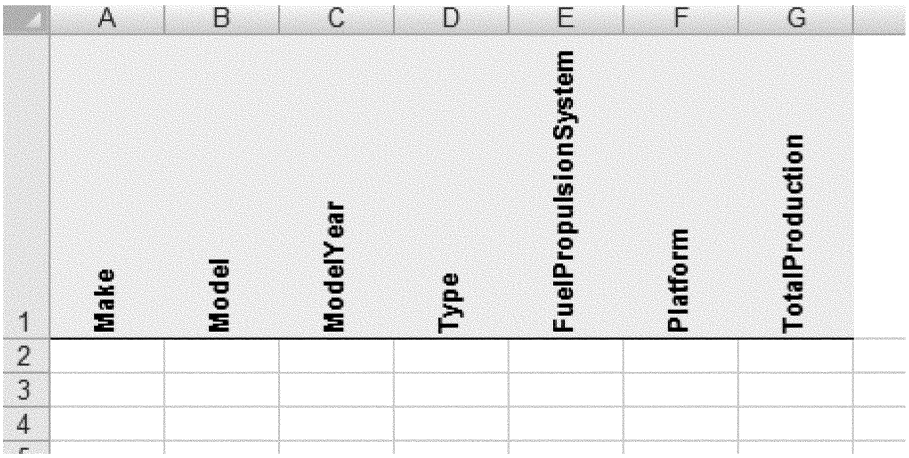


Figure 2 Amended Light Vehicle Death\Injury Template showing new columns F and G.

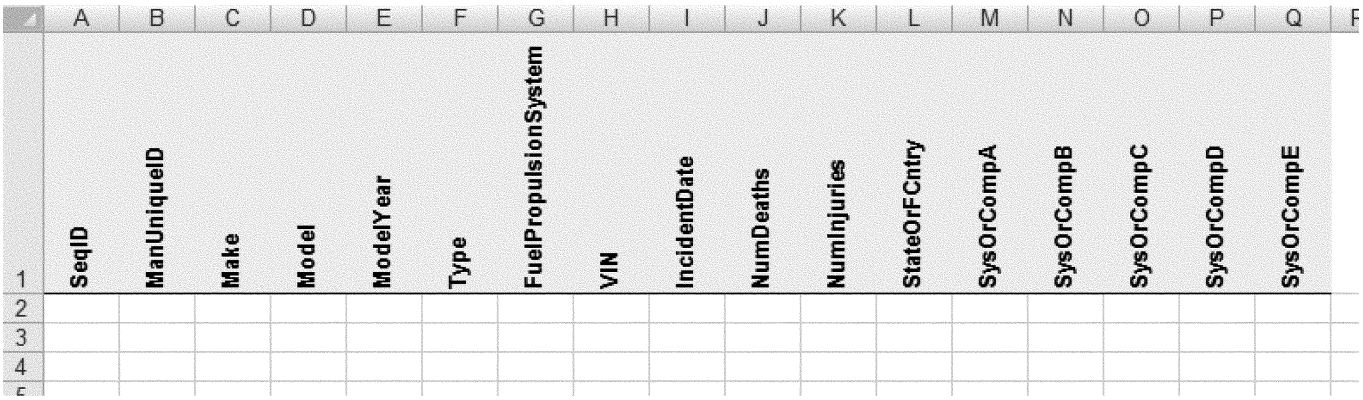
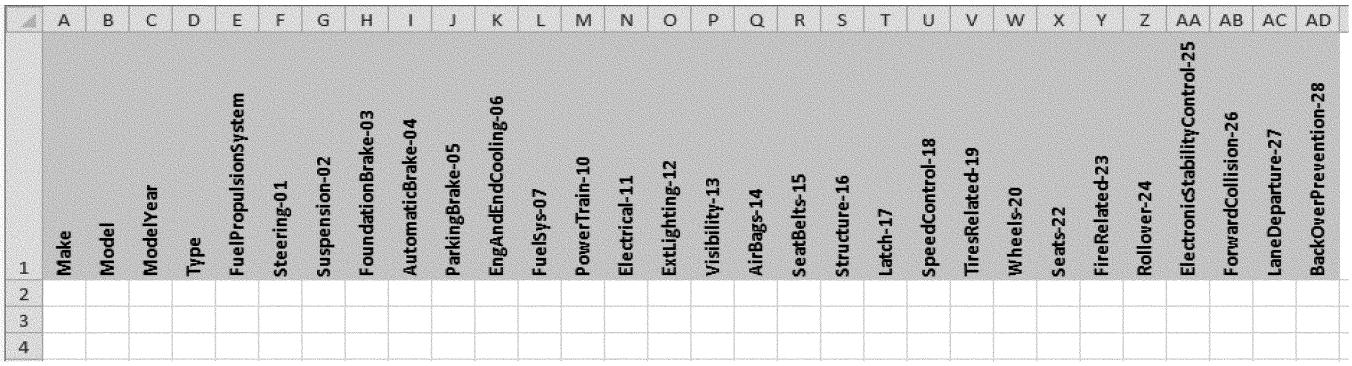


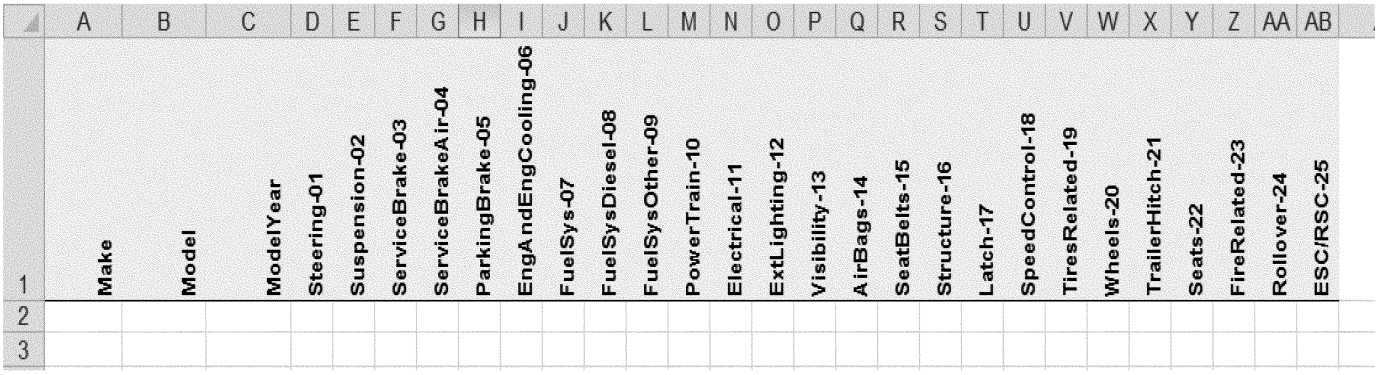
Figure 3 Amended Light Vehicle Aggregate Template showing new columns D, E, H, I, AA, AB, AC, and AD.



	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z	AA	AB	AC	AD
1	Make	Model	ModelYear	Type	FuelPropulsionSystem	Steering-01	Suspension-02	FoundationBrake-03	AutomaticBrake-04	ParkingBrake-05	EngAndEndCooling-06	FuelSys-07	PowerTrain-10	Electrical-11	ExtLighting-12	Visibility-13	AirBags-14	SeatBelts-15	Structure-16	Latch-17	SpeedControl-18	TiresRelated-19	Wheels-20	Seats-22	FireRelated-23	Rollover-24	ElectronicStabilityControl-25	ForwardCollision-26	LaneDeparture-27	BackOverPrevention-28
2																														
3																														
4																														

Appendix B

Figure 1 Amended Heavy Vehicle Aggregate Template showing new column AB.



	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z	AA	AB
1	Make	Model	ModelYear	Steering-01	Suspension-02	ServiceBrake-03	ServiceBrakeAir-04	ParkingBrake-05	EngAndEngCooling-06	FuelSys-07	FuelSysDiesel-08	FuelSysOther-09	PowerTrain-10	Electrical-11	ExtLighting-12	Visibility-13	AirBags-14	SeatBelts-15	Structure-16	Latch-17	SpeedControl-18	TiresRelated-19	Wheels-20	TrailerHitch-21	Seats-22	FireRelated-23	Rollover-24	ESC/RSC-25
2																												
3																												

Appendix C



Questions?
Contact Customer Service:
1-800-555-5555

Search Results for VINXXXXXXXXXXXXXX

Vehicle: 2004 Supra Sedan
Trim: LX Sedan 4 Speed Automatic
Exterior Color: Metallic Silver
Interior Color: Gray

Safety Recalls

NHTSA Recall Number	Recall Date	Recall Description	Repair Description	Status
13V-702	March 4, 2013	It may be possible to remove the key from the ignition when the vehicle is running. As such, these vehicles fail to conform to the requirements of FMVSS 114, "Theft Protection." If the ignition key is removed while the vehicle is still on and/or the vehicle is not in Park, the vehicle may rollaway and the unintended movement of the vehicle may result in a possible crash or injury to pedestrians.	Dealers will reinforce the affected fork locking bolt connections, free of charge. Repair availability expected in July 2013.	**Repair Not Yet Available**
12V-590	June 1, 2012	The affected vehicles may have improperly sized terminal crimps on the seat side-airbag wiring harness which may cause the seat side-airbags to malfunction. In the event of a crash necessitating airbag deployment the airbags may not operate as designed, increasing the risk of injury.	Dealers will replace the ignition lock cylinder and the two associated keys. This service will be performed free of charge.	**INCOMPLETE** But Repair Available

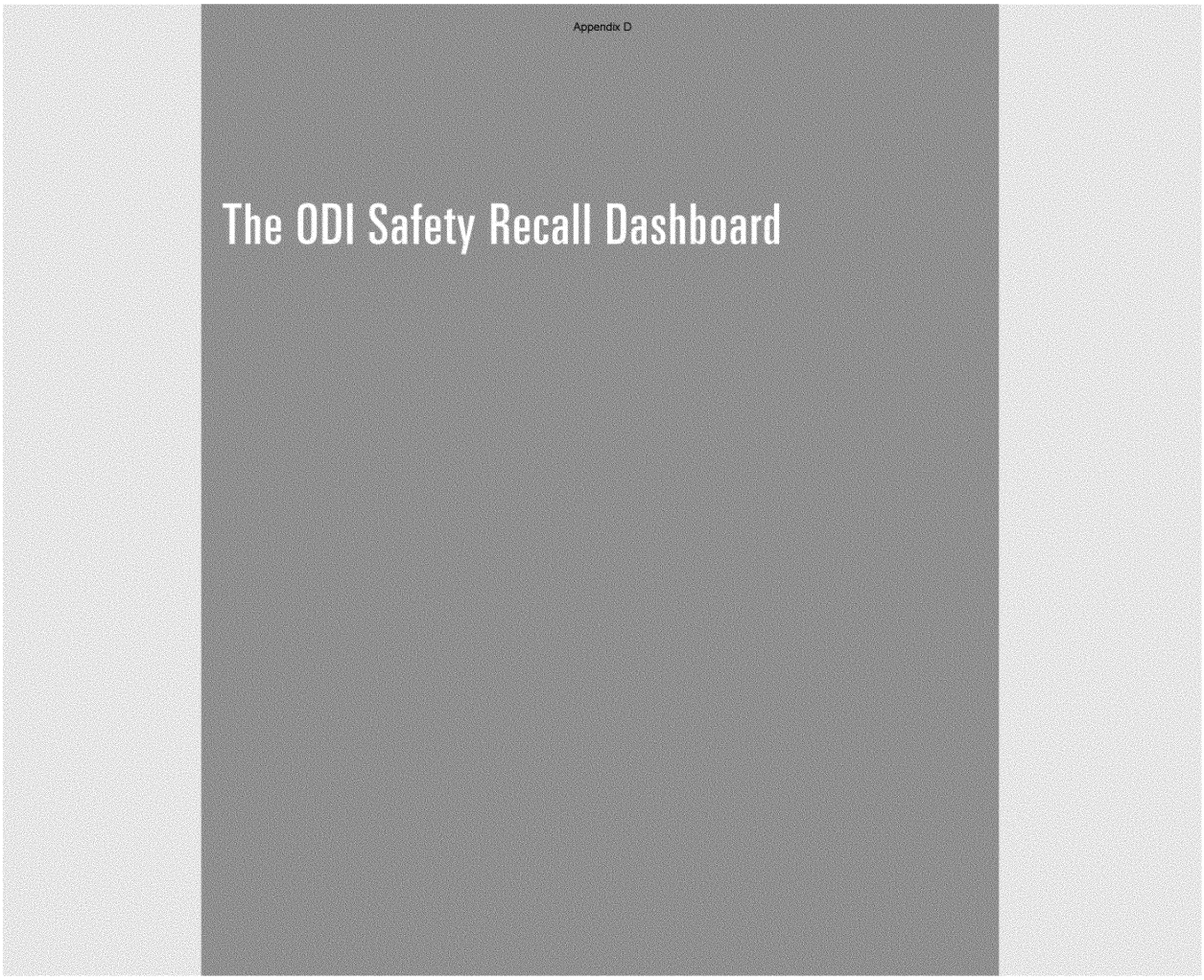
*** Results Last Updated: Friday, March 5, 2013**

Other Campaigns

Campaign Date	Campaign Description	Repair Description	Comments
May 5, 2013	Replacement audio system volume knobs will be replaced with new, more rigid knobs.	Dealers will replace the volume knobs, free of charge.	**INCOMPLETE** But Repair Available

Appendix D

Appendix D



Appendix D

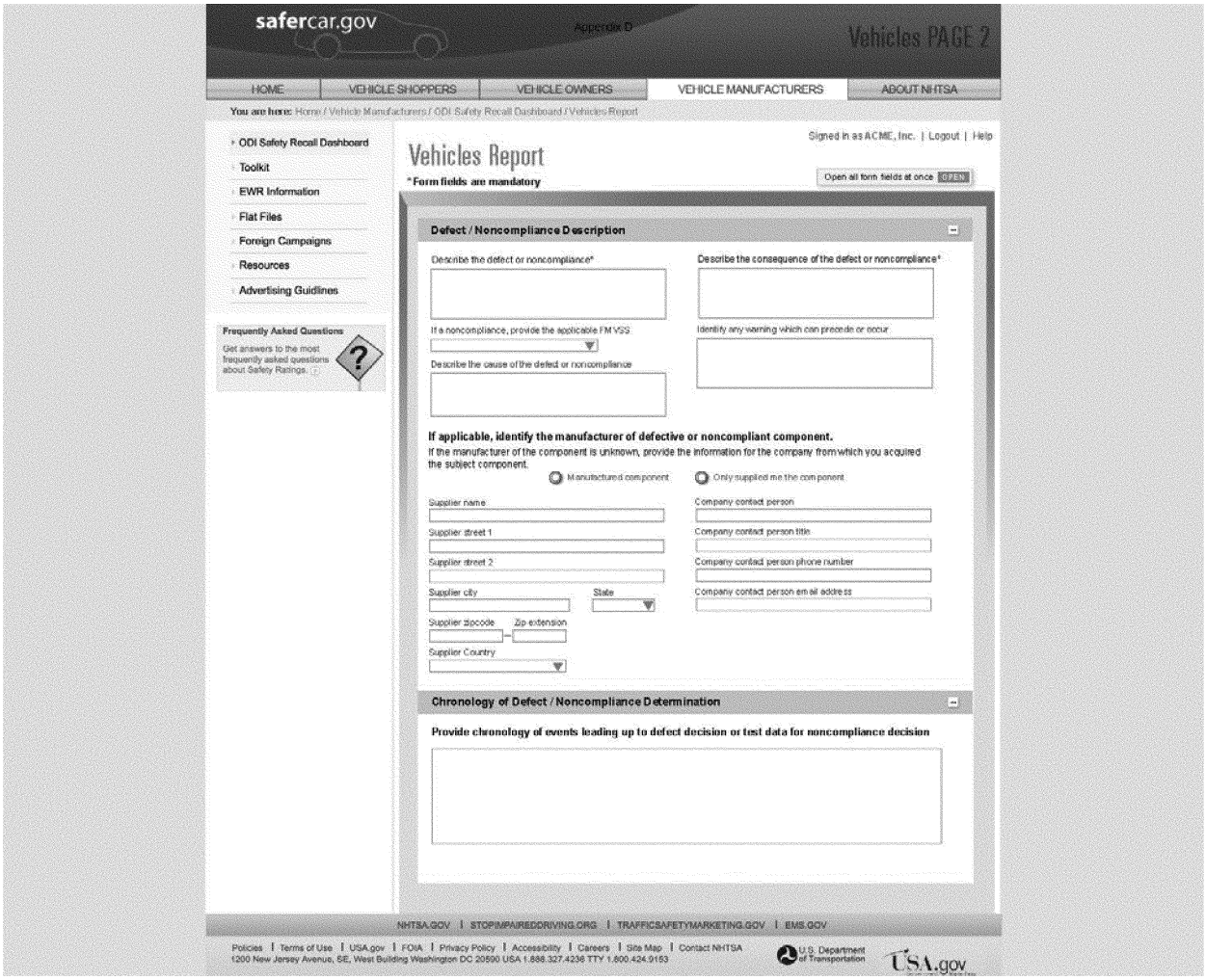
Mockups of Report Pages

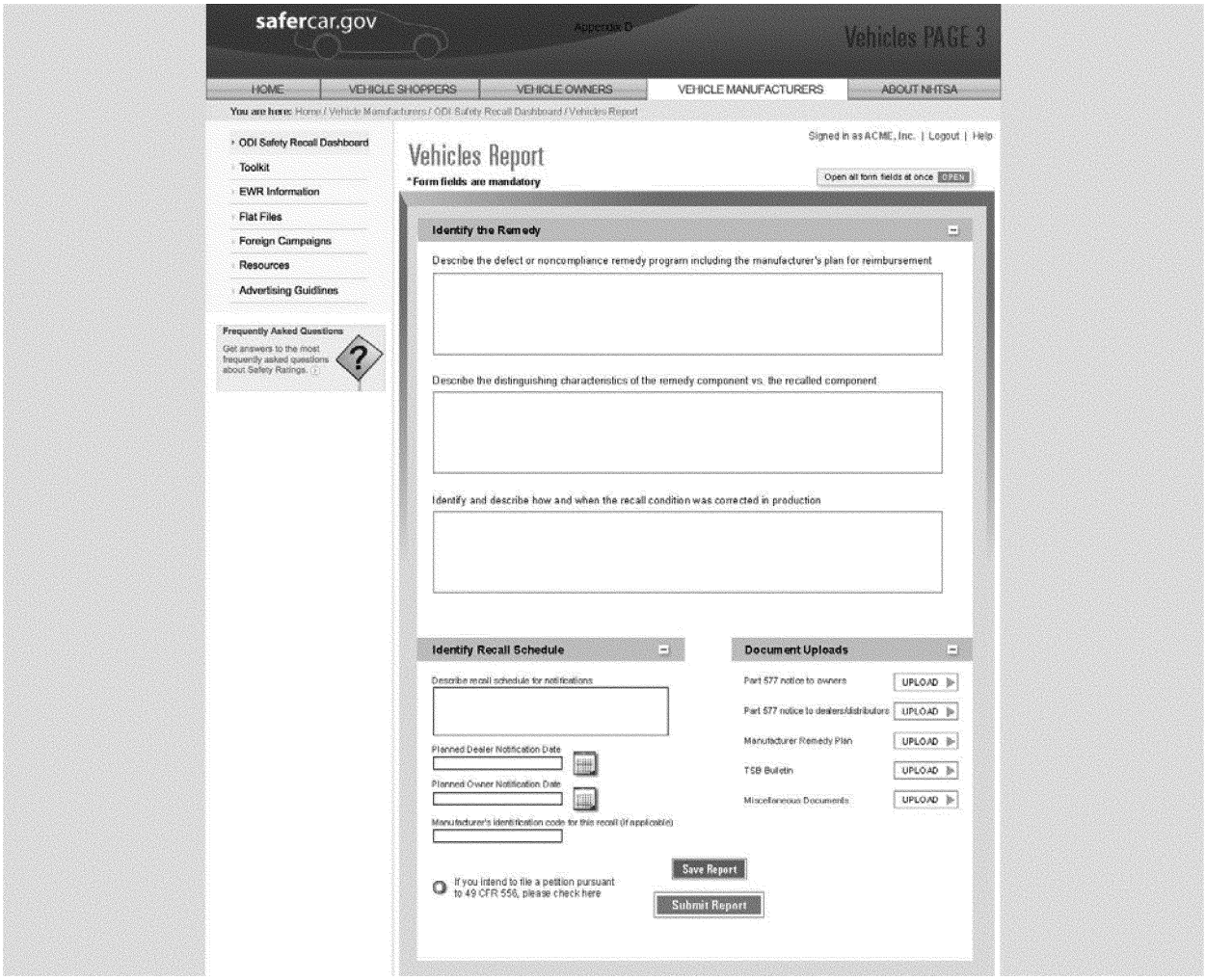
The following mockups display all of the report sections open so that all of the individual form fields are visible.

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Open all form fields at once OPEN
Manufacturer / Importer Information
ACME Industries, Inc.
Address:
1600 Industrial Blvd - Suite 1200
Street 2
Building 2 – 1200 Industrial Blvd
City
Boston
State
MA
Zip code
02121 0431
Company contact – primary
John Smith
617-234-5678
Director Product Manufacturing
john.smith@acme.com
Company contact – secondary
Mary Jones
617-234-5821
Product Manufacturing Assistant
mary.jones@acme.com
Update information UPDATE
Vehicle Information (User can add additional models if needed)
Model year start*
Model year end*
Vehicle make*
Vehicle model/line*
Beginning production date
Ending production date
Vehicle type
Other
Descriptive information which characterized distinguishes recalled vehicles from other vehicles
Number of vehicles potentially involved
Percentage (%) of vehicles from above estimated to contain the defect/noncompliance
Add another vehicle ADD
VIN range
Beginning VIN range
Ending VIN range
Add another VIN range
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Vehicles Report
* Form fields are mandatory
Open all form fields at once OPEN
Defect / Noncompliance Description
Describe the defect or noncompliance*
Describe the consequence of the defect or noncompliance*
If a noncompliance, provide the applicable FMVSS
Identify any warning which can precede or occur
Describe the cause of the defect or noncompliance
If applicable, identify the manufacturer of defective or noncompliant component.
If the manufacturer of the component is unknown, provide the information for the company from which you acquired the subject component.
Manufactured component
Only supplied me the component
Supplier name
Supplier street 1
Supplier street 2
Supplier city
State
Supplier zipcode
Zip extension
Supplier Country
Company contact person
Company contact person title
Company contact person phone number
Company contact person email address
Chronology of Defect / Noncompliance Determination
Provide chronology of events leading up to defect decision or test data for noncompliance decision
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Open all form fields at once OPEN
Identify the Remedy
Describe the defect or noncompliance remedy program including the manufacturer's plan for reimbursement
Describe the distinguishing characteristics of the remedy component vs. the recalled component
Identify and describe how and when the recall condition was corrected in production
Identify Recall Schedule
Describe recall schedule for notifications
Planned Dealer Notification Date
Planned Owner Notification Date
Manufacturer's identification code for this recall (if applicable)
If you intend to file a petition pursuant to 49 CFR 556, please check here
Save Report
Submit Report
Document Uploads
Part 577 notice to owners
UPLOAD
Part 577 notice to dealers/distributors
UPLOAD
Manufacturer Remedy Plan
UPLOAD
TSB Bulletin
UPLOAD
Miscellaneous Documents
UPLOAD

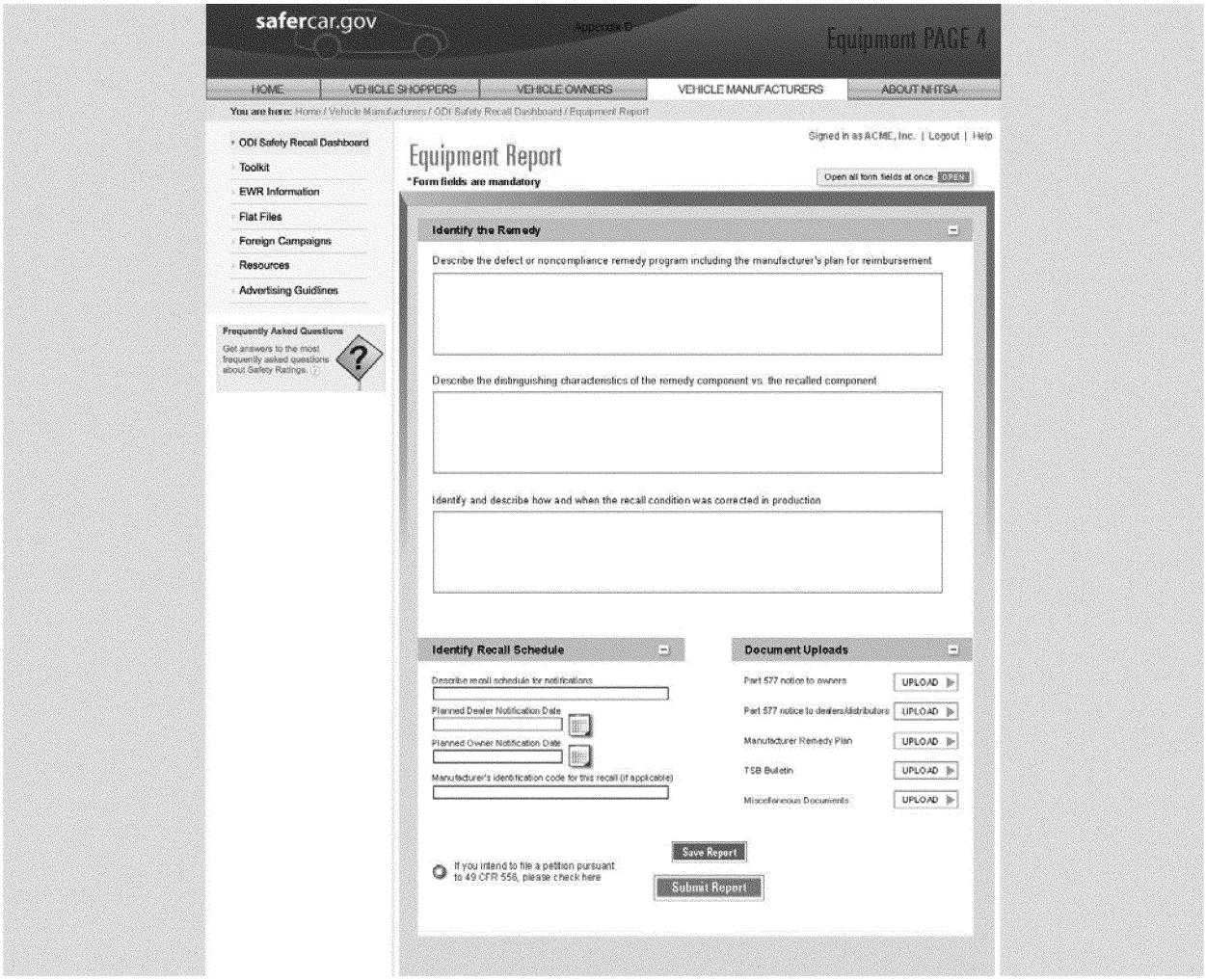
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Manufacturer / Importer Information
ACME Industries, Inc.
Address:
1000 Industrial Blvd - Suite 1200
Street 2
Building 2 – 1200 Industrial Blvd
City
Boston
State
MA
Zip code
02121 0431
Company contact – primary
John Smith
617-234- 5678
Director Product Manufacturing
john.smith@acme.com
Company contact – secondary
Mary Jones
617-234- 5821
Product Manufacturing Assistant
mary.jones@acme.com
Update information UPDATE
Equipment Information (User can add additional equipment if needed)
Equipment brand/trade name*
Equipment model name*
Beginning production date
Ending production date
Part Number*
Size
Function
Descriptive information which characterizes/distinguishes recalled equipment from other equipment
Number of equipment potentially involved
Percentage (%) of above equipment containing defect/ noncompliance
Percentage
Add more equipment ADD
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Defect / Noncompliance Description
Describe the defect or noncompliance*
Describe the consequence of the defect or noncompliance*
If a noncompliance, provide the applicable FMVSS
Identify any warning which can precede or occur
Describe the cause of the defect or noncompliance
If applicable, identify the manufacturer of defective or noncompliant component.
If the manufacturer of the component is unknown, provide the information for the company from which you acquired the subject component.
Manufactured component
Only supplied me the component
Supplier name
Supplier street 1
Supplier street 2
Supplier city
State
Supplier zipcode
Zip extension
Supplier Country
Company contact person
Company contact person title
Company contact person phone number
Company contact person email address
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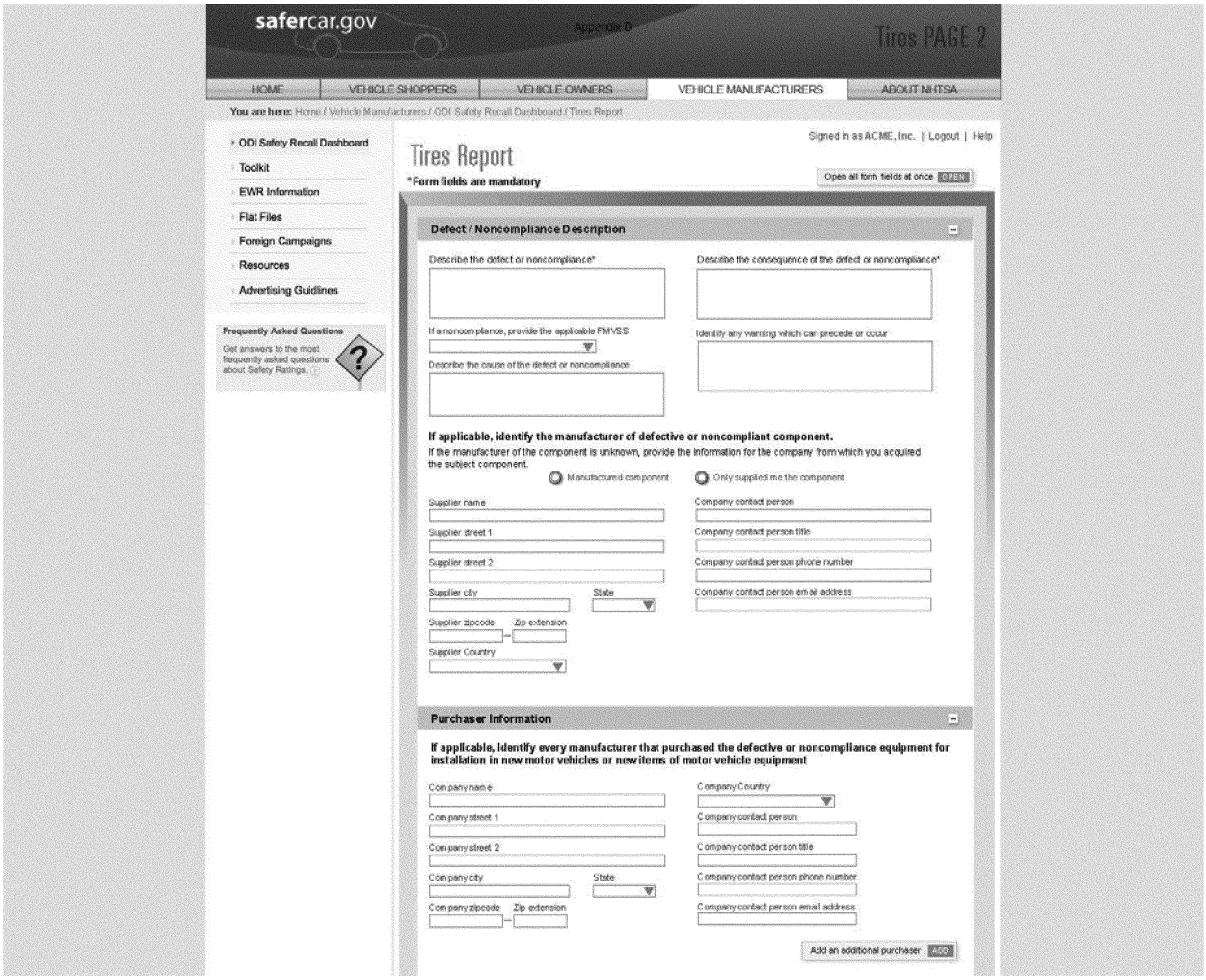

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Open all form fields at once OPEN
Purchaser Information
If applicable, identify every manufacturer that purchased the defective or noncompliance equipment for installation in new motor vehicles or new items of motor vehicle equipment
Company name
Company street 1
Company street 2
Company city
State
Company zipcode
Zip extension
Company Country
Company contact person
Company contact person title
Company contact person phone number
Company contact person email address
Add an additional purchaser ADD
Chronology of Defect / Noncompliance Determination
Provide chronology of events leading up to defect decision or test data for noncompliance decision
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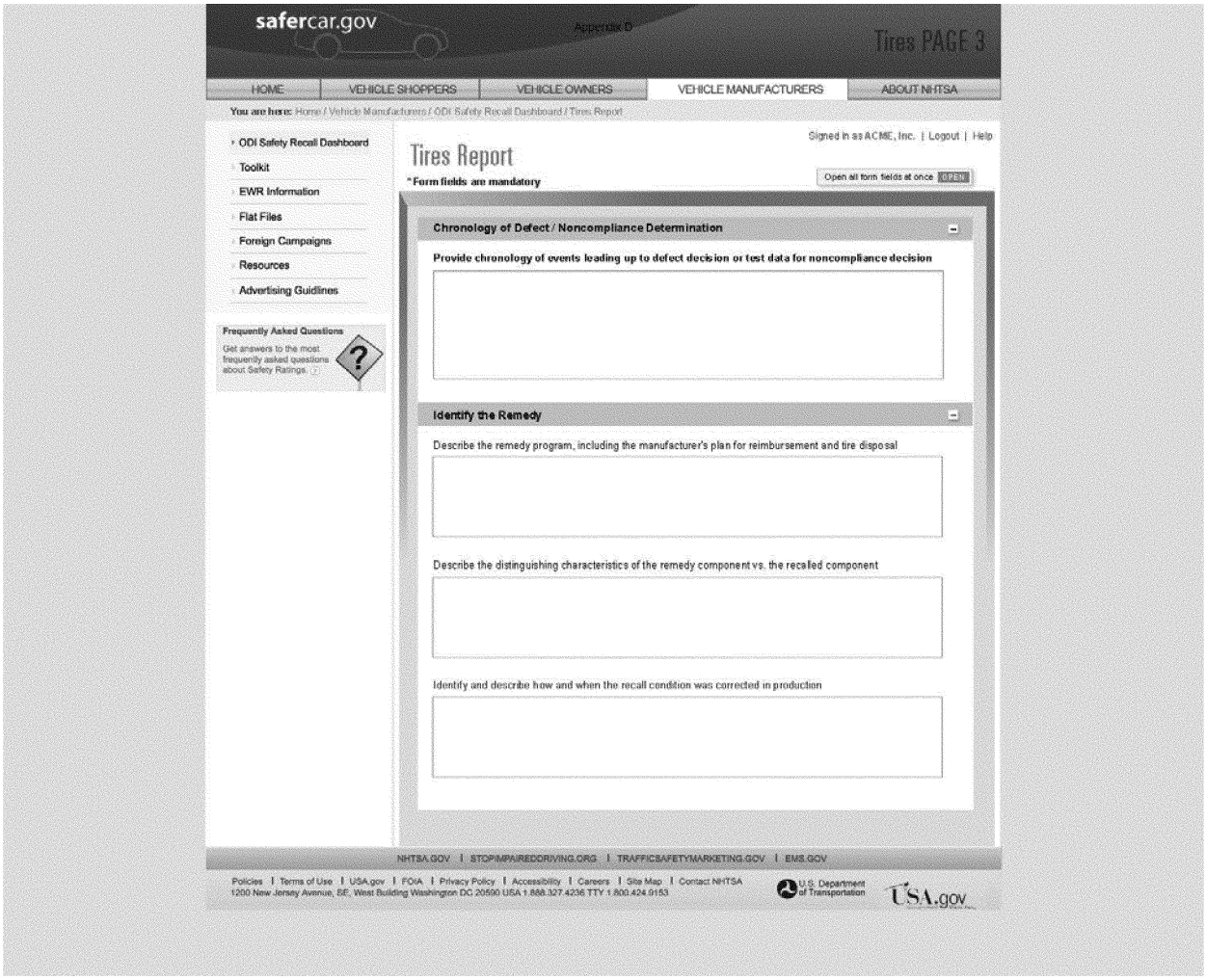

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Open all form fields at once OPEN
Identify the Remedy
Describe the defect or noncompliance remedy program including the manufacturer's plan for reimbursement
Describe the distinguishing characteristics of the remedy component vs. the recalled component
Identify and describe how and when the recall condition was corrected in production
Identify Recall Schedule
Describe recall schedule for notifications
Planned Dealer Notification Date
Planned Owner Notification Date
Manufacturer's identification code for this recall (if applicable)
Document Uploads
Part 577 notice to owners
Part 577 notice to dealers/distributors
Manufacturer Remedy Plan
TSB Bulletin
Miscellaneous Documents
UPLOAD
If you intend to file a petition pursuant to 49 CFR 556, please check here
Save Report
Submit Report

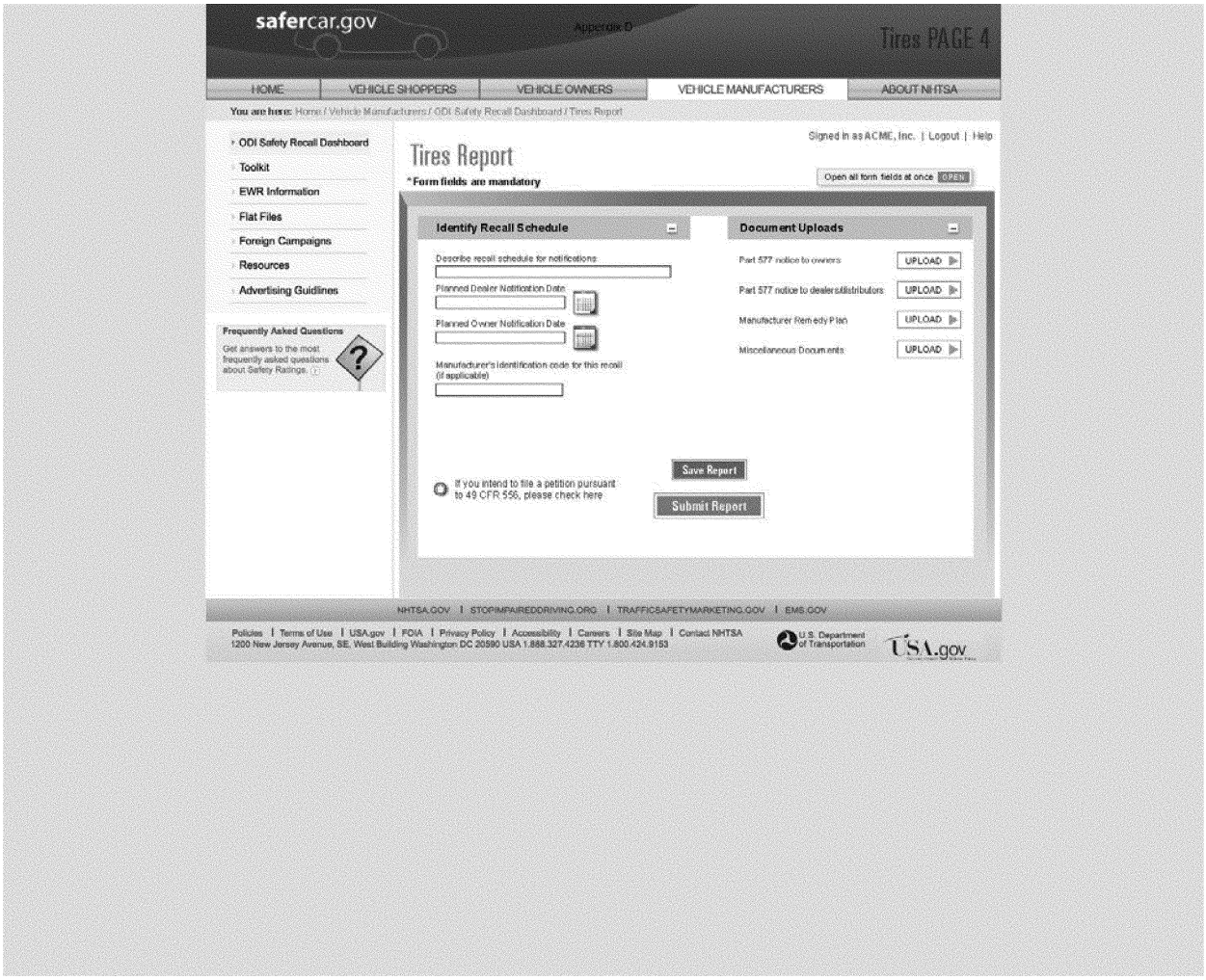
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Tires Report


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Manufacturer / Importer Information
ACME Industries, Inc.
Address:
1000 Industrial Blvd - Suite 1200
Street 2
Building 2 – 1200 Industrial Blvd
City
Boston
State
MA
Zip code
02121 0421
Company contact – primary
John Smith
617-234-5678
Director Product Manufacturing
john.smith@acme.com
Company contact – secondary
Mary Jones
617-234-5621
Product Manufacturing Assistant
mary.jones@acme.com
Update information UPDATE
Tire Information (User can add additional tires if needed)
Tire Brand*
Tire Line*
Tire Size*
Beginning production date
Ending production date
Descriptive information which characterizes/distinguishes recalled tires from other tires
Number of tires potentially involved
Percentage (%) of above tires containing defect/noncompliance
Percentage
Add another tire ADD
Tire Identification Numbers (TIN)
Plant ID code*
Size code*
Optional code*
Beginning date code*
Ending date code*
Add another TIN
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Frequently Asked Questions
Get answers to the most frequently asked questions about Safety Ratings.
Signed in as ACME, Inc. | Logout | Help
Tires Report
* Form fields are mandatory
Open all form fields at once OPEN
Defect / Noncompliance Description
Describe the defect or noncompliance*
Describe the consequence of the defect or noncompliance*
If a noncompliance, provide the applicable FMVSS
Identify any warning which can precede or occur
Describe the cause of the defect or noncompliance
If applicable, identify the manufacturer of defective or noncompliant component.
If the manufacturer of the component is unknown, provide the information for the company from which you acquired the subject component.
Manufactured component
Only supplied me the component
Supplier name
Supplier street 1
Supplier street 2
Supplier city
State
Supplier zipcode
Zip extension
Supplier Country
Company contact person
Company contact person title
Company contact person phone number
Company contact person email address
Purchaser Information
If applicable, identify every manufacturer that purchased the defective or noncompliance equipment for installation in new motor vehicles or new items of motor vehicle equipment
Company name
Company street 1
Company street 2
Company city
State
Company zipcode
Zip extension
Company Country
Company contact person
Company contact person title
Company contact person phone number
Company contact person email address
Add an additional purchaser ADD


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Advertising Guidlines
Frequently Asked Questions
Get answers to the most frequently asked questions about Safety Ratings.
Signed in as ACME, Inc. | Logout | Help
Tires Report
* Form fields are mandatory
Open all form fields at once OPEN
Chronology of Defect / Noncompliance Determination
Provide chronology of events leading up to defect decision or test data for noncompliance decision
Identify the Remedy
Describe the remedy program, including the manufacturer's plan for reimbursement and tire disposal
Describe the distinguishing characteristics of the remedy component vs. the recalled component
Identify and describe how and when the recall condition was corrected in production
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Advertising Guidlines
Frequently Asked Questions
Get answers to the most frequently asked questions about Safety Ratings.
Signed in as ACME, Inc. | Logout | Help
Tires Report
*Form fields are mandatory
Open all form fields at once OPEN
Identify Recall Schedule
Describe recall schedule for notifications
Planned Dealer Notification Date
Planned Owner Notification Date
Manufacturer's identification code for this recall (if applicable)
If you intend to file a petition pursuant to 49 CFR 556, please check here
Document Uploads
Part 577 notice to owners
Part 577 notice to dealers/distributors
Manufacturer Remedy Plan
Miscellaneous Documents
UPLOAD
Save Report
Submit Report
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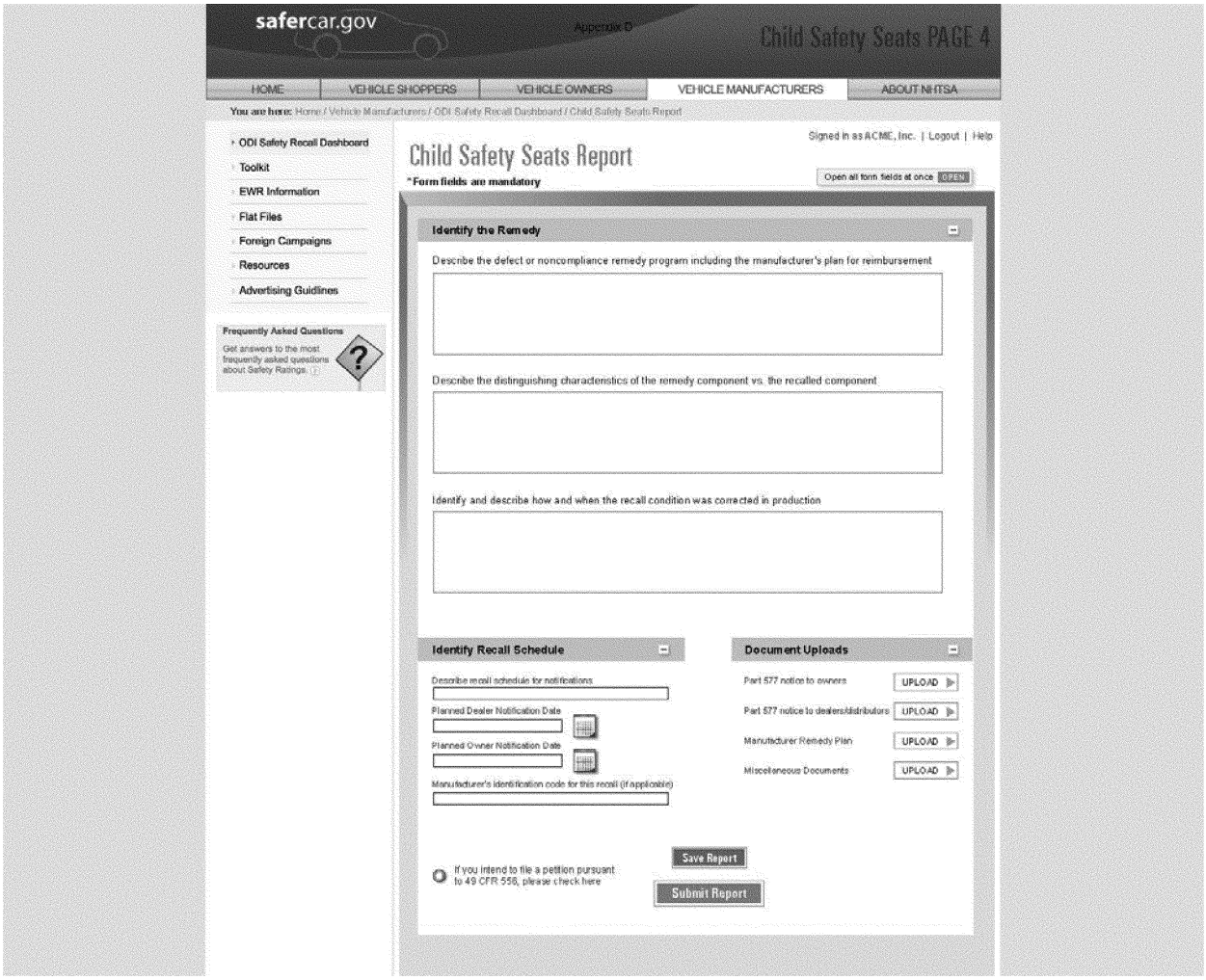
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Child Safety Seats Report


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Advertising Guidlines
Frequently Asked Questions
Get answers to the most frequently asked questions about Safety Ratings.
Signed in as ACME, Inc. | Logout | Help
Child Safety Seats Report
*Form fields are mandatory
Open all form fields at once OPEN
Manufacturer / Importer Information
ACME Industries, Inc.
Address:
1000 Industrial Blvd - Suite 1200
Street 2
Building 2 – 1200 Industrial Blvd
City
Boston
State
MA
Zip code
02121 0421
Company contact - primary
John Smith
617-234-5678
Director Product Manufacturing
john.smith@acme.com
Company contact - secondary
Mary Jones
617-234-5821
Product Manufacturing Assistant
mary.jones@acme.com
Update information UPDATE
Child Safety Seat Information (User can add additional Child Safety Seat models if needed)
Child Safety Seat make*
Child Safety Seat model name*
Seat Type (Booster, Rear-Facing, etc.)
Model number (as already required on the label by 49 CFR 571.213)*
Platform Name/Number, if applicable
Brand Name, if applicable
Beginning production date
Ending production date
Descriptive information which characterizes/distinguishes recalled Child Safety Seats from other seats
Number of Child Safety Seats potentially involved
Percentage (%) of above Child Safety Seats containing defect/noncompliance
Percentage
Add more Child Safety Seat models ADD
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Frequently Asked Questions
Get answers to the most frequently asked questions about Safety Ratings.
Signed in as ACME, Inc. | Logout | Help
Child Safety Seats Report
* Form fields are mandatory
Open all form fields at once OPEN
Defect / Noncompliance Description
Describe the defect or noncompliance*
Describe the consequence of the defect or noncompliance*
If a noncompliance, provide the applicable FMVSS
Identify any warning which can precede or occur
Describe the cause of the defect or noncompliance
If applicable, identify the manufacturer of defective or noncompliant component.
If the manufacturer of the component is unknown, provide the information for the company from which you acquired the subject component.
Manufactured component
Only supplied me the component
Supplier name
Supplier street 1
Supplier street 2
Supplier city
State
Supplier zipcode
Zip extension
Supplier Country
Company contact person
Company contact person title
Company contact person phone number
Company contact person email address
NHTSA.GOV | STOPIMPAIREDDRIVING.ORG | TRAFFICSAFETYMARKETING.GOV | EMS.GOV
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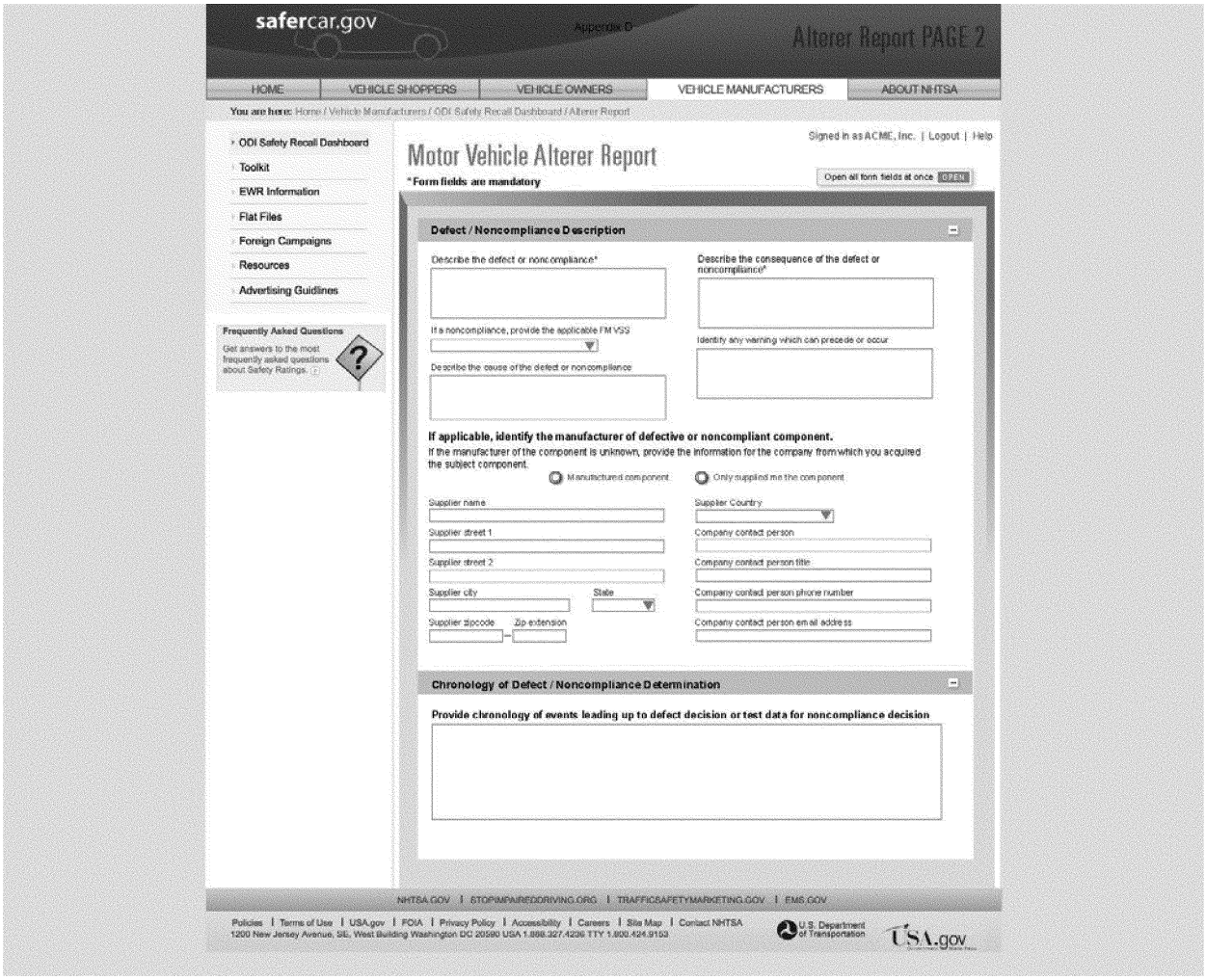

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Frequently Asked Questions
Get answers to the most frequently asked questions about Safety Ratings.
Signed in as ACME, Inc. | Logout | Help
Child Safety Seats Report
*Form fields are mandatory
Open all form fields at once OPEN
Purchaser Information
If applicable, identify every manufacturer that purchased the defective or noncompliance equipment for installation in new motor vehicles or new items of motor vehicle equipment
Company name
Company street 1
Company street 2
Company city
State
Company zipcode
Zip extension
Company Country
Company contact person
Company contact person title
Company contact person phone number
Company contact person email address
Add an additional purchaser ADD
Chronology of Defect / Noncompliance Determination
Provide chronology of events leading up to defect decision or test data for noncompliance decision
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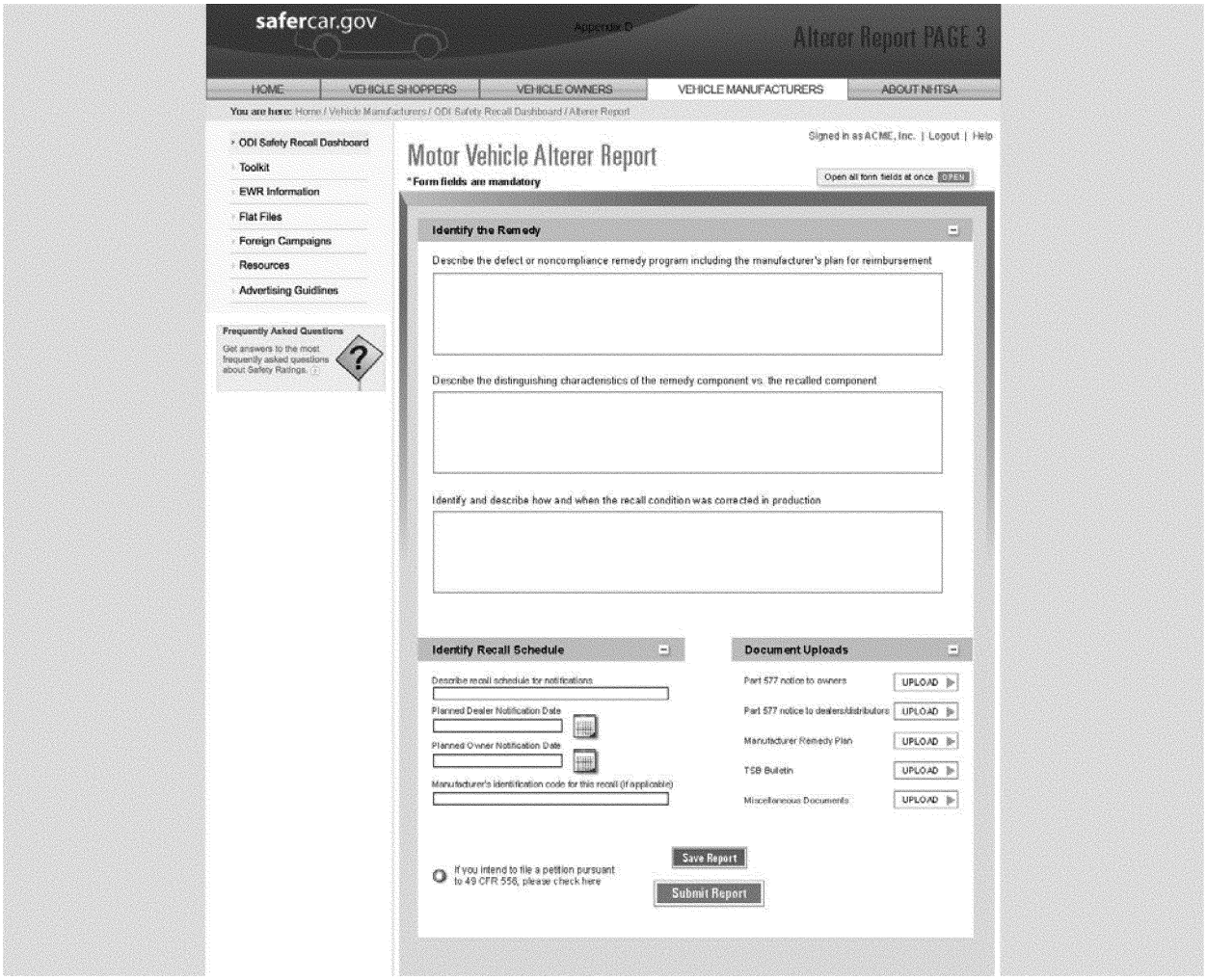

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Advertising Guidlines
Frequently Asked Questions
Get answers to the most frequently asked questions about Safety Ratings.
Signed in as ACME, Inc. | Logout | Help
Child Safety Seats Report
*Form fields are mandatory
Open all form fields at once OPEN
Identify the Remedy
Describe the defect or noncompliance remedy program including the manufacturer's plan for reimbursement
Describe the distinguishing characteristics of the remedy component vs. the recalled component
Identify and describe how and when the recall condition was corrected in production
Identify Recall Schedule
Describe recall schedule for notifications
Planned Dealer Notification Date
Planned Owner Notification Date
Manufacturer's identification code for this recall (if applicable)
Document Uploads
Part 577 notice to owners
UPLOAD
Part 577 notice to dealers/distributors
UPLOAD
Manufacturer Remedy Plan
UPLOAD
Miscellaneous Documents
UPLOAD
If you intend to file a petition pursuant to 49 CFR 556, please check here
Save Report
Submit Report

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Motor Vehicle Alterer Report

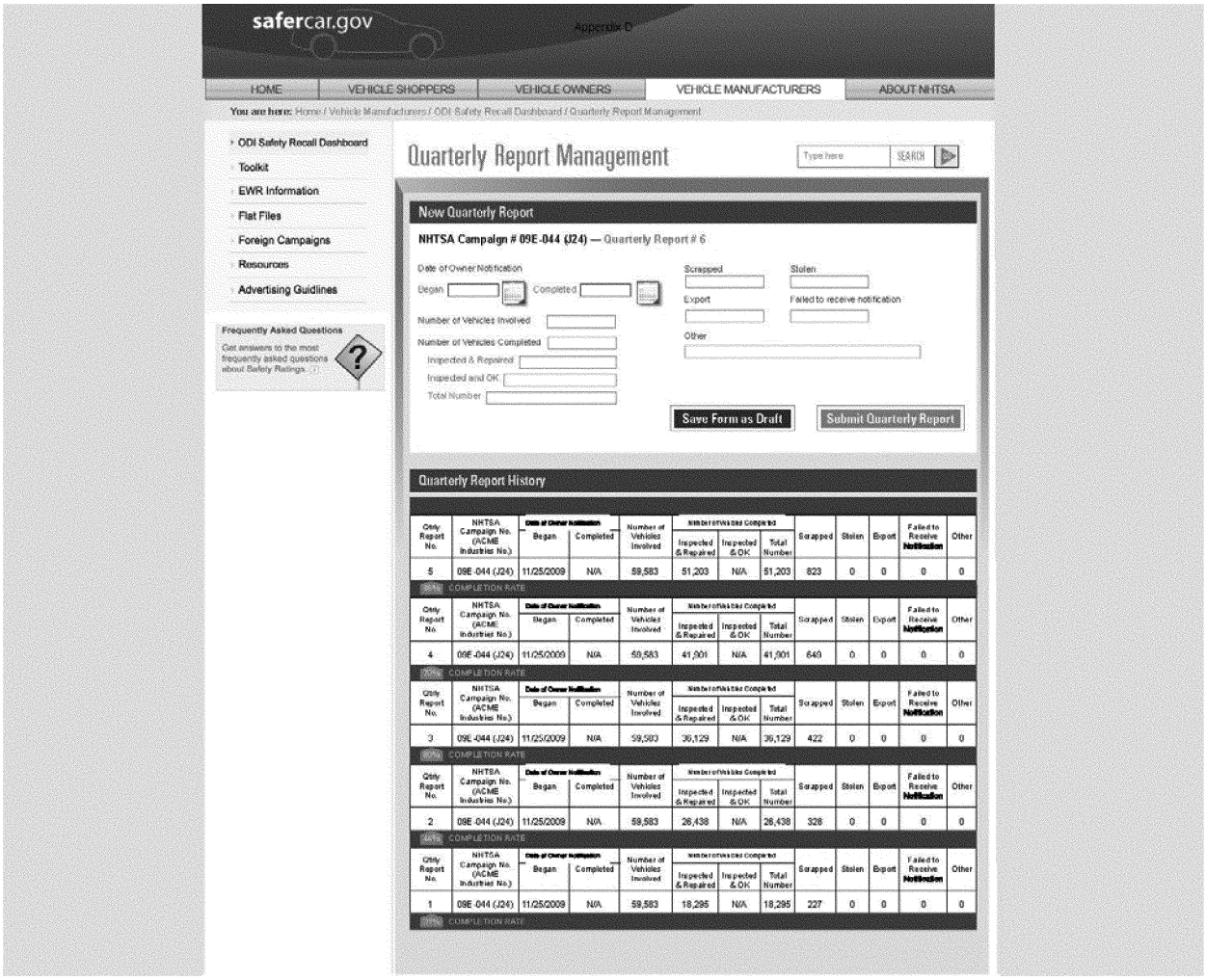

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Advertising Guidlines
Frequently Asked Questions
Get answers to the most frequently asked questions about Safety Ratings.
Signed in as ACME, Inc. | Logout | Help
Motor Vehicle Alterer Report
* Form fields are mandatory
Open all form fields at once OPEN
Manufacturer / Importer Information
ACME Industries, Inc.
Address:
1000 Industrial Blvd - Suite 1200
Street 2
Building 2 -- 1200 Industrial Blvd
City
Boston
State
MA
Zip code
02121 0431
Company contact - primary
John Smith
617-234-5678
Director Product Manufacturing
john.smith@acme.com
Company contact - secondary
Mary Jones
617-234-5021
Product Manufacturing Assistant
mary.jones@acme.com
Update information UPDATE
Vehicle Information (User can add additional models if needed)
Vehicle year start*
Vehicle year end*
Vehicle make*
Vehicle model*
Beginning alteration date
Ending alteration date
Descriptive information which characterize/distinguishes recalled vehicles from other vehicles
Number of vehicles potentially involved
Percentage (%) of above vehicles containing the defect/noncompliance
Percentage
Add another vehicle ADD
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EWR Information
Flat Files
Foreign Campaigns
Resources
Advertising Guidlines
Frequently Asked Questions
Get answers to the most frequently asked questions about Safety Ratings.
Signed in as ACME, Inc. | Logout | Help
Motor Vehicle Alterer Report
* Form fields are mandatory
Open all form fields at once OPEN
Defect / Noncompliance Description
Describe the defect or noncompliance*
Describe the consequence of the defect or noncompliance*
If a noncompliance, provide the applicable FM VSS
Identify any warning which can precede or occur
Describe the cause of the defect or noncompliance
If applicable, identify the manufacturer of defective or noncompliant component.
If the manufacturer of the component is unknown, provide the information for the company from which you acquired the subject component.
Manufactured component
Only supplied me the component
Supplier name
Supplier Country
Supplier street 1
Company contact person
Supplier street 2
Company contact person title
Supplier city
State
Company contact person phone number
Supplier zipcode
Zip extension
Company contact person email address
Chronology of Defect / Noncompliance Determination
Provide chronology of events leading up to defect decision or test data for noncompliance decision
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Advertising Guidlines
Frequently Asked Questions
Get answers to the most frequently asked questions about Safety Ratings.
Signed in as ACME, Inc. | Logout | Help
Motor Vehicle Alterer Report
* Form fields are mandatory
Open all form fields at once OPEN
Identify the Remedy
Describe the defect or noncompliance remedy program including the manufacturer's plan for reimbursement
Describe the distinguishing characteristics of the remedy component vs. the recalled component
Identify and describe how and when the recall condition was corrected in production
Identify Recall Schedule
Describe recall schedule for notifications
Planned Dealer Notification Date
Planned Owner Notification Date
Manufacturer's identification code for this recall (if applicable)
Document Uploads
Part 577 notice to owners
Part 577 notice to dealers/distributors
Manufacturer Remedy Plan
TSB Bulletin
Miscellaneous Documents
UPLOAD
If you intend to file a petition pursuant to 49 CFR 556, please check here
Save Report
Submit Report

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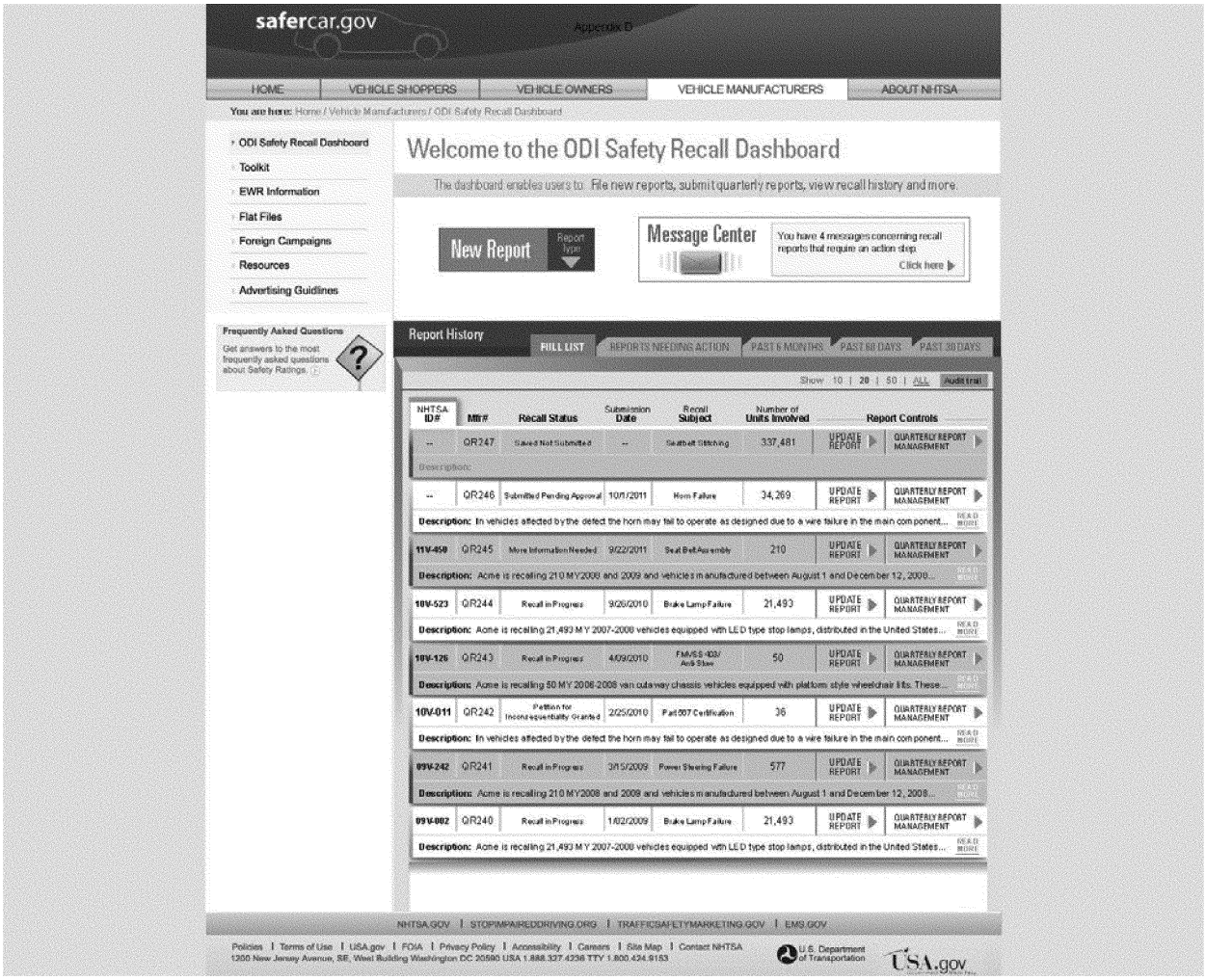
Quarterly Report Management Page


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Frequently Asked Questions
Get answers to the most frequently asked questions about Safety Ratings.
Quarterly Report Management
Type here
SEARCH
New Quarterly Report
NHTSA Campaign # 09E-044 (J24) — Quarterly Report # 6
Date of Owner Notification
Began
Completed
Number of Vehicles Involved
Number of Vehicles Completed
Inspected & Repaired
Inspected and OK
Total Number
Scrapped
Stolen
Export
Failed to receive notification
Other
Save Form as Draft
Submit Quarterly Report
Quarterly Report History
Qtrly Report No.
NHTSA Campaign No. (ACME Industries No.)
Date of Owner Notification
Began
Completed
Number of Vehicles Involved
Number of Vehicles Completed
Inspected & Repaired
Inspected & OK
Total Number
Scrapped
Stolen
Export
Failed to Receive Notification
Other
5 09E-044 (J24) 11/25/2009 N/A 59,583 51,203 N/A 51,203 823 0 0 0 0
86% COMPLETION RATE
4 09E-044 (J24) 11/25/2009 N/A 59,583 41,901 N/A 41,901 649 0 0 0 0
70% COMPLETION RATE
3 09E-044 (J24) 11/25/2009 N/A 59,583 36,129 N/A 36,129 422 0 0 0 0
61% COMPLETION RATE
2 09E-044 (J24) 11/25/2009 N/A 59,583 26,438 N/A 26,438 326 0 0 0 0
44% COMPLETION RATE
1 09E-044 (J24) 11/25/2009 N/A 59,583 18,295 N/A 18,295 227 0 0 0 0
31% COMPLETION RATE

Appendix D

Mockup of Recall Portal Dashboard

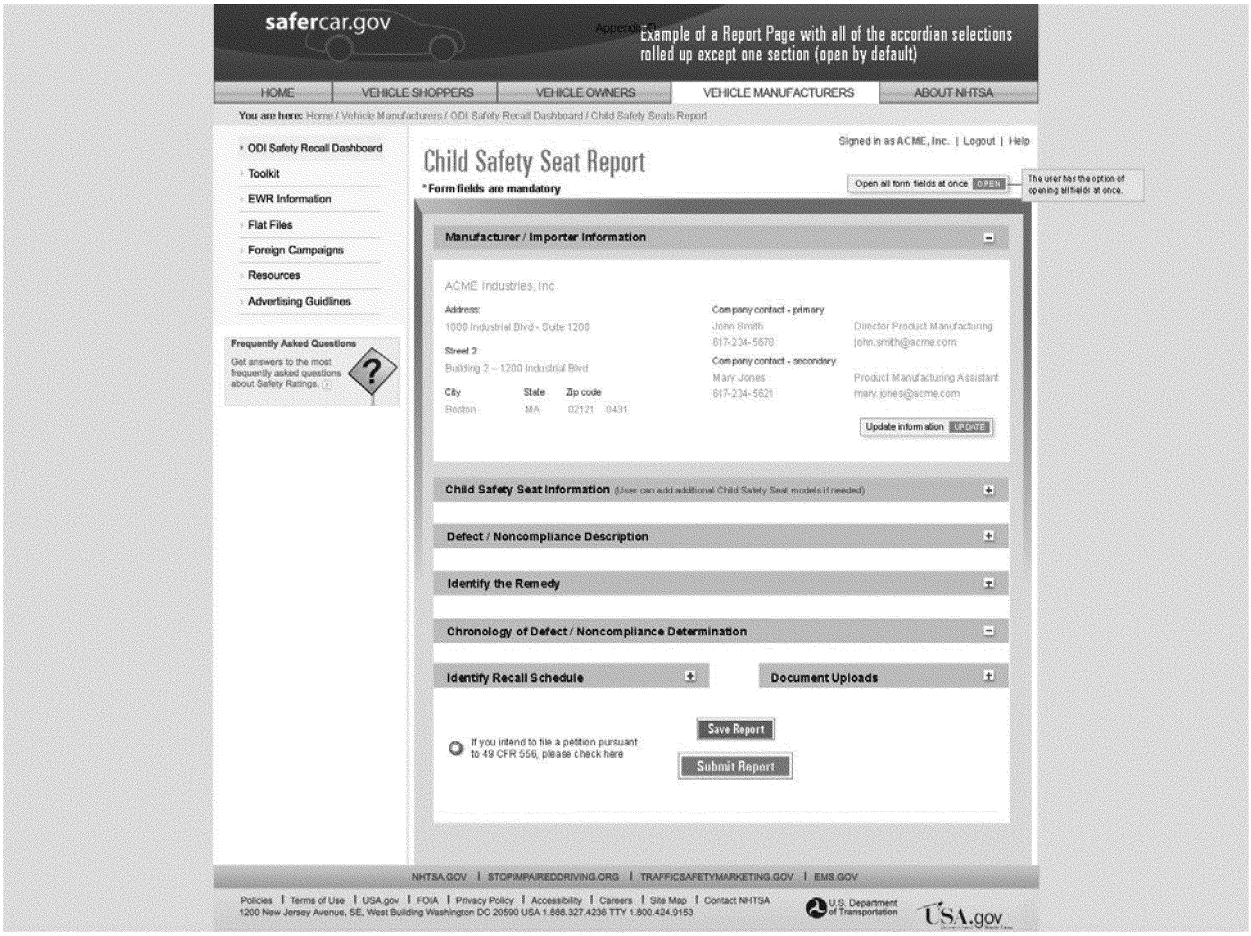
The next page is the Dashboard where the user begins their recall activity, after logging in on the portal.


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Advertising Guidlines
Frequently Asked Questions
Get answers to the most frequently asked questions about Safety Ratings.
Welcome to the ODI Safety Recall Dashboard
The dashboard enables users to: File new reports, submit quarterly reports, view recall history and more.
New Report
Report Type
Message Center
You have 4 messages concerning recall reports that require an action step.
Click here
Report History
FULL LIST
REPORTS NEEDING ACTION
PAST 6 MONTHS
PAST 60 DAYS
PAST 30 DAYS
Show 10 | 20 | 50 | ALL
Audit trail
NHTSA ID# | Mfr# | Recall Status | Submission Date | Recall Subject | Number of Units Involved | Report Controls
-- | QR247 | Saved Not Submitted | -- | Seatbelt Stitching | 337,481 | UPDATE REPORT | QUARTERLY REPORT MANAGEMENT
Description:
-- | QR246 | Submitted Pending Approval | 10/1/2011 | Horn Failure | 34,269 | UPDATE REPORT | QUARTERLY REPORT MANAGEMENT
Description: In vehicles affected by the defect the horn may fail to operate as designed due to a wire failure in the main component...
11V-459 | QR245 | More Information Needed | 9/22/2011 | Seat Belt Assembly | 210 | UPDATE REPORT | QUARTERLY REPORT MANAGEMENT
Description: Acme is recalling 210 MY2008 and 2009 and vehicles manufactured between August 1 and December 12, 2008...
10V-523 | QR244 | Recall in Progress | 9/26/2010 | Brake Lamp Failure | 21,493 | UPDATE REPORT | QUARTERLY REPORT MANAGEMENT
Description: Acme is recalling 21,493 MY 2007-2008 vehicles equipped with LED type stop lamps, distributed in the United States...
10V-126 | QR243 | Recall in Progress | 4/09/2010 | FMVSS 403/ Anti Skid | 50 | UPDATE REPORT | QUARTERLY REPORT MANAGEMENT
Description: Acme is recalling 50 MY 2006-2008 van cutaway chassis vehicles equipped with platform style wheelchair lifts. These...
10V-011 | QR242 | Petition for Inconsequentiality Granted | 2/25/2010 | Part 567 Certification | 36 | UPDATE REPORT | QUARTERLY REPORT MANAGEMENT
Description: In vehicles affected by the defect the horn may fail to operate as designed due to a wire failure in the main component...
09V-242 | QR241 | Recall in Progress | 3/15/2009 | Power Steering Failure | 577 | UPDATE REPORT | QUARTERLY REPORT MANAGEMENT
Description: Acme is recalling 210 MY2008 and 2009 and vehicles manufactured between August 1 and December 12, 2008...
09V-092 | QR240 | Recall in Progress | 1/02/2009 | Brake Lamp Failure | 21,493 | UPDATE REPORT | QUARTERLY REPORT MANAGEMENT
Description: Acme is recalling 21,493 MY 2007-2008 vehicles equipped with LED type stop lamps, distributed in the United States...
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Mockup of Recall Report Page Functionality

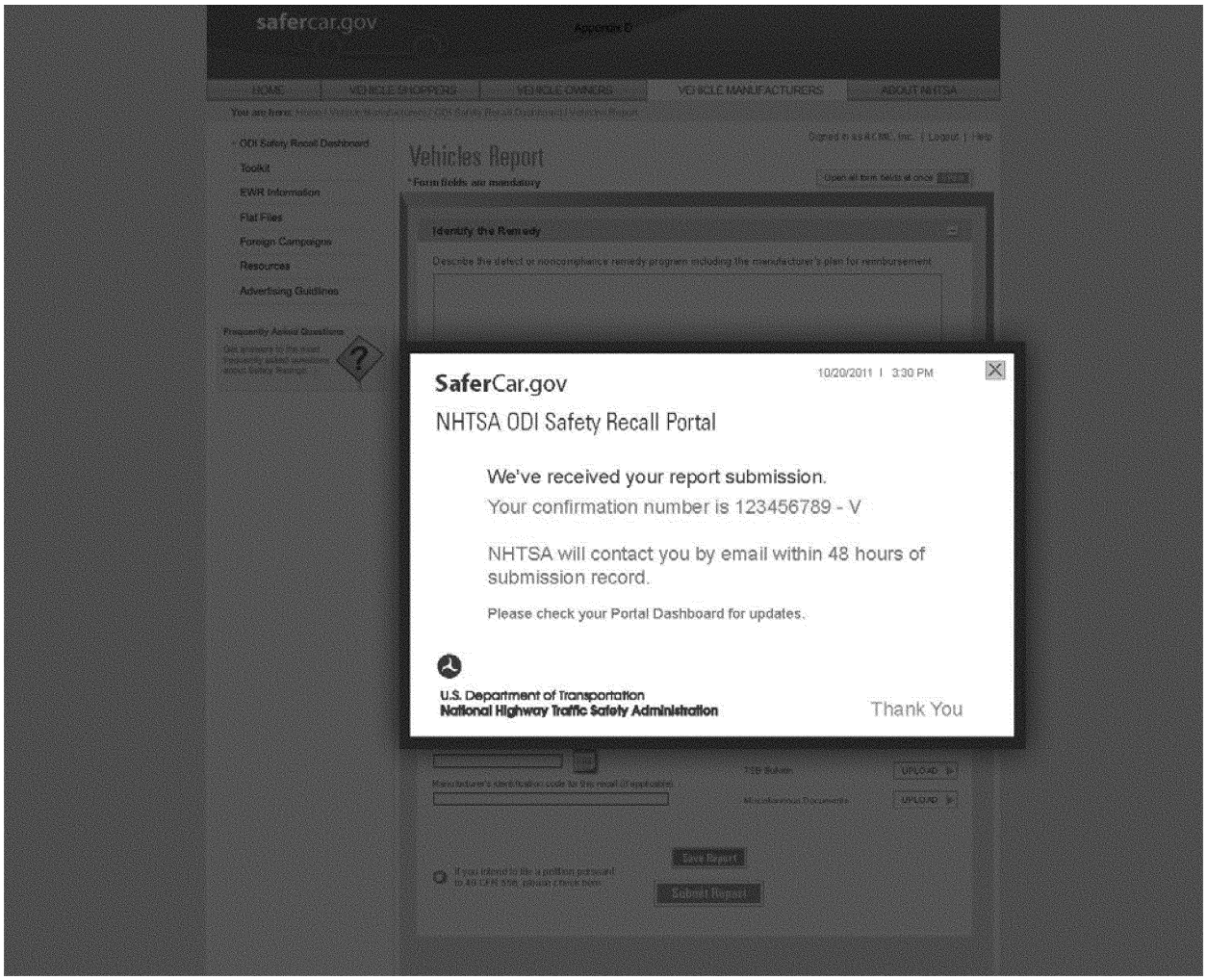
Using a Child Safety Seats Report as an example, this next page shows the default page configuration that a user will see upon starting to fill out the form fields. Also, some details are called-out to explain functionality.


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Example of a Report Page with all of the accordian selections rolled up except one section (open by default)
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VEHICLE SHOPPERS
VEHICLE OWNERS
VEHICLE MANUFACTURERS
ABOUT NHTSA
You are here: Home / Vehicle Manufacturers / ODI Safety Recall Dashboard / Child Safety Seats Report
ODI Safety Recall Dashboard
Toolkit
EWR Information
Flat Files
Foreign Campaigns
Resources
Advertising Guidlines
Frequently Asked Questions
Get answers to the most frequently asked questions about Safety Ratings.
Signed in as ACME, Inc. | Logout | Help
Child Safety Seat Report
* Form fields are mandatory
Open all form fields at once OPEN
The user has the option of opening all fields at once.
Manufacturer / Importer Information
ACME Industries, Inc.
Address:
1000 Industrial Blvd - Suite 1200
Street 2
Building 2 - 1200 Industrial Blvd
City
Boston
State
MA
Zip code
02121 0431
Company contact - primary
John Smith
617-234-5678
Director Product Manufacturing
john.smith@acme.com
Company contact - secondary
Mary Jones
617-234-5621
Product Manufacturing Assistant
mary.jones@acme.com
Update information UPDATE
Child Safety Seat Information (User can add additional Child Safety Seat models if needed)
Defect / Noncompliance Description
Identify the Remedy
Chronology of Defect / Noncompliance Determination
Identify Recall Schedule
Document Uploads
If you intend to file a petition pursuant to 49 CFR 556, please check here
Save Report
Submit Report
NHTSA.GOV | STOPIMPAIREDDRIVING.ORG | TRAFFICSAFETYMARKETING.GOV | EMS.GOV
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Mockup of Confirmation Message

This next page simulates a scenario where the user has submitted a report and gets a confirmation message.


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Vehicles Report
SaferCar.gov
10/20/2011 | 3:30 PM
NHTSA ODI Safety Recall Portal
We've received your report submission.
Your confirmation number is 123456789 - V
NHTSA will contact you by email within 48 hours of submission record.
Please check your Portal Dashboard for updates.
U.S. Department of Transportation
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Appendix E



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David L. Strickland,

Administrator, NHTSA.

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Part V

Department of Energy

10 CFR Part 431
Energy Conservation Program: Energy Conservation Standards for Metal Halide Lamp Fixtures; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket Number EERE–2009–BT–STD–0018]

RIN 1904–AC00

Energy Conservation Program: Energy Conservation Standards for Metal Halide Lamp Fixtures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking (NOPR) 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 metal halide lamp fixtures. 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 metal halide lamp fixtures. The notice also announces a public meeting to receive comments on these proposed standards and associated analyses and results.

DATES: DOE will hold a public meeting on Friday, September 27, 2013, from 9 a.m. to 4 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section VIII, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than October 21, 2013. See section, ''VIII Public Participation,'' for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089 1000 Independence Avenue SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Edwards 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. For more information, refer to the Public Participation section near the end of this notice.

Any comments submitted must identify the NOPR for Energy Conservation Standards for metal halide lamp fixtures, and provide docket number EE–2009–BT–STD–0018 and/or regulatory information number (RIN) 1904–AC00. 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: MHLF-2009-STD-0018@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 VIII of this document (''Public Participation'').

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/49*. This Web page will contain a link to the docket for this notice 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 VIII 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:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1604. Email: *metal_halide_lamp_fixtures@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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I. Summary of the Proposed Rule

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles. Pursuant to EPCA, any new or amended energy conservation standard that the U.S. Department of Energy (DOE) prescribes for certain products, such as metal halide lamp fixtures (MHLFs or ''fixtures''), shall be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) In accordance with these and other statutory provisions discussed in this notice, DOE proposes amended energy conservation standards for metal halide lamp fixtures. The proposed standards, which are the

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

minimum allowable ballast efficiencies [2] based on fixture location, ballast type, and rated lamp wattage, are shown in Table I.1.

TABLE I.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR METAL HALIDE LAMP FIXTURES

Equipment classes	Rated lamp wattage	Indoor/outdoor***	Test input voltage †	Minimum standard equation %
1	≥50 W and ≤100 W	Indoor	480 V	99.4/(1 + 2.5 * P∧(−0.55)) ‡.
2	≥50 W and ≤100 W	Indoor	All others	100/(1 + 2.5 * P∧(−0.55)).
3	≥50 W and ≤100 W	Outdoor	480 V	99.4/(1 + 2.5 * P∧(−0.55)).
4	≥50 W and ≤100 W	Outdoor	All others	100/(1 + 2.5 * P∧(−0.55)).
5	>100 W and <150 W*	Indoor	480 V	99.4/(1 + 0.36 * P∧(−0.30)).
6	>100 W and <150 W*	Indoor	All others	100/(1 + 0.36 * P∧(−0.30)).
7	>100 W and <150 W*	Outdoor	480 V	99.4/(1 + 0.36 * P∧(−0.30)).
8	>100 W and <150 W*	Outdoor	All others	100/(1 + 0.36 * P∧(−0.30)).
9	≥150 W** and ≤250 W	Indoor	480 V	For ≥150 W and ≤200 W: 88.0. For >200 W and ≤250 W: 6.0 * 10∧(−2) * P + 76.0.
10	≥150 W** and ≤250 W	Indoor	All others	For ≥150 W and ≤200 W: 88.0. For >200 W and ≤250 W: 7.0 * 10∧(−2) * P + 74.0.
11	≥150 W** and ≤250 W	Outdoor	480 V	For ≥150 W and ≤200 W: 88.0. For >200 W and ≤250 W: 6.0 * 10∧(−2) * P + 76.0.
12	≥150 W** and ≤250 W	Outdoor	All others	For ≥150 W and ≤200 W: 88.0. For >200 W and ≤250 W: 7.0 * 10∧(−2) * P + 74.0.
13	>250 W and ≤500 W	Indoor	480 V	91.0.
14	>250 W and ≤500 W	Indoor	All others	91.5.
15	>250 W and ≤500 W	Outdoor	480 V	91.0.
16	>250 W and ≤500 W	Outdoor	All others	91.5.
17	>500 W and ≤2000 W	Indoor	480 V	For >500 W to <1000 W: 0.994 * (3.2 * 10∧(−3) * P + 89.9). For ≥1000 W to ≤2000 W: 92.5 and may not utilize a probe-start ballast.
18	>500 W and ≤2000 W	Indoor	All others	For >500 W to <1000 W: 3.2 * 10∧(−3) * P + 89.9. For ≥1000 W to ≤2000 W: 93.1 and may not utilize a probe-start ballast.
19	>500 W and ≤2000 W	Outdoor	480 V	For >500 W to <1000 W: 0.994 * (3.2 * 10∧(−3) * P + 89.9). For ≥1000 W to ≤2000 W: 92.5 and may not utilize a probe-start ballast.
20	>500 W and ≤2000 W	Outdoor	All others	For >500 W to <1000 W: 3.2 * 10∧(−3) * P + 89.9. For ≥1000 W to ≤2000 W: 93.1 and may not utilize a probe-start ballast.

* Includes 150 W fixtures exempted by EISA 2007, which are fixtures rated only for 150 watt lamps; rated for use in wet locations, as specified by the National Electrical Code 2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by Underwriters Laboratories (UL) 1029–2001.

** Excludes 150 W fixtures exempted by EISA 2007, which are fixtures rated only for 150 watt lamps; rated for use in wet locations, as specified by the National Electrical Code 2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2001.

*** DOE's proposed definitions for ''indoor'' and ''outdoor'' metal halide lamp fixtures are described in section V.A.2.

† Input voltage for testing would be specified by the test procedures. Ballasts rated to operate lamps less than 150 W would be tested at 120 V, and ballasts rated to operate lamps ≥150 W would be tested at 277 V. Ballasts not designed to operate at either of these voltages would be tested at the highest voltage for which the ballast is designed to operate.

‡ P is defined as the rated wattage of the lamp that the fixture is designed to operate.

[2] DOE is proposing to continue using a ballast efficiency metric for regulation of metal halide lamp fixtures, rather than a system or other approach. See section III.B for further discussion.

A. Benefits and Costs to Customers

Table I.2 presents DOE's evaluation of the economic effects of the proposed standards on customers of metal halide lamp fixtures, as measured by the average life-cycle cost (LCC) savings and the median payback period (PBP). The average LCC savings are positive for a majority of users for all equipment classes. For example, the estimated average LCC savings are approximately $30 for fixtures operating a 400 W metal halide (MH) lamp in indoor and outdoor applications.

TABLE I.2—IMPACTS OF PROPOSED STANDARDS ON METAL HALIDE LAMP FIXTURE CUSTOMERS

Equipment class	Average LCC savings 2012$	Median payback period years
70 W (indoor, magnetic baseline)	38.41	4.2
70 W (outdoor, magnetic baseline)	46.44	4.4
150 W (indoor)	10.14	4.7
150 W (outdoor)	112.51	10.5
250 W (indoor)	13.12	11.8
250 W (outdoor)	13.75	14.0
400 W (indoor)	28.23	10.5
400 W (outdoor)	30.47	12.3
1000 W (indoor)	502.21	2.0
1000 W (outdoor)	409.02	3.0

B. Impact on Manufacturers

The industry net present value (INPV) is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2013 to 2045). Using a real discount rate of 8.9 percent, DOE estimates that the INPV for manufacturers of metal halide ballasts ranges from $77 million in the low shipment-preservation of operating profit markup scenario to $127 million in the high shipment-flat markup scenario in 2012$. Under the proposed standards, DOE expects ballast manufacturers to lose up to 25.0 percent of their INPV, which is approximately $25.9 million, in the low shipment,-preservation of operating profit markup scenario. In the high shipment-flat markup scenario, DOE expects manufacturers to increase their INPV up to 3.7 percent, which is approximately $4.5 million. Using a real discount rate of 9.5 percent, DOE estimates that the INPV for manufacturers of metal halide lamp fixtures ranges from $523 million in the low shipment-preservation of operating profit markup scenario to $695 million in the high shipment-flat markup scenario in 2012$. Under the proposed standards, DOE expects fixture manufacturers to lose up to 3.2 percent of their INPV, which is approximately $17.3 million, in the low shipment-preservation of operating profit markup scenario. In the high shipment-flat markup scenario, DOE expects manufacturers to increase their INPV up to 10.3 percent, which is approximately $64.8 million. Additionally, based on DOE's interviews with the manufacturers of metal halide lamp fixtures, DOE does not expect any plant closings or significant loss of employment.

C. National Benefits

DOE's analyses indicate that the proposed standards would save a significant amount of energy. The lifetime savings for metal halide lamp fixtures purchased in a 30-year period (2016–2045) amount to 0.80–1.1 quads.

The cumulative national net present value (NPV) of total customer costs and savings of the proposed standards in 2012$ ranges from $0.95 billion (at a 7-percent discount rate) to $3.2 billion (at a 3-percent discount rate) for metal halide lamp fixtures. This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased equipment costs for equipment purchased in 2016–2045, discounted to 2013.

In addition, the proposed standards would have significant environmental benefits. The energy savings would result in cumulative emission reductions of 49–65 million metric tons (Mt) [3] of carbon dioxide (CO_2), 214–289 thousand tons of methane (CH_4), 0.89–3.0 thousand tons of nitrous oxide (N_2O), 65–87 thousand tons of sulfur dioxide (SO_2), 66–90 thousand tons of nitrogen oxides (NO_X), and 0.11–0.15 tons of mercury (Hg).[4] [5]

The value of the CO_2 emissions 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 by a recent interagency process. The derivation of the SCC values is discussed in section V.M.1. DOE estimates the net present monetary value of the CO_2 emissions reduction is between $0.33 and $4.7 billion, expressed in 2012$ 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 $45 million at a 7-percent discount rate, and $91 million at a 3-percent discount rate.[6]

Table I.3 summarizes the national economic costs and benefits expected to result from today's proposed standards for metal halide lamp fixtures.

[3] A metric ton is equivalent to 1.1 short tons. Results for CH_4, SO_2, NO_X and Hg are presented in short tons.

[4] DOE calculates emissions reductions relative to the Annual Energy Outlook (AEO) 2013 Reference case, which generally represents current legislation and environmental regulations for which implementing regulations were available as of December 31, 2012.

[5] DOE also estimated CO_2 and CO_2 equivalent (CO_2eq) emissions that occur by 2030 (CO_2eq includes greenhouse gases such as CH_4 and N_2O). The estimated emissions reductions by 2030 are 15–17 million metric tons CO_2, 1,471–1,627 thousand tons CO_2eq for CH_4, and 63–70 thousand tons CO_2eq for N_2O.

[6] DOE has decided to await further guidance regarding consistent valuation and reporting of Hg emissions before it monetizes Hg in its rulemakings.

TABLE I.3—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF METAL HALIDE LAMP FIXTURE ENERGY CONSERVATION STANDARDS (PRIMARY (LOW SHIPMENTS) ESTIMATE)

Category	Present value million 2012$	Discount rate (percent)
Benefits		
Operating Cost Savings	1,848	7
	3,748	3
CO_2 Reduction Monetized Value ($12.9/t case) *	333	5
CO_2 Reduction Monetized Value ($40.8/t case) *	1,532	3
CO_2 Reduction Monetized Value ($62.2/t case) *	2,436	2.5
CO_2 Reduction Monetized Value (at $117/t case) *	4,689	3
NO_X Reduction Monetized Value (at $2,639/ton) **	45	7
	91	3
Total Benefits†	3,424	7
	5,371	3
Costs		
Incremental Installed Costs	897	7
	1,294	3
Net Benefits		
Including CO_2 and NO_X Reduction Monetized Value	2,528	7
	4,076	3

* 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 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 in parentheses represent the SCC in 2015. 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% and 7% cases are derived using the series corresponding to average SCC value with 3-percent discount rate.

The benefits and costs of today's proposed standards, for equipment sold between 2016 and 2045, 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 customer operation of equipment that meets the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase and installation costs, which is another way of representing customer NPV), and (2) the annualized monetary value of the benefits of emissions reductions, including CO_2 emissions reductions.[7]

Although combining the values of operating savings and CO_2 emissions 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 emissions reductions is a global value. Second, the assessments of operating cost savings and CO_2 emissions savings are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of metal halide lamp fixtures shipped between 2016 and 2045. 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 will continue well beyond 2045.

Estimates of annualized benefits and costs of the proposed standards are shown in Table I.4. The results under the primary estimate are as follows. (All monetary values below are expressed in 2012$.) Using a 7-percent discount rate for benefits and costs other than CO_2 emissions reductions, for which DOE used a 3-percent discount rate along with the SCC series corresponding to a value of $40.8/ton in 2012$, the cost of the standards proposed in today's rule is $68.0 million per year in increased equipment costs, while the annualized benefits are $139 million per year in reduced equipment operating costs, $76 million in CO_2 emissions reductions, and $3.4 million in reduced NO_X emissions. In this case, the net benefit amounts to $151 million per year. Using a 3-percent discount rate for all benefits and costs and the SCC series corresponding to a value of $40.8/ton in 2012$, the cost of the standards proposed in today's rule is $64 million per year in increased equipment costs, while the benefits are $186 million per year in reduced operating costs, $76 million in CO_2 emissions reductions, and $4.5 million in reduced NO_X emissions. In this case, the net benefit amounts to $202 million per year.

[7] 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 customer 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 emissions reductions. For the latter, DOE used a range of discount rates, as shown in Table I.4. From the present value, DOE then calculated the fixed annual payment over a 30-year period (2016 through 2045) that yields the same present value. The fixed annual payment is the annualized value. Although DOE calculated annualized values, this does not imply that the time-series of costs and benefits from which the annualized values were determined is a steady stream of payments.

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDARDS FOR METAL HALIDE LAMP FIXTURES

	Discount rate	Monetized Values [*million 2012$/year*]	
		Primary (low shipments) estimate *	High estimate *
Benefits			
Operating Cost Savings	7%	139	169
	3%	186	240
CO_2 Reduction Monetized Value ($12.9/t case) **	5%	21	26
CO_2 Reduction Monetized Value ($40.8/t case) **	3%	76	99
CO_2 Reduction Monetized Value ($62.2/t case) **	2.5%	114	149
CO_2 Reduction Monetized Value $117/t case) **	3%	232	303
NO_X Reduction Monetized Value (at $2,639/ton) **	7%	3.36	4.06
	3%	4.49	5.76
Total Benefits†	7% plus CO_2 range	163 to 375	200 to 476
	7%	218	272
	3%	266	344
	3% plus CO_2 range	211 to 422	272 to 548
Costs			
Incremental Equipment Costs	7%	68	81
	3%	64	80
Net Benefits/Costs			
Total †	7% plus CO_2 range	96 to 307	119 to 396
	7%	151	192
	3%	202	264
	3% plus CO_2 range	147 to 358	192 to 468

* This table presents the annualized costs and benefits associated with fixtures shipped in 2016 and 2045. These results include benefits to customers which accrue after 2045 from the fixtures purchased in 2016 to 2045. Costs incurred by manufacturers, some of which may be incurred prior to 2016 in preparation for the rule, are not directly included, but are indirectly included as part of incremental equipment costs. The Low (Primary) and High Estimates utilize forecasts of energy prices from the Energy Information Administration's 2012 *Annual Energy Outlook (AEO2013)* from the *AEO2013* Reference case, with the Low and High Estimates based on projected fixture shipments in the Low Shipments, Roll-up and High Shipments, Roll-up scenarios, respectively. In addition, all estimates use incremental equipment costs that reflect a declining trend for equipment prices, using *AEO* price trends (deflators). The derivation and application of price trends for equipment prices is explained in section V.F.

** 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 in parentheses represent the SCC in 2015. The SCC time series incorporate an escalation factor. The value for NO_X is the average of the low and high values used in DOE's analysis.

† Total Benefits for both the 3-percent and 7-percent cases are derived using the series corresponding to average SCC with 3-percent discount rate. In the rows labeled as ''7% plus CO_2 range'' and ''3% plus CO_2 range,'' the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. DOE further notes that equipment achieving these standard levels are already commercially available for at least some, if not most, equipment classes covered by today's proposal. 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 emissions reductions) would outweigh the burdens (loss of INPV for manufacturers and LCC increases for some customers).

DOE also considered more-stringent fixture energy-use levels as trial standard levels (TSLs), and is still considering them in this rulemaking. DOE has tentatively concluded, however, that the potential burdens of the more-stringent energy-use levels would outweigh the projected benefits. Based on its consideration of the public comments DOE receives in response to this notice and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy-use levels 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 discusses the statutory authority underlying today's proposal, as well as some of the historical background related to the establishment of standards for metal halide lamp fixtures.

A. Authority

Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles,[8] a program covering most major household appliances (collectively referred to as ''covered products''). Amendments to EPCA have given DOE the authority to regulate the energy efficiency of several additional kinds of equipment, including certain metal halide lamp fixtures, which are the subject of this rulemaking. (42 U.S.C. 6292(a)(19)) EPCA, as amended by the Energy Independence and Security Act of 2007 (EISA 2007) prescribes energy conservation

[8] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

standards for these products (42 U.S.C. 6295(hh)(1)), and directs DOE to conduct a rulemaking to determine whether to amend these standards. (42 U.S.C. 6295(hh)(2)(A)) (DOE notes that under 42 U.S.C. 6295(hh)(3)(A), the agency must review its already established energy conservation standards for metal halide lamp fixtures. Under this requirement, the next review that DOE would need to conduct must occur no later than January 1, 2019.)

Pursuant to EPCA, DOE's energy conservation program for covered products consists of four parts: (1) Testing; (2) labeling; (3) the establishment of Federal energy conservation standards; and (4) certification and enforcement procedures. The Federal Trade Commission (FTC) is primarily responsible for labeling, and DOE implements the remainder of the program. Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6293) Manufacturers of covered products must use the prescribed DOE test procedures as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. The DOE test procedures for metal halide lamp fixtures currently appear at title 10 of the Code of Federal Regulations (CFR) §§ 431.323 and 431.324.

DOE must follow specific statutory criteria for prescribing amended standards for covered products. As indicated above, any amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)) Moreover, DOE may not prescribe a standard: (1) For certain products, including metal halide lamp fixtures, if no test procedures have 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)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of the products subject to the standard;
2. The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the imposition of the standard;
3. The total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard;
4. Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;
5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;
6. The need for national energy and water conservation; and
7. Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

EPCA, as codified, also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of 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))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedures. See 42 U.S.C. 6295(o)(2)(B)(iii).

Additionally, 42 U.S.C. 6295(q)(1) specifies requirements when promulgating a standard for a type or class of covered product that has two or more subcategories. DOE must specify a different standard level than that which applies generally to such type or class of products for any group of covered products that have the same function or intended use if DOE determines that products within such group (A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. (42 U.S.C. 6294(q)(1)) Any rule prescribing such a standard must include an explanation of the basis on which such a 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, standards, and enforcement. (42 U.S.C. 6297(a)–(c)) 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)).

Finally, pursuant to the amendments contained in section 310(3) of EISA 2007, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) When DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into the standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedures and standards for metal halide lamp fixtures address standby mode and off mode energy use. However, in this rulemaking, DOE only addresses active mode energy consumption as standby and off mode energy use are not applicable to the proposed scope of coverage.

DOE has also reviewed this regulation pursuant to Executive Order (E.O.) 13563, issued on January 18, 2011. 76 FR 3281, (Jan. 21, 2011). E.O. 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review

established in E.O. 12866. To the extent permitted by law, agencies are required by E.O. 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 E.O. 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 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. Consistent with EO 13563, and the range of impacts analyzed in this rulemaking, the energy efficiency standard proposed herein by DOE achieves maximum net benefits.

B. Background

1. Current Standards

EISA 2007 prescribed the current energy conservation standards for metal halide lamp fixtures manufactured on or after January 1, 2009. (42 U.S.C. 6295(hh)(1)) The current standards are set forth in Table II.1. EISA 2007 excludes from the standards: fixtures with regulated-lag ballasts, fixtures with electronic ballasts that operate at 480 volts (V); and fixtures that (1) are rated only for 150 W lamps; (2) are rated for use in wet locations; and (3) contain a ballast that is rated to operate at ambient air temperatures higher than 50 °C.

TABLE II.1—FEDERAL ENERGY EFFICIENCY STANDARDS FOR METAL HALIDE LAMP FIXTURES *

Ballast type	Operated lamp rated wattage range	Minimum ballast efficiency (percent)
Pulse-start	≥150 and ≤500 W	88
Magnetic Probe-start	≥150 and ≤500 W	94
Nonpulse-start Electronic	≥150 and ≤250 W	90
Nonpulse-start Electronic	≥250 and ≤500 W	92

* (42 U.S.C. 6295(hh)(1)).

2. History of Standards Rulemaking for Metal Halide Lamp Fixtures

DOE is conducting this rulemaking to review and consider amendments to the energy conservation standards in effect for metal halide lamp fixtures, as required under 42 U.S.C. 6295(hh)(2) and (4). On December 30, 2009, DOE published a notice announcing the availability of the framework document, ''Energy Conservation Standards Rulemaking Framework Document for Metal Halide Lamp Fixtures,'' and a public meeting to discuss the proposed analytical framework for the rulemaking. 74 FR 69036. DOE also posted the framework document on its Web site; this document is available at *www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/49.* The framework document described the procedural and analytical approaches that DOE anticipated using to evaluate energy conservation standards for metal halide lamp fixtures, and identified various issues to be resolved in conducting this rulemaking.

DOE held a public meeting on January 26, 2010, during which it presented the contents of the framework document, described the analyses it planned to conduct during the rulemaking, sought comments from interested parties on these subjects, and in general, sought to inform interested parties about, and facilitate their involvement in, the rulemaking. At the meeting and during the period for commenting on the framework document, DOE received comments that helped identify and resolve issues involved in this rulemaking.

DOE then gathered additional information and performed preliminary analyses to help develop potential energy conservation standards for metal halide lamp fixtures. On April 1, 2011, DOE published in the **Federal Register** an announcement (the April 2011 notice) of the availability of the preliminary technical support document (the preliminary TSD) and of another public meeting to discuss and receive comments on the following matters: (1) The equipment classes DOE planned to analyze; (2) the analytical framework, models, and tools that DOE was using to evaluate standards; (3) the results of the preliminary analyses performed by DOE; and (4) potential standard levels that DOE could consider. 76 FR 1812 (April 1, 2011). In the April 2011 notice, DOE requested comment on issues that would affect energy conservation standards for metal halide lamp fixtures or that DOE should address in this notice of proposed rulemaking (NOPR). The preliminary TSD is available at *www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/49.*

The preliminary TSD summarized the activities DOE undertook in developing standards for metal halide lamp fixtures, and discussed the comments DOE received in response to the framework document. It also described the analytical framework that DOE uses in this rulemaking, including a description of the methodology, the analytical tools, and the relationships among the various analyses that are part of the rulemaking. The preliminary TSD presented and described in detail each analysis DOE performed up to that point, including descriptions of inputs, sources, methodologies, and results. These analyses were as follows:

• A *market and technology assessment* set the scope of this rulemaking, identified the potential equipment classes for metal halide lamp

fixtures, characterized the markets for this equipment, and reviewed techniques and approaches for improving their efficiency;

- A *screening analysis* reviewed technology options to improve the efficiency of metal halide lamp fixtures, 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 metal halide lamp fixtures;
- An *energy-use analysis* estimated the annual energy use of metal halide lamp fixtures;
- A *markups analysis* converted estimated MSPs derived from the engineering analysis to customer prices;
- A *life-cycle cost (LCC) analysis* calculated, for individual customers, the discounted savings in operating costs throughout the estimated average life of the equipment compared to any increase in installed costs likely to result directly from the imposition of a given standard;
- A *payback period (PBP) analysis* estimated the amount of time it would take individual customers to recover the higher purchase expense of more energy-efficient products through lower operating costs;
- A *shipments analysis* estimated shipments of metal halide lamp fixtures over the time period examined in the analysis. This was then used in the national impact analysis (NIA);
- A *national impact analysis* assessed the national energy savings, and the national net present value of total customer costs and savings, expected to result from specific, potential energy conservation standards for metal halide lamp fixtures; and
- A *preliminary manufacturer impact analysis (MIA)* began evaluating the effects on manufacturers of amended efficiency standards.

The public meeting announced in the April 2011 notice took place on April 18, 2011 (April 2011 public meeting). At this meeting, DOE presented the methodologies and results of the analyses set forth in the preliminary TSD. Interested parties discussed the following major issues at the public meeting: (1) Alternative approaches to performance requirements and the various related efficiency metrics; (2) the possibility of including design standards; (3) amendments to the test procedures for metal halide ballasts to account for multiple input voltages; (4) the cost and feasibility of utilizing electronic ballasts in metal halide lamp fixtures; (5) equipment class divisions; (6) overall pricing methodology; (7) lamp lifetimes; (8) cumulative regulatory burden; (9) shipments; and (10) the possibility of merging the metal halide lamp fixture and the high-intensity discharge (HID) lamp rulemakings. This NOPR responds to the issues raised in the comments received since publication of the April 2011 notice, including those received at the April 2011 public meeting.

3. Compliance Date

EPCA, as amended by EISA 2007, contains guidelines for the compliance date of the standards amended by this rulemaking. EPCA requires DOE to determine whether to amend the standards in effect for metal halide lamp fixtures and whether any amended standards should apply to additional metal halide lamp fixtures. The Secretary was directed to publish a final rule no later than January 1, 2012 to determine whether the energy conservation standards established by EISA 2007 for metal halide lamp fixtures should be amended, with any amendment applicable to products manufactured after January 1, 2015. (42 U.S.C. 6295(hh)(2)(B))

III. Issues Affecting the Scope of This Rulemaking

A. Additional Metal Halide Lamp Fixtures for Which DOE Is Proposing Standards

As noted in section II.B.1, the existing energy conservation standards for metal halide lamp fixtures are established in EPCA through amendments made by EISA 2007. (42 U.S.C. 6295(hh)(1)(A)) EISA 2007 prescribed energy conservation standards for metal halide lamp fixtures by setting minimum ballast efficiency requirements for fixtures manufactured after January 1, 2009. Currently, coverage is limited to certain rated wattages of lamps used in metal halide lamp fixtures (150 W to 500 W). Such fixtures must be equipped with a ballast that has a designated starting method (pulse-start or probe-start) and electronic configuration (magnetic or electronic). However, the statute excludes from coverage metal halide lamp fixtures with regulated-lag ballasts,[9] electronic ballasts that operate at 480 V, and fixtures that: (1) Are rated only for 150 W lamps, (2) are rated for use in wet locations,[10] and (3) contain a ballast that is rated to operate at ambient air temperatures greater than 50 °C.[11] (42 U.S.C. 6295(hh)(1)(A)).

In the preliminary TSD, DOE requested comment from interested parties on the scope of energy conservation standards rulemaking for metal halide lamp fixtures. DOE received several comments related to expanding the scope to include fixtures exempted by EISA 2007, fixtures designed to be operated with additional rated lamp wattages, and the definition of a general lighting application.

1. EISA 2007 Exempted Metal Halide Lamp Fixtures

DOE considered expanding its energy conservation standards to cover metal halide lamp fixtures exempted by EISA 2007, including fixtures with regulated-lag ballasts; electronic ballasts that operate at 480 V; and ballasts that are rated only for (1) use with 150 W lamps, (2) use in wet locations, and (3) operation in ambient air temperatures higher than 50 °C. (42 U.S.C. 6295(hh)(1)(B))

Fixtures With Regulated-Lag Ballasts

In the preliminary analysis, DOE tentatively decided to continue the exemption for regulated-lag ballasts. Through information gathered in manufacturer interviews and market research, DOE determined that regulated-lag ballasts are mainly used for specialty applications where line voltage variation is large. Regulated-lag ballasts are designed to withstand significant line voltage variation with minimum wattage variation to the lamp, which results in an efficiency penalty compared to ballasts whose output changes more significantly with line voltage variation. To be able to withstand large variations, regulated-lag ballasts are currently designed to be significantly larger than standard ballasts, and as a result exhibit poor efficiency. According to manufacturers and market research, EISA 2007's exemption did not lead to a significant market shift to regulated-lag ballasts.

The Appliance Standard Awareness Project (ASAP) encouraged DOE to consider coverage for regulated-lag ballasts. While ASAP stated that they understood that regulated-lag ballasts may be inherently less efficient, they suggested a separate equipment class with a lower standard might be more appropriate than no standard. They also stated that little information about the market for regulated-lag ballasts is available. (ASAP, Public Meeting Transcript, No. 33 at p. 24) [12] DOE

[9] 'Regulated lag ballast' means ballasts designed to withstand significant line voltage variation with minimum wattage variation to the lamp.

[10] Specifications for ''wet locations'' are from the National Electrical Code 2002, section 410.4(A).

[11] Specifications for ballasts that operate at ambient air temperatures above 50 °C are found in UL 1029–2001.

[12] A notation in the form ''ASAP, Public Meeting Transcript, No. 33 at p. 24'' identifies a comment that DOE has received and included in the docket of this rulemaking. This particular notation refers to a comment: (1) Submitted by ASAP during the

conducted additional research on regulated-lag ballasts and found none of these products available in major manufacturers' catalogs. DOE assumed that absence from catalogs indicates a very small market share, and concluded that there was no potential for significant energy savings through inclusion of these products in the scope of coverage. In addition, DOE continues to agree with the preliminary analysis that the size and weight of regulated-lag ballasts prohibit their use as substitutes in traditional applications. For the NOPR, DOE proposes to continue exempting from energy conservation standards fixtures that include regulated-lag ballasts and requests comment on this proposal.

Fixtures With 480 V Electronic Ballasts

In the preliminary analysis, DOE also considered continuing the exemption of 480 V electronic ballasts based on their unavailability in the market. In its comments, Empower Electronics disagreed with the exemption, stating that 347 V and 480 V electronic ballasts for metal halide lamps are now feasible, and suggested that regulations could help the maturation of these technologies. (Empower Electronics, No. 36 at pp. 3–4) [13] Following additional research for the NOPR, DOE did identify one manufacturer of 480 V electronic ballasts, but determined that these ballasts have a very small market share based on their limited availability from distributors and only being manufactured by one company. Therefore, DOE concluded that there is no potential for significant energy savings and proposes to continue exempting fixtures that use 480 V electronic ballasts until DOE has an opportunity to analyze commercially available products. DOE requests comment on this proposal.

Exempted 150 W Fixtures

In the preliminary analysis, DOE considered eliminating the current exemption for 150 W outdoor fixtures rated for wet and hot locations because these products could be made more efficient and have the potential for significant energy savings. Shipments for these exempted 150 W fixtures increased in response to the EISA 2007 regulations (a shift from 175 W fixtures), further increasing the potential energy savings for regulations targeted at this product type. In addition, DOE found that many fixtures commonly used indoors (high- and low-bay fixtures for high-ceiling buildings) meet the high-temperature requirements and have the option of being rated for wet locations. DOE preliminarily concluded that some fixtures used indoors were using the exemption designed for outdoor fixtures, negating possible energy savings for indoor 150 W fixtures. DOE requested comment on the impact of eliminating the exemption for 150 W outdoor fixtures rated for wet and high-temperature locations.

The National Electrical Manufacturers Association (NEMA), Philips Lighting Electronics (Philips), and Georgia Power commented that the wet-location and high-temperature outdoor 150 W fixture exemption was created in part to move the market from the popular 175 W ballast to the 150 W ballast, and lead to energy savings through a wattage reduction, and therefore does not constitute a loophole. (NEMA, No. 34 at p. 4; Philips, Public Meeting Transcript, No. 33 at pp. 24–25; Georgia Power, No. 28 at p. 1) NEMA stated that this exemption is critical for outdoor lighting ballasts because 150 W magnetic ballasts cannot meet the 88 percent EISA 2007 requirement. NEMA contended that the power savings realized by shifting from 175 W lamps to 150 W lamps, and the risk that the market would migrate back to 175 W without the exemption, far outweigh any additional savings generated by requiring that 150 W ballasts meet a ballast efficiency requirement. (NEMA, No. 34 at p. 4) DOE disagrees with NEMA that the removal of the exemption will result in a shift to 175 W fixtures. DOE is not required to set the standard for 150 W fixtures at or above the 88 percent minimum set by EISA 2007. Because these fixtures were not previously covered, setting a less stringent standard than 88 percent would not constitute backsliding and has the potential to save significant energy. DOE would analyze efficiency levels for 150 W fixtures according to the same criteria it uses for all other wattages. Section V.C.9 describes the efficiency levels under consideration in the NOPR for 150 W fixtures.

Northwest Energy Efficiency Alliance (NEEA) commented that there is no reason to continue the exclusion for fixtures rated for wet locations and ambient temperatures higher than 50 °C. If electronic ballasts with their higher efficiencies cannot be utilized in these fixtures, NEEA suggested placing them in a separate class for standards purposes rather than excluding them from coverage. (NEEA, No. 31 at pp. 1, 3) ASAP and, in a joint comment, Pacific Gas and Electric Company, San Diego Gas & Electric, Southern California Gas Company, and Southern California Edison (hereafter the ''California Investor-Owned Utilities'' [CA IOUs]) also supported the coverage of 150 W fixtures because the exemption may have become a loophole. (ASAP, Public Meeting Transcript, No. 33 at p. 23; CA IOUs, No. 32 at p. 1)

DOE agrees that these 150 W ballasts should be covered by this rulemaking and notes that the criteria for the scope of coverage for this rulemaking is defined as technology which is technologically feasible, economically justified, and has the potential for significant energy savings. Because a range of ballast efficiencies exist or are achievable in commercially available ballasts, DOE believes that improving the efficiencies of ballasts in 150 W fixtures in wet locations and high ambient temperatures is technologically feasible. DOE's analysis indicates that removing the wet-location and high-ambient-temperature 150 W fixture exemption has the potential for energy savings and is economically justified. Therefore, in this NOPR, DOE proposes to remove the exemption for fixtures that are rated only for use with 150 W lamps, wet environments, and in ambient temperatures greater than 50 °C and include these fixtures in the scope of coverage. DOE requests comment on this proposal.

2. Additional Rated Lamp Wattages

During the preliminary analysis, DOE considered expanding its coverage of energy conservation standards to include metal halide lamp fixtures that operate lamps rated from 50 W to 150 W and fixtures that operate lamps rated greater than 500 W. DOE's review of ballast manufacturer catalogs (an indication of product availability) showed many types of metal halide ballasts for fixtures operating lamps rated outside the currently regulated wattage range. The catalogs showed that approximately 30 percent (by number of products, not by market share) of available metal halide ballasts are designed for lamps rated less than 150 W and approximately 13 percent of available metal halide ballasts are designed for lamps rated greater than 500 W. Due to the number of ballasts outside of the existing scope of coverage, DOE believed that there was potential for significant energy savings and considered including fixtures designed to operate lamps with rated

public meeting on April 18, 2011; (2) in the transcript of that public meeting, document number 33 in the docket of this rulemaking; and (3) appearing on page 24 of the transcript.

[13] A notation in the form ''Empower Electronics, No. 36 at pp. 3–4'' identifies a written comment that DOE has received and included in the docket of this rulemaking. This particular notation refers to a comment: (1) Submitted by Empower Electronics; (2) in document number 36 of the docket; and (3) on pages 3 to 4 of that document.

wattage ≥50 W in the analysis. DOE received comment on expanding the scope to fixtures that operate lamps rated from 50 W to 150 W and fixtures that operate lamps rated greater than 500 W.

In response to request for comment in the preliminary TSD, NEMA suggested that there is little energy savings to be realized by regulating fixtures for the 50 W to 150 W range due to their low energy usage and the movement of the market to the greater than 150 W power range. (NEMA, Public Meeting Transcript, No. 34 at p. 13) ASAP, NEEA, the CA IOUs, Empower Electronics, and Progress Energy Carolinas supported the expansion of scope to the greater than 50 W and less than 150 W range discussed in the preliminary TSD. (ASAP, Public Meeting Transcript, No. 33 at p. 23; NEEA, No. 31 at p. 1; CA IOUs, No. 32 at p. 1; Empower Electronics, No. 36 at p. 3; Progress Energy Carolinas, No. 24 at p. 2) DOE conducted testing within the 50 W to 150 W range and identified varying efficiencies within a single wattage, which suggests that standards to improve the least-efficient ballasts are technologically feasible. Furthermore, as discussed in section VI.B.3, DOE determined that standards for this wattage range have the potential for significant energy savings. Therefore, DOE proposes to include fixtures designed to operate lamps rated ≥50 W and <150 W.

DOE also received comment on the greater than 500 W equipment class. Georgia Power stated that regulating high wattages (such as 1000 W and 1500 W) would save little energy at significant cost. (Georgia Power, No. 28 at p. 2) ASAP, NEEA, the CA IOUs, Empower Electronics, and Progress Energy Carolinas, however, agreed with DOE's preliminary findings and supported the expansion of scope to the >500 W range discussed in the preliminary TSD. (ASAP, Public Meeting Transcript, No. 33 at p. 23; NEEA, No. 31 at p. 1; CA IOUs, No. 32 at p. 1; Empower Electronics, No. 36 at p. 3; Progress Energy Carolinas, No. 24 at p. 2) In terms of technological feasibility, NEMA stated that the ballasts included in high-wattage fixtures are already up to 92 percent efficient. NEMA took the position that because this efficiency is comparable to the efficiencies of lower-wattage equipment with the highest-grade components, it would be difficult, if not impossible, to define energy efficiency requirements that would result in appreciable savings. Still, NEMA supported DOE's determination that ballasts greater than 500 W were within the scope of DOE's authority for preclusion of ''state-by-state'' rulemaking through preemption (NEMA, No. 34 at p. 3) In terms of potential for significant energy savings, NEMA noted that market estimates for greater-than-500–W ballasts are on the order of 15 percent, while the total energy use for equipment in this power range is estimated to be as high as 40 percent of the total of installed metal halide lamp fixtures. Id.

DOE agrees that the greater-than-500–W ballasts have higher efficiencies than the lower-wattage equipment. However, based on test data, DOE still found a range of efficiencies present in commercially available ballasts, indicating technological feasibility. DOE also verified NEMA's comment that these high-wattage products have fewer shipments than the lower-wattage products included in this rulemaking, but they consume more energy per installation. DOE's analysis indicates that regulation of these higher wattages could be economically justified and has the potential for significant energy savings. Finally, based on review of product catalogs, DOE determined that fixtures rated for use with lamps rated for wattages greater than 2000 W served small-market-share applications like graphic arts, ultraviolet curing, and scanners. Therefore, DOE proposes not to include fixtures rated for wattages greater than 2000 W in this rulemaking. In summary, because DOE finds economic justification and potential energy savings in regulating ballasts greater than 500 W and less than or equal to 2000 W, DOE proposes that these fixtures be included in the scope of this rulemaking. DOE requests comment on this proposal.

3. General Lighting

EISA 2007 defines the scope of this rulemaking as applying to fixtures used in general lighting applications. (42 U.S.C. 6291(64)) In section 2 of 10 CFR Part 430, Subpart A, a general lighting application is defined as lighting that provides an interior or exterior area with overall illumination. DOE is proposing to add this definition to 10 CFR 431.2,[14] the section of the CFR that relates to commercial and industrial equipment. DOE applies this definition to determine which lighting applications DOE has the authority to cover.

[14] The general lighting application definition prescribed by EISA 2007 was previously incorporated into the consumer products section (10 CFR Part 430), but has not yet been added to the commercial and industrial equipment section (10 CFR Part 431).

NEMA and OSRAM SYLVANIA (OSI) recommended capping the greater-than-500 W class at 1000 W because 1000 W is the highest wattage used for general lighting applications, arguing that DOE does not have authority to consider higher wattages. (NEMA, No. 34 at pp. 13–14; OSI, No. 27 at p. 4) OSI also commented that metal halide systems are also used in specialty applications such as stage, theater, television, film, solar simulation, airfield, medical/surgical, microscope, endoscope, video projection, display, treatment of skin disorders, sports, and automotive. OSI recommended that these specialized applications be excluded from this rulemaking. (OSI, No. 27 at p. 7)

DOE's research indicated that there are a number of fixtures available for general lighting applications above 1000 W. The primary application of such fixtures is outdoor sports lighting, which commonly uses metal halide ballasts of 1000 W to 2000 W. Because sports lighting provides overall illumination to an exterior area (playing field and stadium), DOE believes sports lighting does meet the definition of a general lighting application. While DOE agrees that some special applications listed by OSI do not fit under the covered general illumination definition, others, such as sports and airfield lighting, do provide general illumination to an exterior area and are covered by this rulemaking. DOE requests comment on this proposal.

4. Summary

DOE proposes to include metal halide lamp fixtures designed to operate ballasts rated from 50 W to 2000 W and for use in general lighting applications in the scope of coverage. EISA 2007 exempted specific metal halide lamp fixtures from regulation. These included (a) fixtures that include regulated-lag ballasts, (b) fixtures that include 480 V electronic metal halide ballasts, and (c) fixtures that include lamps rated at 150 W with ballasts that (1) are rated for use in wet locations and (2) contain a ballast that is rated to operate at ambient air temperatures greater than 50 °C. In this rulemaking, DOE proposes to continue the exemption for the first two categories (regulated-lag ballasts and 480 V electronic ballasts) but not for the third, certain 150 W fixtures. DOE finds that regulating these 150 W ballasts could provide considerable potential energy savings and would be economically justifiable. As such, DOE proposes that the 150 W ballasts rated for use in wet locations and containing a ballast that is rated to operate at ambient air temperatures greater than 50 °C be covered in this rulemaking.

B. Alternative Approaches to Energy Conservation Standards: System Approaches

EISA 2007 requires DOE to set standards for metal halide lamp fixtures. (42 U.S.C. 6295(hh)(2)) As previously stated, although metal halide lamp fixtures usually comprise a metal halide lamp, a metal halide ballast, and other fixture components, EPCA established MHLF energy conservation standards by setting minimum efficiency requirements for only the ballast. For the preliminary analysis, DOE considered three system approaches as alternatives to regulating only ballast efficiency. The first was a lamp and ballast system approach in which the lamp and ballast would be rated together in terms of lumens per lamp-ballast system watts. The second was a whole fixture system approach in which the ballast, lamp, and optics/enclosure would all be rated together in terms of a fixture-level metric such as Fitted Target Efficacy (FTE) or Target Efficacy Rating (TER). The third was an approach similar to California Title 20, which allowed for multiple compliance pathways utilizing a combination of design standards, ballast efficiency standards, and lamp wattage requirements. DOE received several comments on these three system approaches.

In general, interested parties recognized the potential value for system approaches over a ballast efficiency approach, but also noted several limitations related to each possible approach. NEEA supported systems approaches to rating equipment, but did not find any of the three specific approaches discussed in the preliminary analysis to be practicable to implement. (NEEA, No. 31 at p. 2) Philips stated that, generally, NEMA considers the system approach to be the preferred approach for any rulemaking. (Philips, Public Meeting Transcript, No. 33 at p. 32) Philips noted that a system approach is an extremely complex issue and pointed out that there are other metrics beyond those that DOE listed as under consideration. (Philips, Public Meeting Transcript, No. 33 at pp. 36–37) DOE found that the three system approaches considered in the preliminary TSD have the theoretical potential of saving more energy than the current ballast-only approach, but also have many practical limitations. DOE weighed the benefits and drawbacks of each system approach, but for this rulemaking, DOE proposes a ballast-efficiency approach consistent with the current EISA 2007 regulations. DOE discusses each of the system approaches in the following sections. DOE also discusses the possibility of a coordinated metal halide lamp fixture and high-intensity discharge lamp rulemaking in section III.C as an additional approach to considering all aspects of the metal halide lighting system when considering energy conservation standards.

1. Lamp-Ballast System

In the lamp-ballast system approach, metal halide lamp fixtures would be regulated on the basis of a lumens-per-watt metric that assesses the performance of the lamp and ballast included in the fixture. Fixture manufacturers would be required to report the system lumens per watt (lm/W) of every lamp and ballast pair included in their fixtures. This approach has the potential to save more energy and allow more design flexibility for manufacturers. However, this approach is somewhat at odds with current fixture sales practices. Fixture manufacturers commonly ship fixtures with the ballast installed to ensure that the fixture is compliant with fire safety requirements and meets energy conservation standards. There are currently no requirements for fixtures to be shipped with certain lamps, and in general, fixture manufacturers noted that few fixtures are sold with lamps, giving customers flexibility to choose lamps from a variety of manufacturers. In a lamp-ballast system approach, fixture manufacturers would be required to provide fixtures with installed lamps and ballasts, and customers would be limited to predetermined lamp and ballast combinations.

During preliminary interviews, DOE found that there are several metal halide ballast manufacturers that do not manufacture metal halide lamps. In a lamp-ballast system approach, these manufacturers could have a competitive disadvantage compared with manufacturers that manufacture both lamps and ballasts. Manufacturers said that for fixture manufacturers that are not vertically integrated (*i.e.,* fixture manufacturers that do not also produce lamps and ballasts), sourcing lamp and ballast systems is problematic as only a few manufacturers have the capability to provide them. Non-vertically-integrated manufacturers also said that they would not have the same ability to optimize the fixtures as their lamp and ballast-manufacturer competitors. Based on the concern that some manufacturers would be at a disadvantage to their vertically integrated competitors and that fixtures are typically not shipped with lamps, DOE preliminarily determined that ballast efficiency was a better approach than lamp-ballast systems.

NEMA described the pros and cons of a simple lumens-per-watt standard based on a lamp-ballast system. NEMA stated that this methodology provides more technological flexibility and can yield overall higher performance by including the effect of lamp efficacy. On the other hand, NEMA stated that there are compatibility issues with operation of certain lamp and ballast pairs. While some of these compatibility issues would be resolved through use of a database, that database would require management by the industry, which represents additional cost and a reporting burden if manufacturers are required to report on various lamp and ballast combinations. It also might require manufacturers to transport mercury (if DOE mandates that a fixture be sold with a lamp). (NEMA, No. 34 at p. 5)

Georgia Power and NEEA commented on the practical limitations of a lamp-ballast system approach. Georgia Power pointed out that utilities buy lamps and fixtures separately and strive to minimize the number of lamp types that they must stock to use in new and existing fixtures. Georgia Power said that matching different lamps to different ballasts of the same wattage would be costly and very confusing. Additionally, Georgia Power noted that training the installers and relampers would be costly and impractical for the utilities. (Georgia Power, No. 28 at p. 1) NEEA commented that because there is no way to control which replacement lamps are used after the initial lamp fails, real system energy savings may be smaller than forecasts that assume an equivalent lamp is used as a replacement. (NEEA, No. 31 at p. 2)

With regards to lamp-ballast compatibility concerns with a lamp-ballast approach to setting standards, OSI commented that lamp and electronic ballast manufacturers already maintain lists of compatible products, indicating a lamp-ballast approach would not create additional burden. OSI stated that NEMA's main concern is with high-frequency electronic ballasts operating high-wattage lamps. As noted in section V.C.8, these ballasts can create acoustic resonance problems with lamps. The issue is further complicated by the fact that different lamps have different acoustic resonance points. OSI noted that NEMA has assembled a task force on lamp and electronic ballast compatibility issues, and the task force is close to finalizing compatibility test procedures. Once finalized, each manufacturer will conduct testing based on the procedure to determine

compatibility with other products. OSI recommended that all electronic metal halide ballasts be designed to meet existing American National Standards Institute (ANSI) standards based on magnetic operation. This redesign will help assure lamp and ballast compatibility. (OSI, No. 27 at p. 7)

In the preliminary TSD, DOE also considered a 'table of standard lamps' for use in a lamp-ballast system standard approach. The use of a table of standard lamps would allow for fixture performance to be assigned to all fixtures, including those not shipped with lamps. This table of standard lamps would allow for conversion of tested ballast efficiency to lumens per watt for determination of compliance with a lamp-ballast system standard, mitigating the potential for lost competitive advantage for ballast-only manufacturers. NEEA commented that they did not agree that a table of standard lamps (and a lamp-ballast system approach without a table of standard lamps) would adequately control which replacement lamps are used in fixtures. (NEEA, No. 31 at p. 2)

DOE recognizes these positive and negative aspects of the lamp and ballast approach (both with and without the table of standard lamps) and has weighed them carefully and tentatively decided not to propose this approach. DOE found that a lamp and ballast system approach might be burdensome due to unresolved compatibility and compliance issues related to specifying performance of every lamp and ballast combination sold. DOE tentatively agrees with Georgia Power's concern that some users could need to stock multiple lamps for pairing with different manufacturers' ballasts of the same wattage, unless they were willing to place all of their lamp and ballast orders from a single supplier. Additionally, once the original lamp fails, customers may replace it with a lower-efficacy alternative. A lamp-ballast system approach could also complicate defining categories and classes. In regards to a lamp-ballast system approach with a table of standard lamps, DOE agrees with NEEA that such a table would not address customers using less-efficacious replacement lamps and does not provide an adequate improvement over a traditional lamp-ballast system approach or a simple ballast efficiency approach. Though inclusion of the table could be more equitable for ballast-only manufacturers, it is still hindered by compliance and compatibility issues, and would likely result in less energy savings than a pure lamp-ballast system approach.

2. Fixtures Systems—Lamp, Ballast, Optics, and Enclosure

For the preliminary TSD, DOE analyzed fixture-level metrics by conducting independent research and interviewing manufacturers. DOE found that fixture energy use depends on four variables: (1) Lamp efficacy; (2) ballast efficiency; (3) light absorption by the fixture; and (4) usefulness of light emitted by the fixture (direction or light distribution pattern). DOE considered two alternative metrics to quantify these areas of importance, namely FTE and TER. DOE drafted the FTE metric for the solid-state lighting (SSL) ENERGY STAR® program. NEMA, along with its luminaire division, developed TER. FTE and TER metrics treat each fixture-energy-use area of importance more effectively in some ways than others.

The FTE metric measures the fixture performance by fitting a rectangle to a uniform ''pool'' of light for each fixture, then multiplying the lumens delivered to this pool by the percent coverage of the rectangular target, and dividing the result by input watts to the fixture. Because FTE was developed for roadway and parking lot applications, separate algorithms for each respective application would need to be calculated and verified. As FTE is calculated using a rectangular area, a fixture that is designed to (1) light a non-rectangular area, (2) produce a large amount of unlighted area within the rectangle, or (3) produce specific light patterns that light both a horizontal plane and a vertical plane, or even above the fixture, will be at a disadvantage.

TER involves calculating fixture efficacy by multiplying the light leaving the fixture by the Coefficient of Utilization (CU), which factors in the distribution of light, room geometry, and room surface reflectances. CU represents the percentage of rated lamp lumens reaching the workplane. The calculation of efficacy for TER also takes into account lamp and ballast efficiency. TER has 22 different types of luminaire classifications, each with a different TER calculation method and value,[15] though every classification is not applicable to metal halide lamp fixtures.

For the preliminary TSD, DOE tentatively decided not to implement either FTE or TER. DOE found that FTE only accounts for light hitting the specified test area and does not take into account other surfaces that the fixture is designed to light. This methodology disadvantages fixture types not designed to light a uniform, flat, rectangular space. DOE tentatively decided not to use TER out of concern that certain fixtures could fall within multiple categories of fixture due to their designs. Because of the need for uniformity and more simplicity, DOE preliminarily found TER unsuitable this rulemaking. The following discussion describes the comments DOE received about the use of these metrics.

Georgia Power and Progress Energy Carolinas suggested that TER and FTE were better metrics than the current ballast-efficiency metric because they address the optical performance of the entire fixture, accounting for light directionality and losses. (Georgia Power, No. 28 at p. 1; Progress Energy Carolinas, No. 24 at p. 1) However, NEEA commented that it did not believe that FTE or TER is appropriate as the basis for energy efficiency standards at this time. NEEA stated that either approach could be used as a design optimization framework, but both have sufficient drawbacks and lack of field implementation experience that render them unusable as the basis for a minimum efficiency standard. (NEEA, No. 31 at p. 2) NEMA agreed with the preliminary TSD, stating that because this rulemaking covers all types of products (*e.g.,* downlights, track lighting, industrial highbay/lowbay, streetlighting, roadway lighting, floodlights, parking lots, parking garages), it is challenging to define a metric that effectively covers all applications without flawed assumptions. Specifically, NEMA pointed out that none of the metrics considered covers equipment that is designed to be aimed or tilted. (NEMA, No. 34 at p. 6) Both NEEA and Empower Electronics also supported DOE's determination from the preliminary TSD not to use either FTE or TER. (NEEA, No. 31 at p. 2; Empower Electronics, No. 36 at p. 4)

Though a fixture-level metric has the potential to save the most energy, DOE does not believe an approach currently exists that adequately assesses the types of metal halide lamp fixtures included in this rulemaking. Because FTE is focused on applications that deliver light to a horizontal space and a TER standard would require fixture classifications that have not yet been developed, DOE has determined that ballast efficiency is a better approach at this time. Therefore, DOE does not find fixture-level metrics practicable for setting standards for this equipment at this time, and proposes not to use a system-approach metric in this rulemaking.

[15] There are two main calculation methods—one for indoor and one for outdoor applications. The methods are then customized to each classification.

3. California Title 20 Approach

California's Title 20 [16] includes regulations that aim to reduce energy consumption in appliances, including metal halide lamp fixtures.[17] For metal halide lamp fixtures, Title 20 requires compliance through one of four primary paths: (1) The use of lamps from reduced-wattage bins with a minimum 88 percent efficient ballast; (2) an integrated motion sensor and high-low control with a minimum 88 percent efficient ballast; (3) an integrated daylight sensor and high-low control (for indoor only) with a minimum 88 percent efficient ballast; and (4) high-efficiency ballasts with a minimum efficiency of 90 percent for 150 W to 250 W lamps or 92 percent for 251 W to 500 W lamps. In the preliminary TSD, DOE requested comment on the implementation of a similar approach, with multiple options for compliance, including the integration of controls.

Several commenters gave direct feedback on the Title 20 approach. Energy Solutions supported DOE's consideration of a Title 20 or Title-20-like approach. (Energy Solutions, Public Meeting Transcript, No. 33 at p. 39) NEMA and Acuity Brands Lighting (Acuity) stated that although it also adds complexity to the associated enforcement and reporting, the Title 20 approach provides flexibility for manufacturers and designers. Additionally, NEMA and Acuity noted that the Title 20 requirement for 336 W to 500 W reduced-wattage lamps to produce 80 lm/W is not currently achievable. Acuity requested that DOE not consider these lamp specifications, and stated that they have been working with the California Energy Commission (CEC) to correct that efficacy level. (NEMA, No. 34 at p. 6; Acuity, Public Meeting Transcript, No. 33 at p. 41)

NEMA and Philips then addressed regulations that consider lamps and ballasts simultaneously for analysis, but assign performance metrics to each component individually. NEMA commented that they would support regulation that allows for lower ballast efficiency requirements in conjunction with higher lamp efficacy requirements. However, NEMA noted that a requirement to ship high-efficacy lamps in new fixtures would not prevent future replacement of these lamps with lower-efficacy alternatives. (NEMA, No. 34 at p. 5) Philips noted that it is possible to specify certain lamps for particular fixtures through an Underwriters Laboratories (UL) listing. Philips explained that if a ballast and a fixture are labeled for a particular lamp, then that fixture would only keep its UL listing when that lamp is used. This could mitigate the risk that the type of lamp originally packaged with the fixture would be replaced with a less-efficacious alternative. Additionally, Philips pointed out that for ENERGY STAR and fluorescent lamps, NEMA has maintained a table of corresponding lamp and ballast efficacies so that fixture manufacturers can easily select compliant products. Philips suggested that DOE could create a similar database for this rulemaking. (Philips, Public Meeting Transcript, No. 33 at pp. 33–34)

DOE also received many comments on the controls and dimming compliance pathways of the Title 20 approach. The CA IOUs noted that dimming and occupancy controls can greatly reduce the overall electricity consumption of a lighting system. The CA IOUs stated that many electronic ballasts in the 150 W to 575 W range include dimming circuitry. (CA IOUs, No. 32 at p. 5) OSI agreed that the use of dimming as an energy-saving tool is growing. OSI clarified that it is actually easier to develop an electronic metal halide dimming ballast than a magnetic one; and the electronic ballast will provide more utility for the end user. (OSI, No. 27 at p. 3) The CA IOUs specifically noted that for outdoor fixtures, from a public safety standpoint, dimming can be prohibitively slow in magnetic ballasts. However, there are commercially available electronically ballasted systems with appropriate response times that are much better suited for the transition towards fully controllable and dimmable fixtures. (CA IOUs, No. 32 at p. 5)

Several commenters provided feedback on the relative merits of electronic metal halide lamp dimming, magnetic metal halide lamp dimming, and other lighting technologies like fluorescent lighting. OSI explained that magnetic ballasts (by using a split capacitor) can only provide two light levels (bi-level dimming). An electronic ballast has a microprocessor to provide stepped dimming at programmed levels or continuous dimming using a 0 to 10 V signal. A continuously dimming ballast is compatible with daylight harvesting, scheduling, building management, demand response systems, and other processes where dimming is desirable. OSI stated that dimming can be provided in various applications, including outdoor lighting, by replacing a magnetic ballast with an electronic one with no rewiring needed. (OSI, No. 27 at p. 3) Progress Energy Carolinas stated that bi-level dimming in magnetic ballasts has been around for years and has a proven track record. Although there is an efficacy decrease associated with dimming to 50 percent, Progress Energy Carolinas concluded that bi-level dimming is cost effective. (Progress Energy Carolinas, No. 24. at pp. 1–2) NEMA stated, however, that the incremental cost associated with an integrated bi-level dimming control in a metal halide lamp fixture can almost double the overall fixture cost. By contrast, the cost of integrated controls for a fluorescent lamp fixture designed for the same application requirements are about 30 to 40 percent higher than without controls, and the controls have more functionality due to the instant on and continuous dimming capability of the fluorescent system. For these reasons, NEMA argued that bi-level dimming with metal halide lamp fixtures is more costly and has less functionality than alternative technologies. (NEMA, No. 34 at p. 9)

Next, DOE received several comments relating to the applications that commonly use dimming, and the potential for difficulty in distinguishing some of these categories based on technical features. NEMA pointed out that although dimming metal halide lamp fixtures in certain applications where there is sporadic or limited occupancy (*e.g.,* high-bay and low-bay applications for warehousing) can result in significant energy reduction, many MHLF applications are not well suited for bi-level control capabilities, such as operations and roadway lighting that operates 24 hours per day, 7 days per week. (NEMA, No. 34 at p. 9) Progress Energy Carolinas also noted that apart from dusk-to-dawn photocontrol, occupancy sensors will not work for street lighting. Progress Energy Carolinas stated that street lighting would need to be controlled with a smart-box type of control. (Progress Energy Carolinas, No. 24 at p. 2) Cooper Lighting suggested that DOE analyze dimming in roadway lighting separately from other applications. (Cooper, Public Meeting Transcript, No. 33 at p. 40) Georgia Power recognized that the specifics of which applications can and cannot be dimmed, and how to measure energy reduction in unmetered applications (*e.g.,* roadway lighting provided by a utility), will be complex. (Georgia Power, No. 28 at p. 1) NEMA noted that because DOE cannot distinguish products based on application type, it is unclear how DOE would describe regulatory requirements without specifying the use of controls based on application characteristics.

[16] *www.energy.ca.gov/regs/title20/index.html.*

[17] California's term 'metal halide luminaire' refers to the same item as DOE's 'metal halide lamp fixture.'

(NEMA, No. 34 at p. 9) Specifically, NEMA also observed that the Title 20 approach requires differentiation between indoor and outdoor products, which DOE would have to define based on product attributes. (NEMA, No. 34 at p. 6)

Several commenters reported on the low percentage of fixtures using the controls pathways to compliance for California Title 20. Energy Solutions and the CA IOUs reported that of the chosen compliance pathways recorded in the CEC Appliance Database, most are either the reduced lamp wattage or the ballast efficiency requirement; not many report the controls compliance pathway. (Energy Solutions, Public Meeting Transcript, No. 33 at pp. 39–40; CA IOUs, No. 32 at p. 2) Philips explained that the controls compliance pathway has not been embraced because Title 20 requires all pieces of a control system to be integral to the fixture. Philips urged DOE to consider that a simplified approach to controllable fixtures would encourage more dimming systems and, therefore, more energy savings. (Philips Lighting Electronics, Public Meeting Transcript, No. 33 at p. 40) Similarly, NEMA supported the concept of controllable fixtures and also suggested that controls be separate from the fixture for any regulations. NEMA stated that any incorporation of controls should be technology-neutral, allowing various control technologies without requiring the control to be integral to the fixture. (NEMA, No. 34 at p. 6)

NEEA expressed concern over any forecasted energy savings resulting from the implementation of dimming ballasts, commenting that the presence of controls and the capability of dimming are no guarantee of use, and therefore, no guarantee of the promised energy savings. Consequently, NEEA did not agree with a Title 20 approach as part of a federal minimum efficiency standard. Furthermore, NEEA opposed DOE's adoption of the Title 20 approach because California's regulatory approach depends heavily on the existence of its Title 24 regulations (which have no DOE analog) for compliance and enforcement, including verifying the installation of the qualifying components that would meet the system requirements. For these reasons, NEEA felt that the Title 20 approach is unworkable at the federal level. (NEEA, No. 31 at p. 3)

In response to the various approaches in California Title 20, DOE is concerned that adopting these methods would risk reducing energy savings and complicating compliance and enforcement relative to ballast-efficiency-only regulations. With regards to the controls/dimming approach, DOE tentatively agrees that a standard requiring the presence of controls or dimming does not ensure energy savings. DOE believes that the use of such technologies is much less popular for metal halide systems relative to other lighting technologies. Metal halide lamp fixtures typically take 5 to 10 minutes to re-strike and turn on again after being turned off, so controls that would turn metal halide lamp fixtures on and off more frequently have less utility relative to lighting with instant restarting capability. Additionally, a majority of metal halide lamp fixtures installed today use magnetic ballasts. Magnetic ballasts are typically only capable of bi-level dimming, giving them less functionality compared to other lighting technologies. Regarding the approach to allow less-efficient ballasts when sold in fixtures with more efficacious lamps, DOE is concerned that some energy savings could be lost if the lamp is replaced with a less efficacious lamp after the first failure, similar to its conclusions with lamp and ballast systems. Given the uncertainty of resulting energy savings, DOE has tentatively decided not to propose Title-20-like standards in this rulemaking.

C. Combined Rulemakings

In addition to system approaches, another method for maximizing energy savings and simplifying compliance would be to combine the metal halide lamp fixture and high-intensity discharge (HID) lamp rulemakings (Docket EERE–2010–BT–STD–0043). These rulemakings are related because the MH lamps used in metal halide lamp fixtures are a subset of HID lamps. During the comment period and the public meeting for the metal halide lamp fixture preliminary TSD, and also in subsequent manufacturer interviews, DOE received requests that DOE consider metal halide lamp fixtures and HID lamps in a combined manner. The stated benefits of this approach include maximizing potential energy savings, avoiding conflicting rules for related technologies, avoiding duplicative efforts, improving consistency and ease of review, saving taxpayer dollars, and simplifying compliance. Based on the outcome of this NOPR, DOE will consider how to best combine the rulemakings.

OSI, NEMA, and Philips commented that the metal halide lamp fixture rulemaking should be conducted in conjunction with metal halide lamp rulemakings. (OSI, No. 27 at p. 6; NEMA, Public Meeting Transcript, No. 33 at p. 15; NEMA, No. 34 at p. 5; Philips, Public Meeting Transcript, No. 33 at p. 32) NEMA expressed concern that potential energy savings could be missed by keeping the metal halide lamp fixtures and HID lamps rulemakings separate. (NEMA, Public Meeting Transcript, No. 33 at p. 15) OSI and NEMA recommended that the ballast efficiency and lamp efficacy regulations be completed in conjunction so that overall system efficacy can be recognized in resulting regulations. (OSI, No. 27 at p. 6; NEMA, No. 34 at p. 21) Additionally, Philips stated that keeping the lamp and ballast rulemakings separate will add complexity to maintaining lamp and ballast compatibility. (Philips, Public Meeting Transcript, No. 33 at p. 32) Philips noted that if ballast regulations eliminate certain ballast types, they may also take certain lamps out of the market, losing all energy savings that were meant to be generated by the lamps' standards. (Philips, Public Meeting Transcript, No. 33 at p. 132)

In its work to date on the HID lamp and MHLF energy conservation standards, DOE has identified and is using a number of shared data sources and analytical processes in the two rulemakings. The following is an initial inventory of rulemaking data and processes either fully or partially shared between HID lamps and metal halide lamp fixtures:

- market and technology assessments;
- distribution channels and price markups;
- annual operating hours;
- lamp, fixture, and ballast lifetimes;
- lamp lumen maintenance;
- installation times and costs;
- electricity prices;
- discount rates;
- lamp and fixture shipments;
- life-cycle cost (LCC) subgroup analysis; and
- Regulatory impact analysis.

DOE is currently evaluating the data and analytical processes that are shared between the two rulemakings.

D. Standby Mode and Off Mode Energy Consumption Standards

EPCA requires energy conservation standards adopted for covered equipment after July 1, 2010 to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) The requirement to incorporate standby mode and off mode energy use into the energy conservation standards analysis is therefore applicable in this rulemaking. 10 CFR 431.322 defines the terms ''active mode,'' ''standby mode,'' and ''off mode'' as follows:

- ''Active mode'' is the condition in which an energy-using piece of

equipment is connected to a main power source, has been activated, and provides one or more main functions.

• ''Off mode'' is the condition in which an energy-using piece of equipment is connected to a main power source, and is not providing any standby or active mode function.

• ''Standby mode'' is the condition in which an energy-using piece of equipment is connected to a main power source and offers one or more of the following user-oriented or protective functions: facilitating the activation or deactivation of other functions (including active mode) by remote switch (including remote control), internal sensor, or timer; or providing continuous functions, including information or status displays (including clocks) or sensor-based functions.

For the preliminary TSD, DOE analyzed these definitions to determine their applicability to metal halide lamp fixtures. DOE tentatively found that it is possible for metal halide fixtures to operate in active mode and standby mode. The off mode condition does not apply because metal halide lamp fixtures do not operate in off mode. 74 FR 33171, 33175 (July 10, 2009).[18] Therefore, for this energy conservation standard rulemaking, DOE only considered the active mode and standby mode energy use provisions from EISA 2007 applicable to metal halide lamp fixtures that are (or could be) covered by this rulemaking.

DOE recognizes that metal halide lamp fixtures can be designed with auxiliary control devices, which could consume energy in standby mode. One example of this fixture design involves Digitally Addressable Light Interface (DALI) enabled ballasts. These ballasts may draw power in standby mode, as the internal circuitry remains on and active even when the ballast is not driving any lamps. DOE has yet to encounter such a ballast that it could purchase. DOE has continued to search for and consider DALI-enabled fixtures, as well as other types of metal halide lamp fixtures, to evaluate the issue of standby mode energy use in metal halide lamp fixtures. In the preliminary TSD, DOE tentatively concluded that it cannot establish a separate standard that incorporates standby mode energy use and invited comments on the issue of standby mode and ballast designs that incorporate it.

Philips and NEMA both expressed NEMA's view, agreeing that a standard cannot be established for standby mode energy consumption. (Philips, Public Meeting Transcript, No. 33 at p. 29, NEMA, No. 34 at p. 3) Empower Electronics also commented that a standby mode energy standard cannot be established. (Empower Electronics, No. 36 at p. 2) NEEA agreed with DOE's findings and proposals for standby mode and off mode. (NEEA, No. 31 at p. 2)

With no new findings with regard to ballasts drawing power in standby and off modes and comments supporting DOE's preliminary proposal, DOE continues to conclude in this NOPR that it cannot establish a separate standard that incorporates standby mode or off mode energy consumption.

IV. General Discussion

A. Test Procedures

1. Current Test Procedures

The current test procedures for metal halide ballasts and fixtures are outlined in Subpart S of 10 CFR Part 431. The test conditions, setup, and methodology generally follow the guidance of ANSI C82.6–2005. Testing requires the use of a reference lamp, which is to be driven by the ballast under test conditions until the ballast reaches operational stability. Ballast efficiency for the fixture is then calculated as the measured ballast output power divided by the ballast input power. In this NOPR, DOE proposes changes to test input voltage, testing electronic ballasts, and rounding requirements.

2. Test Input Voltage

Metal halide ballasts can be operated at a variety of voltages, with different voltages chosen based on the application and use of the fixture. The most common voltages are 120 V, 208 V, 240 V, 277 V, and 480 V. Ballasts will also commonly be rated for more than one, such as dual-input-voltage ballasts that can be operated on 120 V or 277 V, or quad-input-voltage ballasts that can be operated on 120 V, 208 V, 240 V, or 277 V. DOE received manufacturer feedback that the specific design of a ballast and the voltage of the lamp operated by the ballast can affect the trend between input voltage and efficiency. DOE likewise observed that changes in efficiency (on the level of several percent) were possible in individual ballasts based on its own testing of multiple-input-voltage ballasts.

The existing test procedures do not specify the voltage at which a ballast is to be tested. Therefore, to ensure consistency among testing and reported efficiencies, the input voltage should be specified in the test procedures. To set an energy conservation standard based on test data, DOE needed to determine which input voltage to use for its data. In addition, manufacturers would need to their equipment at the same input voltage that DOE used when developing energy conservation standards for the regulations to have the intended effect. Because the majority of ballasts sold are capable of operating at multiple input voltages, DOE is considering standardizing this aspect of testing. In the preliminary TSD, DOE requested comment on this issue, specifically on the possibility of testing at all input voltages and reporting the average of the efficiencies. DOE discusses several input voltage specification options in the following paragraphs.

a. Average of Tested Efficiency at All Possible Voltages

In the preliminary TSD, DOE asked for comment on the possibility of testing ballasts at each input voltage at which they are able to operate, then having a standard for the average of these efficiencies. NEEA commented that they saw the positive aspects of this method of testing. NEEA said that even though it would increase testing burden, it would also reduce efficiency bias associated with input voltage. (NEEA, No. 31 at p. 2) Philips commented that adapting a magnetic ballast for use with multiple input voltages lowers the efficiencies on one or more of the voltages, but the market has demanded the use of multi-tap ballasts, especially because the manufacturers desire to reduce inventory in an effort to lower cost. (Philips, Public Meeting Transcript, No. 33 at p. 28) NEMA said it disagreed with measuring at multiple voltages and then averaging due to the increased testing burden and associated costs. (NEMA, No. 34 at p. 2) Although DOE found little difference in ballast efficiency at different input voltages, DOE recognizes the possibility for efficiencies associated with rarely used input voltages to skew the overall efficiency of ballasts under this averaged-efficiencies approach. For example, a ballast might have the capability to operate on 120 V and 277 V at approximately 90 percent efficiency, but at 208 V (an uncommon input voltage for metal halide lighting) it operated at only 88 percent efficiency. Averaging these three efficiencies would lead to a reported value of about 89 percent, when the ballast will in all

[18] The definition of ''off mode'' requires that ballasts be connected to a main power source and not provide any standby mode or active mode function. (42 U.S.C. 6295(gg)(1)(A)(ii)) As discussed in the metal halide ballast test procedures, DOE does not believe that there is any condition in which the ballast is connected to the main power source and is not already accounted for in either active mode or standby mode.

likelihood only operate at 120 V or 277 V (at 90 percent efficiency). In this instance, averaging the efficiencies misrepresents the performance of the ballast in its most common uses. Additionally, DOE recognizes that testing at each input voltage could increase the burden relative to a requirement of testing ballasts at only a single voltage. For these reasons, in this NOPR, DOE is not proposing to test at all available input voltages and average the resulting efficiencies.

b. Posting the Highest and Lowest Efficiencies

Another approach, suggested by Empower Electronics, would require testing at each input voltage and listing the best and worst efficiencies on the product label. (Empower Electronics, No. 36 at p. 2) DOE acknowledges that, as with voltage averaging, this method could help address the concern that a manufacturer could optimize their ballasts on a voltage that could easily increase in efficiency, while most customers would be using a non-optimized voltage. Also similar to voltage averaging, however, DOE finds that this approach would lead to a compliance burden for manufacturers and would increase the required tests compared to a requirement to test ballasts only at a single voltage.

c. Test at Single Manufacturer-Declared Voltage

In response to the preliminary TSD, NEMA suggested that the test procedures should allow testing at a single voltage determined by the manufacturer and declared in the test report. (NEMA, No. 34 at p. 2) In manufacturer interviews, DOE received feedback that manufacturers optimize ballasts at a specific voltage and prefer to test their products at that voltage. DOE is concerned, however, that manufacturers might optimize efficiency at a voltage that is most convenient or least expensive rather than the voltage most used by customers. Were manufacturers to optimize efficiency at a less commonly used voltage, the efficiency claimed at this voltage would not be representative of typical efficiency in the more common uses. Because the efficiency at the manufacturer-declared voltage and the efficiency at the more commonly used voltages may not have direct correlation, such test procedures could potentially reduce the energy savings of this rulemaking.

d. Test at Highest-Rated Voltage

Another input voltage specification could be that the ballast should be tested at the highest voltage possible. OSI commented, and NEEA agreed, that fluorescent ballast test procedures set the precedent for having to test only at the highest rated voltage. They also said that this would reduce costs associated with additional testing for metal halide ballasts. (OSI, Public Meeting Transcript, No. 33 at p. 29; NEEA, No. 31 at p. 2) DOE understands the concern regarding increased burdens and costs associated with being required to test ballasts at multiple input voltages. DOE's research, however, found that a ballast's highest-rated voltage is not always its most common input voltage. For example, DOE found a significant number of 70 W ballasts that were capable of operating on 120 V, 208 V, 240 V, and 277 V. Testing at the highest-rated voltage would mean these ballasts are tested at 277 V, but manufacturer feedback indicated that 70 W ballasts are much more likely to be actually used in 120 V applications. One possible reaction to energy conservation standards based on this test procedure specification could be for manufacturers to optimize 70 W ballasts at 277 V (the tested voltage) as opposed to 120 V (the more commonly used voltage). Because of this possibility, DOE finds that testing and enforcing standards at the highest voltage could reduce the potential energy savings of this rulemaking.

e. Test on Input Voltage Based on Wattage and Available Voltages

In this NOPR, DOE is proposing that the most common input voltages for each wattage range be used in testing. Progress Energy Carolinas commented that an amendment to the current test procedures that would specify the required input voltage for testing would not provide enough energy savings for the additional expense. (Progress Energy Carolinas, No. 24 at p. 2) DOE disagrees with Progress Energy Carolinas' assertion that an added expense is inherent in specification of the input voltage for testing. DOE's proposal only requires testing at one input voltage, the minimum number of tests possible. By proposing testing at a single voltage, DOE reduces testing burden relative to a requirement for testing at multiple input voltages. In addition, because the input voltage specification matches the most commonly used voltage, the requirement encourages optimization of efficiency around an input voltage commonly used in practice. Finally, analysis of the impact of energy savings for this rulemaking is made more accurate by assessing ballast efficiency at the most commonly used input voltages.

In manufacturer interviews, DOE received feedback on usage of different input voltages. DOE learned that 208 V is the least used and least optimized voltage. DOE also received feedback that efficiencies at 277 V and 240 V are similar to each other. In general, DOE determined that fixtures with wattages less than 150 W were most often used at 120 V. Wattages of 150 W and above were most commonly used at 277 V. Thus, this NOPR proposes that testing of metal halide ballasts use the following input voltages:

- For ballasts less than 150 W that have 120 V as an available input voltage, ballasts are to be tested at 120 V.
- For ballasts less than 150 W that lack 120 V as an available voltage, ballasts should be tested at the highest available input voltage.
- For ballasts operated at greater than or equal to 150 W and less than or equal to 2000 W that also have 277 V as an available input voltage, ballasts are to be tested at 277 V.
- For ballasts greater than or equal to 150 W and less than or equal to 2000 W that lack 277 V as an available input voltage, ballasts should be tested at the highest available input voltage.

3. Testing Electronic Ballasts

With regards to testing electronic metal halide ballasts, DOE received feedback on several issues in response to the preliminary TSD. Some interested parties commented that the test procedures do not apply to any electronic ballasts and others commented that high-frequency electronic ballast testing is not specified and is more prone to measurement variation than low-frequency electronic ballast testing is. DOE discusses these comments below.

In the preliminary TSD, DOE noted that it would continue to use the 2005 version of ANSI C82.6 for testing both electronic and magnetic ballasts. Philips and Venture both commented that there are currently no test procedures for electronic ballasts. (Philips, Public Meeting Transcript, No. 33 at p. 130; Venture, Public Meeting Transcript, No. 33 at p. 130) Both Cooper and NEMA noted that an update to ANSI C82.6 that was to be released by the end of 2011 would include test procedures for low-frequency electronic (LFE) ballasts, but not high-frequency electronic (HFE) ballasts.[19] (Cooper, Public Meeting Transcript, No. 33 at pp. 27–28; NEMA, No. 34 at p. 2) NEEA commented that

[19] At the time of development of this NOPR in mid-2012, an update to ANSI C82.6–2005 was not yet available.

this delay should preclude DOE from altering the test procedures for electronic metal halide ballasts at this time. (NEEA, No. 31 at p. 2) In DOE's reading of ANSI C82.6, the scope dictates testing HID lamp ballasts without specifying applicability only to magnetic ballasts. In interviews with manufacturers, DOE received feedback confirming that ANSI C82.6–2005 does provide a method for testing low-frequency ballasts. Additionally, section 4.4.3 of ANSI C82.6–2005 discusses low-frequency electronic ballasts in the context of alternative stabilization methods.

DOE also received comments that HFE ballasts should be excluded from the rulemaking because there are no test procedures for them. Philips, OSI, and NEMA noted that the available equipment cannot test HFE ballast frequencies above 125 kHz as accurately as other ballasts, and Philips noted that HFE ballast testing accuracy can range from plus or minus two to five percent. (Philips, Public Meeting Transcript, No. 33 at p. 130; NEMA, No. 34 at p. 14; OSI, No. 27 at p. 4) NEEA commented that manufacturers stated that there are no ANSI or NEMA HFE standards, and that no test procedures could accurately assess the efficiency of these ballasts to within plus or minus one percent. Based on this information, NEEA recommended that DOE should not consider these products in this rulemaking. (NEEA, No. 31 at p. 9) Empower Electronics commented that the test procedures should be amended to include HFE ballast testing. (Empower Electronics, No. 36 at p. 2) DOE agrees that the instrumentation in ANSI C82.6–2005 is specified only up to 800 Hz for ammeters and voltmeters and to 1 kHz for wattmeters, and also that these would be insufficient for measurements of HFE ballasts.

DOE is proposing to amend the metal halide ballast and fixtures test procedures to specify the instrumentation required to test HFE ballasts. DOE found that the instrumentation commonly used for high-frequency electronic metal halide ballast testing is the same instrumentation used for fluorescent lamp ballast testing. DOE proposes that instrumentation at least as accurate as required by ANSI C82.6–2005 be used to assess the output frequency of the ballast. Once the output frequency is determined to be greater than or equal to 1000 Hz, (the frequency at which DOE proposes to define high-frequency electronic ballasts), the test procedure instrumentation would be required to include a power analyzer that conforms to ANSI C82.6–2005 with a maximum of 100 picofarads (pF) capacitance to ground and frequency response between 40 Hz and 1 MHz. The test procedures would also require a current probe compliant with ANSI C82.6–2005 that is galvanically isolated and has a frequency response between 40 Hz and 20 MHz, and lamp current measurement where the full transducer ratio is set in the power analyzer to match the current to the analyzer. The full transducer ratio would be required to satisfy:

$$\frac{I_{in}}{V_{out}} \times \frac{R_{in}}{R_{in} + R_s}$$

Where:
I_{in} is current through the current transducer;
V_{out} is the voltage out of the transducer;
R_{in} is the power analyzer impedance; and
R_s is the current probe output impedance.

4. Rounding Requirements

DOE also proposes to amend the metal halide ballast test procedure requirements for measuring and recording input wattage and output wattage to require rounding to the nearest tenth of a watt, and the resulting calculation of efficiency to the nearest tenth of a percent. Through testing, DOE found that testing multiple samples of the same ballast yielded a range of ballast efficiencies typically differing by less than one percent. Because this data introduces both test measurement and sample to sample variation, the test measurement itself should be at least this accurate. Therefore, DOE believes its test procedures can resolve differences of less than one percent and rounding to the tenths decimal place would be reasonable.

B. Technological Feasibility

1. General

In each standards rulemaking, DOE conducts a screening analysis based on information it has gathered on 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 this 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 is technologically feasible. DOE considers technologies incorporated in commercially available products or in working prototypes to be technologically feasible. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i)

Once DOE has determined that particular design options are technologically feasible, it evaluates each of these design options according to the following three 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. Section V.B of this notice discusses the results of the screening analysis for metal halide lamp fixtures. In particular, it lists the designs DOE considered, those it screened out, and those that are the basis for the TSLs in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the NOPR TSD.

2. Maximum Technologically Feasible Levels

Section 325(o) of EPCA requires that when DOE amends standards for a type or class of covered equipment, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for that product. (42 U.S.C. 6295(o)) Accordingly, DOE determined the maximum technologically feasible (''max tech'') ballast efficiency in this NOPR's engineering analysis, using the design options identified in the screening analysis (see chapter 4 of the NOPR TSD).

To determine the max tech level, DOE conducted a survey of the MHLF market and the research fields that support the market. DOE's view based on test data is that within a given equipment class, no working prototypes exist that have a distinguishably higher ballast efficiency than currently available equipment. Therefore, the highest efficiency level presented, which represents the most efficient tier of commercially available equipment, is the max tech level for this rulemaking. This highest efficiency level requires electronic ballasts using the best components and circuit topologies commercially available for fixtures rated ≥50 W to ≤500 W. The max tech efficiency level requires the highest grades of core steel and copper windings for the fixtures rated >500 W and ≤2000 W.

DOE did not screen out any technology options in the preliminary analysis. DOE received several comments regarding its determination of max tech ballast efficiency in the preliminary TSD. These comments are discussed in section V.C.8. For this NOPR, DOE conducted additional analysis to determine the appropriate max tech levels for metal halide ballasts. As discussed in section V.C.3, DOE added 150 W as a representative wattage, and tested ballasts to establish an appropriate max tech level for this wattage. DOE also conducted additional

testing of the 70 W, 250 W, 400 W, and 1000 W ballasts on the market, and determined the highest efficiency levels that are technologically feasible within each equipment class. As discussed in section V.C.9, data for each equipment class has been fit with a wattage-efficiency equation to determine the minimum efficiency levels. Table IV.1 presents the max tech efficiencies for each wattage range analyzed in the NOPR.

TABLE IV.1—MAX TECH LEVELS

Equipment class wattage range	Efficiency level*	Efficiency level equation %
≥50 and ≤100	EL4	100/(1+0.36*P∧(−0.3))†.
>100 and <150*	EL4	100/(1+0.36*P∧(−0.3)).
≥150** and ≤250	EL4	100/(1+0.36*P∧(−0.3)).
>250 and ≤500	EL4	100/(1+0.36*P∧(−0.3)).
>500 and ≤2000	EL2	For >500 W to <1000 W: 3.2*10∧(−3)*P + 89.9 For ≥1000 W to ≤2000 W: 93.1.

* Includes 150 W fixtures exempted by EISA 2007, which are fixtures rated only for 150 watt lamps; rated for use in wet locations, as specified by the National Electrical Code 2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2001.

** Excludes 150 W fixtures exempted by EISA 2007, which are fixtures rated only for 150 watt lamps; rated for use in wet locations, as specified by the National Electrical Code 2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2001.

† P is defined as the rated wattage of the lamp that the fixture is designed to operate.

DOE requests comment on its selection of the max tech levels and whether it is technologically feasible to attain these high efficiencies. Specifically, DOE seeks data on the potential change in efficiency, the design options employed, and the associated change in cost. Any design option that DOE considers to improve efficiency must meet the four criteria outlined in the screening analysis: technological feasibility; practicability to manufacture, install, and service; adverse impacts on product or equipment utility to customers or availability; and adverse impacts on health or safety. DOE also requests comment on any technological barriers to an improvement in efficiency above the max tech efficiency levels for all or certain types of ballasts.

C. Energy Savings

1. Determination of Savings

For each TSL, DOE projected energy savings from the equipment that are the subject of this rulemaking purchased in the 30-year period that begins in the year of compliance with new or amended standards (2016–2045). The savings are measured over the entire lifetime of products purchased in the 30-year period.[20] 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. For example, in the base case, DOE models a migration from covered metal halide lamp fixtures to higher-efficiency technologies such as high-intensity fluorescent (HIF), induction lights, and light-emitting diodes (LEDs). DOE also models a move to other HID fixtures such as high-pressure sodium, based on data given by manufacturers during the 2010 framework public meeting. (Philips, Public Meeting Transcript, No.8 at p. 91)

DOE used its NIA spreadsheet to estimate energy savings from new or amended-standards for the metal halide lamp fixtures that are the subject of this rulemaking. The NIA spreadsheet model (described in section V.G of this notice and in chapter 11 of the NOPR TSD) calculates energy savings in site energy, which is the energy directly consumed by products at the locations where they are used. DOE reports national energy savings on an annual basis in terms of the source (primary) energy savings, which is the savings in the energy that is used to generate and transmit the site energy. To convert site energy to source energy, DOE derived annual conversion factors from the model used to prepare the Energy Information Administration's (EIA) *Annual Energy Outlook 2013* (*AEO2013*).

DOE has begun to also estimate energy savings using full-fuel-cycle metrics. The full-fuel-cycle (FFC) metric includes the energy consumed in extracting, processing, and transporting primary fuels, and, thus, presents a more complete picture of the impacts of efficiency standards. DOE's approach is based on application of FFC multipliers for each fuel type used by covered products and equipment, as discussed in DOE's statement of policy published in the **Federal Register** on August 18, 2011 (76 FR 51281), and in the notice of policy amendment. 77 FR 49701 (August 17, 2012).

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 energy savings for all of the TSLs considered in this rulemaking (presented in section VI.B.3) are nontrivial, and, therefore, DOE considers them ''significant'' within the meaning of section 325 of EPCA.

D. Economic Justification

1. Specific Criteria

As noted in section II.A, 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)) The following sections discuss how DOE addresses each of those seven factors in this rulemaking.

[20] 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 equipment 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.

a. Economic Impact on Manufacturers and Customers

In determining the impacts of a new or amended standard on manufacturers, DOE first determines quantitative impacts using an annual-cash-flow approach. This approach includes both a short-term assessment—based on the cost and capital requirements during the period between the announcement of a regulation and when the regulation comes into effect—and a long-term (30-year) assessment. The quantitative impacts analyzed include INPV (which values the industry based on expected future cash flows), annual cash flows, and changes in revenue and income. Second, DOE analyzes and reports the impacts on different types of manufacturers, including an analysis of impacts on small manufacturers. Third, DOE considers the impact of standards on overall and technology-specific domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment for technology-specific manufacturers. DOE also takes into account cumulative impacts of different DOE regulations and other regulatory requirements on manufacturers.

For individual customers, measures of economic impact include the changes in LCC and PBP associated with new or amended standards. LCC is separately specified as one of the seven factors to consider when determining the economic justification for a new or amended standard (42 U.S.C. 6295(o)(2)(B)(i)(II)), and is discussed in the following section. For customers viewed from a national perspective, DOE calculates the net present value of the economic impacts on them over the 30-year equipment shipments period used in this rulemaking.

b. Life-Cycle Costs

The LCC is the sum of the purchase price of a fixture (including its installation) and its operating expenses (including energy, maintenance, and repair expenditures) discounted over the lifetime of the fixture. The LCC savings for the considered efficiency levels are calculated relative to a base case that reflects likely trends in the absence of new or amended standards. The LCC analysis required a variety of inputs, such as equipment prices, equipment energy consumption, energy prices, maintenance and repair costs, equipment lifetimes, and customer discount rates. DOE assumed in its analysis that customers purchase the equipment in 2016.

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.

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)) As discussed in section V.G, DOE uses the NIA spreadsheet to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing classes of equipment and evaluating design options and the impact of potential standard levels, DOE seeks to develop standards that would not lessen the utility or performance of the equipment under consideration. The efficiency levels considered in today's NOPR will not affect features valued by customers, such as input voltage and light output. Therefore, DOE believes that none of the TSLs presented in section VI.A would reduce the utility or performance of the ballasts considered in the rulemaking. (42 U.S.C. 6295(o)(2)(B)(i)(IV))

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider any lessening of competition likely to result from standards. It directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit this determination to the Secretary, not later than 60 days after the publication of a proposed rule, together with an analysis of the nature and extent of such impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii)) DOE has transmitted a copy of today's proposed rule to the Attorney General and has requested that the Department of Justice (DOJ) provide its determination on this issue. DOE will address the Attorney General's determination in any final rule.

f. Need for National Energy Conservation

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.

The proposed standards also are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production. DOE reports the emissions impacts from today's proposed standards, and from each TSL it considered, in section VI.B.6 of this notice. DOE also reports estimates of the economic value of emissions reductions resulting from the considered TSLs.

g. Other Factors

EPCA allows the Secretary to consider any other relevant factors in determining whether a standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) Under this provision, DOE considered subgroups of customers that may experience disproportionately adverse effects under the standards proposed in this rule. DOE specifically assessed the effect of standards on utilities, transportation facility owners, and warehouse owners. In considering these subgroups, DOE analyzed differences in electricity prices, operating hours, discount rates, and baseline ballasts. See section V.H for further detail.

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the customer of equipment that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effects that proposed energy conservation standards would have on the payback period for customers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of

impacts to customers, manufacturers, the nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis 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 VI.B.1 of this NOPR.

V. Methodology and Discussion

DOE used two spreadsheet tools to estimate the impact of today's proposed standards. The first spreadsheet tool calculates LCCs and PBPs of potential new energy conservation standards. The second spreadsheet tool provides shipment projections and then calculates national energy savings and net present value impacts of potential new energy conservation standards. The Department also assessed manufacturer impacts, largely through use of the Government Regulatory Impact Model (GRIM).

Additionally, DOE estimated the impacts of energy efficiency standards on utilities and the environment. DOE used a version of EIA's National Energy Modeling System (NEMS) for the utility and environmental analyses. The NEMS model simulates the energy sector of the U.S. economy. EIA uses NEMS to prepare its *Annual Energy Outlook,* a widely known reference energy forecast for the United States. The NEMS-based model used for appliance standards analysis is called NEMS–BT (BT stands for DOE's Building Technologies Program), and is based on the current AEO (*AEO2013)* NEMS with minor modifications.[21] The NEMS–BT accounts for the interactions between the various energy supply and demand sectors and the economy as a whole. For more information on NEMS, refer to *The National Energy Modeling System: An Overview,* DOE/EIA–0581 (98) (Feb. 1998), available at: *tonto.eia.doe.gov/FTPROOT/forecasting/058198.pdf.*

A. Market and Technology Assessment

1. General

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 products, the industry structure, and the market characteristics. This activity includes both quantitative and qualitative assessments based on publicly available information. The subjects addressed in the market and technology assessment for this rulemaking include: Equipment classes and manufacturers; historical shipments; market trends; regulatory and non-regulatory programs; and technologies or design options that could improve the energy efficiency of the product(s) under examination. See chapter 3 of the NOPR TSD for further discussion of the market and technology assessment.

2. Equipment Classes

In establishing energy conservation standards, DOE divides covered equipment into classes by: (a) The type of energy used, (b) the capacity of the equipment, or (c) any other performance-related feature that justifies different standard levels, such as features affecting consumer utility. (42 U.S.C. 6295(q)) DOE then considers establishing separate standard levels for each equipment class based on the criteria set forth in 42 U.S.C. 6295(o).

In the preliminary analysis, DOE considered several potential class-setting factors for fixtures, including rated lamp wattage, input voltage, number of lamps operated, starting method, electronic configuration, circuit type, and fixture application. DOE preliminarily determined that rated lamp wattage was the only factor affecting both consumer utility and efficiency. DOE, therefore, analyzed four equipment classes for fixtures with rated lamp wattages: (1) Greater than or equal to 50 W and less than 150 W; (2) greater than or equal to 150 W and less than or equal to 250 W; (3) greater than 250 W and less than or equal to 500 W; and (4) greater than 500 W. As discussed in the following sections, several interested parties commented on the preliminary equipment classes and the other class-setting factors that DOE considered.

a. Input Voltage

Metal halide lamp fixtures are available in a variety of input voltages (such as 120 V, 208 V, 240 V, 277 V, and 480 V), and the majority of fixtures are equipped with ballasts that are capable of operating at multiple input voltages (for example quad-input-voltage ballasts are able to operate at 120 V, 208 V, 240 V, and 277 V). DOE determined that input voltage represents a feature affecting consumer utility as certain applications demand specific input voltages. Although input voltage can affect ballast resistive losses and thus, efficiency, for the preliminary analysis, DOE's ballast testing did not indicate a prevailing relationship (*e.g.,* higher voltages are not always more efficient) between discrete input voltages and ballast efficiencies. Therefore, in the preliminary analysis, DOE did not establish separate equipment classes for metal halide lamp fixtures based on input voltage. In the preliminary analysis, DOE suggested that efficiency be represented by the average of tested efficiencies at each of the input voltages at which the ballast is rated for operation.

In response to the preliminary analysis, DOE received several comments supporting and opposing input voltage as a class-setting criterion. NEMA noted that multiple-input-voltage ballasts are often optimized for the most popular voltage application. For example, a quint-input-voltage ballast (able to operate at five different input voltages) will often have a lower efficiency at 480 V than at 277 V because the ballast is optimized for 277 V operation. NEMA suggested that 480 V-capable ballasts be given an efficiency allowance, or that all ballasts be allowed to be tested at the optimal operating voltage as specified by the manufacturer. (NEMA, No. 34 at p. 10) Georgia Power also commented that due to their increased costs relative to non-480 V ballasts, dedicated 480 V and quint-input-voltage ballasts should be in a separate equipment class. (Georgia Power, No. 28 at p. 1) Progress Energy Carolinas agreed that separate equipment classes should be established for ballasts above 300 V. (Progress Energy Carolinas, No. 24 at p. 2) NEEA found that voltage does not appear to be a significant factor in energy efficiency performance or system utility. However, NEEA had no objection to treating 480 V systems as a separate class, should DOE choose to do so. (NEEA, No. 31 at p. 3) Empower Electronics commented that a separate classification based on input voltage is not needed. (Empower Electronics, No. 36 at p. 5)

As discussed in section IV.A of this NOPR, DOE is proposing that metal halide ballasts be tested at a single input voltage, based on the lamp wattage operated by the ballast. Ballasts that operate lamps 150 W or less would be tested at 120 V, and all others would be tested at 277 V, unless the ballast is incapable of operating at the specified input voltage; in that case, the ballast would be tested at the highest input voltage possible. DOE's view is that this proposal would reduce the testing burden and better characterize the

[21] The EIA does not approve use of the name ''NEMS'' unless it describes an *AEO* version of the model without any modification to code or data. Because the present analysis entails some minor code modifications and runs the model under various policy scenarios that deviate from *AEO* assumptions, the name ''NEMS–BT'' refers to the model as used here.

energy consumption of metal halide lamp fixtures for the majority of applications in which they are installed. Based on the proposed test procedures, DOE evaluated efficiency differences between dedicated 480 V, quint-input-voltage, and quad-input-voltage ballasts (which represent the vast majority of ballasts on the market). DOE found that the quint-input-voltage ballasts had similar efficiencies as the quad-input-voltage ballasts when both were tested at 120 V or 277 V. In contrast, DOE found that the dedicated 480 V ballasts (tested at 480 V) were, on average, 1.4 percent less efficient than quad-input-voltage ballasts (tested at 120 V or 277 V).

Because dedicated 480 V ballasts have a distinct utility and a difference in efficiency relative to ballasts tested at 120 V and 277 V, DOE proposes separate equipment classes for ballasts tested at 480 V (in accordance with the test procedures). These would include dedicated 480 V ballasts and any ballasts that are capable of being operated at 480 V, but incapable of being operated at the input voltage specified by the test procedures (either 120 V or 277 V, depending on lamp wattage). DOE requests comment on this proposal.

Fixture Application

Metal halide lamp fixtures are used in a variety of applications such as parking lots, roadways, warehouses, big-box retail, and flood lighting. Although the fixture size, shape, and optics are often tailored to the application, generally the same types of ballasts are currently utilized for most of the applications. DOE did not expect fixture-application-related attributes to affect ballast efficiency for a given lamp wattage, and in the preliminary analysis DOE did not analyze separate equipment classes based on such attributes.

In response to the preliminary analysis, DOE received several comments regarding the problems of utilizing electronic ballasts in outdoor applications and recommending that DOE establish separate equipment classes for outdoor fixtures and indoor fixtures. Energy Solutions noted that there are significant fixture design considerations necessitated by outdoor use. (Energy Solutions, Public Meeting Transcript, No. 33 at pp. 46–47) Progress Energy Carolinas clarified that ballasts used in outdoor fixtures need to be able to withstand high temperatures, voltage variations, and lightning and other voltage surges. Progress Energy Carolinas also indicated that the same concerns existed with LED fixtures (utilizing electronic drivers) and that they were successfully addressed by adding heat sinks to dissipate excess heat; building regulation into the drivers to deal with voltage variations; and adding metal oxide varistor (MOV) protection (typically 10 kilo volt [kV] ANSI C62.41.1–2002 [22] Class C protection) to protect against lightning and other voltage surges. LED fixtures also underwent field testing through all four seasons to prove overall reliability. Progress Energy Carolinas explained that until some of these issues are similarly addressed and their solutions proven, end users will be reluctant to use electronic metal halide ballasts in outdoor fixtures. (Progress Energy Carolinas, No. 24 at p. 1) Georgia Power and Progress Energy Carolinas stated that outdoor electronic metal halide ballasts have not been widely adopted by utilities, largely due to these reliability concerns. NEMA urged DOE to establish MHLF standards for outdoor applications (which have higher transient requirements and wider operating temperature ranges) such that magnetic ballasts would be compliant. (NEMA, No. 34 at p. 9) If electronic ballasts are mandated for outdoor fixtures, Progress Energy Carolinas recommended that utilities be exempt until reliability concerns decrease. (Georgia Power, No. 28 at p. 2; Progress Energy Carolinas, No. 24 at p. 2)

The CA IOUs, however, stated that electronic ballasts have been successfully applied in outdoor applications and are readily available on the market today, citing examples of commercially available electronic metal halide products rated for outdoor use and municipalities that have adopted electronically ballasted metal halide streetlights. The CA IOUs expressed their belief that the application environment does not affect the utility or the achievable efficiency of a ballast. The CA IOUs also stated that should DOE decide that the use of electronic ballasts in outdoor environments requires additional fixture modifications, DOE would need to conduct separate cost and savings analyses for indoor versus outdoor applications. If DOE decides to set different equipment classes for indoor and outdoor metal halide lamp fixtures, the CA IOUs suggested that DOE adopt California's approach for differentiation of these types by specifying fixtures that are ''UL 1598 Wet Location Listed and labeled 'Suitable for Wet Locations' as specified by the National Electrical Code [NEC] 2005, Section 410.4(A).'' (CA IOUs, No. 32 at pp. 2–3)

Although electronic ballasts are being successfully used in certain outdoor applications, DOE acknowledges that there is currently a market reluctance to use electronic metal halide ballasts in outdoor applications, particularly due to concerns with the electronic ballast's ability to withstand voltage transients. However, DOE disagrees with NEMA that an efficiency level that requires electronic ballasts should not be analyzed or proposed on the basis of the features of transient suppression and operating temperature ranges. DOE's view is that addressing these concerns with either (1) an external surge protection device or (2) internal transient protection of the ballast using MOVs in conjunction with other inductors and capacitors is technologically feasible, as shown by the CA IOUs' list of examples. DOE understands that this added protection also adds an incremental cost to the ballast or fixture (further discussed in section V.C.12). As these incremental costs could affect the cost effectiveness of fixtures for outdoor applications, DOE proposes separate equipment classes for indoor and outdoor fixtures. DOE proposes that outdoor fixtures be defined as those that (1) are rated for use in wet locations and (2) have 10 kV of voltage transient protection. Conversely, fixtures that do not meet these requirements will be defined as indoor fixtures.

DOE proposes to define the wet location rating as specified by the National Electrical Code 2011,[23] section 410.10(A) or Underwriters Laboratories (UL) 1598 Wet Location Listed.[24] DOE believes that providing two possible definitions will reduce the compliance burden as many manufacturers are already familiar with one or both of these ratings (the NEC definition was included in EISA 2007 and both are used in California energy efficiency regulations). For 10 kV voltage transient protection, DOE proposes to use the 10

[22] ''Institute of Electrical and Electronics Engineers Guide on the Surge Environment in Low-Voltage (V and Less) AC Power Circuits,'' Approved April 4, 2003.

[23] The NEC 2011 states that fixtures installed in wet or damp locations shall be installed such that water cannot enter or accumulate in wiring components, lampholders, or other electrical parts. All fixtures installed in wet locations shall be marked, ''Suitable for Wet Locations.'' All fixtures installed in damp locations shall be marked ''Suitable for Wet locations'' or ''Suitable for Damp Locations.''

[24] UL Standard Publication 1598 defines a wet location is one in which water or other liquid can drip, splash, or flow on or against electrical equipment. A wet location fixture shall be constructed to prevent the accumulation of water on live parts, electrical components, or conductors not identified for use in contact with water. A fixture that permits water to enter the fixture shall be provided with a drain hole.

kV voltage pulse withstand requirement from ANSI C136.2–2004 as a characteristic unique to outdoor fixtures. As discussed in section VI.C, based on weighing the benefits and drawbacks of different requirements, DOE is proposing efficiency standards that are the same for indoor and outdoor equipment classes. If a different requirement is ultimately adopted by DOE in the final rule, the definitions of indoor and outdoor will be added to the Code of Federal Regulations for metal halide lamp fixtures.

c. Electronic Configuration and Circuit Type

Of the two metal halide ballast types (electronic and magnetic), magnetic ballasts are currently more common. Magnetic ballasts typically use transformer-like copper or aluminum windings on a steel or iron core. The newer electronic ballasts, which are more efficient but less common, rely on integrated circuits, switches, and capacitors/inductors to control current and voltage to the lamp. Both electronic and magnetic ballasts are capable of producing the same light output and, with certain modifications (*e.g.,* thermal management, transient protection, 120 V auxiliary power functionality), can be used interchangeably in all applications.

Magnetic metal halide ballasts are available in the market in several types of circuit configurations including high-reactance autotransformer, constant-wattage isolated transformer, constant-wattage autotransformer (CWA), linear reactor (reactor), and magnetically regulated-lag (reg-lag or mag-reg) ballasts. Each magnetic circuit type listed has different characteristics that may be preferred in certain applications. These characteristics (discussed further in chapter 3 of the NOPR TSD) include size, efficiency, and power regulation. For example, magnetically regulated-lag ballasts are typically the largest and heaviest circuit type, but provide the greatest degree of resistance to input voltage variation (which sustains light output). In the preliminary analysis, DOE determined that although magnetic ballasts are usually less efficient and have a lower initial cost than electronic ballasts, neither configuration provides a distinct consumer utility over the other. Because electronic ballasts can provide the same utility as any magnetic circuit type, can be used as substitutes in all applications, and are generally more efficient than magnetic ballasts, DOE determined in the preliminary analysis that setting separate equipment classes based on electronic configuration (magnetic vs. electronic) or on circuit type was unnecessary.

At wattages greater than 500 W, few electronic ballasts are available due to their higher cost and lower expected efficiency improvement over magnetic ballasts. Electronic ballasts have two primary circuit types that operate the lamp at either ''high'' or ''low'' frequency. DOE proposes to define a high-frequency ballast to be a ballast with output frequency greater than or equal to 1000 Hz. For low-frequency electronic ballasts, a square current waveform is used to diminish acoustic resonance and maintain lamp life. All lamps operate well on low-frequency square waves, so these low-frequency ballasts have few compatibility issues with lamps. At higher frequencies, however, acoustic resonance issues and electromagnetic interference (EMI) effects cause compatibility issues with lamps. At these high frequencies, ballasts have to be designed to have the right frequency for a desired lamp, but the selected frequency may be incompatible with other lamps designed for different frequencies. Therefore, high-frequency electronic ballasts are less widely compatible with lamps relative to low-frequency electronic ballasts. High-frequency ballasts may also have difficulty complying with Federal Communications Commission (FCC) standards.[25]

In response to DOE's preliminary determination not to use electronic configuration or circuit type as a class-setting factor, DOE received several comments relating to replacement of magnetic ballasts with electronic ballasts, possible reliability issues with electronic ballasts, and non-efficiency-related benefits to using electronic ballasts. Cooper Lighting stated that electronic ballasts are not direct replacements for magnetic ballasts in fixtures. (Cooper Lighting, Public Meeting Transcript, No. 33 at p. 64) With regard to reliability, Georgia Power said that (1) electronic ballasts are unproven in outdoor applications and (2) electronic ballasts are vulnerable to failures due to high temperature, moisture, and voltage variations and surges caused by lightning and other outdoor events. Progress Energy Carolinas did not disagree with including electronic and magnetically ballasted fixtures in the same equipment class, but commented that the expected energy savings are small. They stated that other operating characteristics drive the use of electronic ballasts in indoor applications (*i.e.,* correlated color temperature variation, lamp lumen depreciation, and dimming). (Progress Energy Carolinas, No. 24 at p. 2) The CA IOUs agreed with Georgia Power that electronic ballasts, especially in conjunction with pulse-start ceramic metal halide lamps that offer higher efficacy and improved color rendering index (CRI), have other advantages that can offset their added cost. The CA IOUs also stated that electronic ballasts do save energy relative to magnetically ballasted systems. (CA IOUs, No. 32 at p. 4) Finally, Empower Electronics supported DOE's preliminary determination, stating that equipment classes need not be set according to electronic configuration and circuit type. (Empower Electronics, No. 36 at p. 6)

As discussed in section V.C.12, DOE recognizes the technological differences between magnetic and electronic ballasts and has incorporated the cost of additional devices or modifications necessary for certain applications into its analysis. In section V.I.2, DOE addresses impacts on manufacturers of a transition to electronic ballasts, but does not consider these impacts in development of equipment classes. While acknowledging that customers make purchasing decisions on electronic versus magnetic ballasts after consideration of other parameters in addition to efficiency, DOE has determined that significant energy savings can be realized through a transition from magnetic to electronic ballasts (see section VI.B.3). For this NOPR, DOE maintains that electronic configuration does not affect consumer utility because with the necessary design adders, electronic ballasts can provide the same utility as magnetic ballasts. Because of this, DOE is not proposing to define equipment classes based on electronic configuration and requests comment on this matter.

d. Lamp Wattage

As lamp wattage increases, lamp and ballast systems generally (but not always) produce increasing amounts of light (lumens). The goal of efficiency standards is to decrease the wattage needed for the same lumens—resulting in an increase in energy efficiency. Because certain applications require more light than others, wattage often varies by application. For example, low-wattage (less than 150 W) lamps are

[25] FCC regulations at 47 CFR part 18, subpart C set forth technical standards for industrial, scientific, and medical equipment that specify frequency bands and tolerance ranges as well as electromagnetic field strength limits. Some metal halide ballasts may be covered under these ''industrial, scientific, and medical (ISM) equipment'' standards, which list the general operating conditions for ISM equipment. Ballasts designed to exceed 9 kHz ballast frequency have to be designed so that interference with transmitted radio frequencies is eliminated. 47 CFR 18.111, 18.301–11

used today in commercial applications for general lighting. Medium-wattage (150–500 W) lamps are the most widely used today and include warehouse, street, and general commercial lighting. High-wattage (greater than 500 W) lamps are used today in searchlights, stadiums, and other applications that require powerful white light. In the preliminary analysis, based on its impact on light output, DOE determined that lamp wattage affects consumer utility. DOE also determined that the wattage of a lamp operated by a ballast is correlated with the ballast efficiency, which generally increases for higher-wattage loads. For electronic ballasts, this efficiency gain can be attributed to the decreasing proportion of fixed losses (*e.g.,* switches) to total losses. For low-wattage electronic ballasts, certain fixed losses contribute a larger proportion of total losses than they do for high-wattage ballasts. Magnetic ballasts—essentially transformers (sometimes with capacitors for power correction and igniters for pulse-starting)—have proportionally lower overall losses with increased wattage. Transformer losses (resistive losses in windings, eddy currents, and hysteresis) do not scale linearly with wattage, meaning that overall efficiency increases with wattage. Because wattage affects consumer utility (lumen output) and has a strong correlation to efficiency, DOE determined that separate equipment classes based on wattage were warranted. As a result in the preliminary analysis, DOE analyzed four lamp wattage class bins: ≥50 W and <150 W, ≥150 W and ≤250 W, >250 W and ≤500 W, and >500 W.

NEEA, Empower Electronics, and Progress Energy Carolinas supported DOE's determination in the preliminary analysis that wattage should be a class-setting factor. (NEEA, No. 31 at p. 3; Empower Electronics, No. 36 at p. 7; Progress Energy Carolinas, No. 24 at p. 3) Because no adverse comments were received on DOE's determination, DOE proposes to continue using lamp wattage as a class-setting factor for this NOPR.

For the NOPR, DOE found that even within a designated wattage range (such as between 100 W and 150 W), the potential efficiencies manufacturers can reach is not constant, but rather varies with wattage. Instead of setting a constant efficiency standard within a wattage bin, DOE is proposing the use of an equation-based energy conservation standard for certain equipment classes (see section V.C). DOE is also continuing to use wattage bins (instead of a single equation spanning the entire covered wattage range) to define equipment classes, for two reasons. First, the range of ballast efficiencies considered can differ significantly by lamp wattage, thus making it difficult to construct a single continuous equation for ballast efficiency from 50 W to 2000 W. This efficiency difference can be attributed to the varying cost of increasing ballast efficiency for different wattages and the impact of legislated (EISA 2007) standards that affect only some wattage ranges. Second, different wattages often serve different applications and have unique cost-efficiency relationships. Analyzing each wattage range as a separate equipment class allows DOE to establish the energy conservation standards that are cost-effective for each wattage bin.

DOE also received comment that certain wattage ranges used in the preliminary analysis should be further divided. Progress Energy Carolinas commented that further division of the 50 W to 250 W equipment class was warranted on the basis of different levels of efficiency being possible for different wattages. (Progress Energy Carolinas, No. 24 at p. 1) For this NOPR, DOE determined that the ≥50 W and <150 W range should be further subdivided. DOE's test data indicates that efficiency varies more significantly for ballasts that operate 50 W to 150 W lamps than for any other wattage range considered in the preliminary TSD. Based on catalog information and manufacturer interviews, DOE determined that 50 W and 100 W fixtures typically serve the same applications, while 150 W products begin to serve applications with increased light demand such as area lighting or parking lots. DOE used this natural division in wattage based on application to further divide the lowest-wattage range from the preliminary analysis.

With regards to the specification of the boundary between fixtures rated to operate at wattages above and below 150 W, Georgia Power commented that 150 W fixtures should be included with fixtures less than 150 W, not those greater than 150 W. (Georgia Power, No. 2 at p. 2) DOE agrees that some 150 W fixtures (those exempted by EISA 2007) should be included in the >100 to <150 W equipment classes. As discussed previously in section III.A.1, there is an existing EISA 2007 exemption for ballasts rated for only 150 W lamps, used in wet locations, and that operate in ambient air temperatures higher than 50 °C. This exemption has led to a difference in the commercially available efficiencies for ballasts that are exempted or not exempted from EISA 2007. The exempted ballasts have a range of efficiencies similar to wattages less than 150 W. Ballasts not exempted by EISA 2007 have efficiencies similar to ballasts greater than 150 W. As a result, DOE is proposing that 150 W fixtures previously exempted from EISA 2007 be included in a >100 W and <150 W range, while 150 W fixtures subject to EISA 2007 standards would be included in a ≥150 W to ≤250 W range.

In the preliminary analysis, DOE included all fixtures rated to operate at wattages greater than 500 W in the same equipment class. OSI suggested that DOE include 500 W ballasts in the highest-wattage range. OSI stated that electronic ballasts that operate lamps greater than or equal to 500 W have not been developed yet. (OSI, No. 27 at p. 4) In response to the lack of electronic ballasts operating lamps greater than or equal to 500 W, DOE agrees that there are not commercially available electronic ballasts at these wattages today, but also notes that magnetic ballasts are also unavailable at this wattage. Because leaving the boundary between these two wattage ranges at 500 W does not affect any commercially available products, DOE proposes to maintain the >250 W and ≤500 W range for consistency with the EISA 2007 covered wattage range.

In summary, DOE is proposing to define metal halide lamp fixture equipment classes by rated lamp wattage ranges ≥50 W to ≤100 W, >100 W to <150 W, ≥150 W to ≤250 W, >250 W to ≤500 W, and >500 W to ≤2000 W. DOE proposes that 150 W fixtures previously exempted by EISA 2007 be included in the >100 W to <150 W range, while 150 W fixtures subject to EISA 2007 standards continue to be included in the ≥150 W to ≤250 W range. DOE requests comment on these wattage ranges.

e. Number of Lamps

Metal halide lamp fixtures are commonly designed to operate with a single lamp because of lamp characteristics related to re-striking (turning the lamp on again after being turned off, because metal halide lamps require time to cool down before being lighted again) and voltage regulation. DOE's review of manufacturer catalogs revealed that while a majority of available ballasts operate only one lamp, a small fraction are designed for two lamps. Based on this review, DOE determined that there is little to no change in efficiency between one-lamp and two-lamp metal halide ballast fixtures. In the preliminary analysis, DOE determined it unnecessary to consider multiple-lamp ballasts in

equipment classes separate from single-lamp ballasts.

NEMA agreed with DOE on the limited number of two-lamp metal halide lamp fixtures. Because two-lamp ballasts represent such a small part of the market, NEMA suggested they be excluded from the rulemaking. Given the optical size of a metal halide lamp, NEMA found it unlikely that a manufacturer would use this exemption as a loophole. Fixtures using multiple-lamp ballasts would have to be larger, more expensive, and less optically efficient than those with single-lamp ballasts. (NEMA, No. 34 at p. 10) Because catalog data shows no difference in efficiency, in this NOPR, DOE continues to propose including ballasts with differing numbers of lamps in the same equipment class. DOE is not proposing to exclude 2-lamp ballasts from the scope of coverage.

f. Starting Method

Metal halide lamp fixtures currently available in the market are designed to operate with either probe-start or pulse-start lamps, but not a mixture of both types at the same time.[26] The main differences between these starting methods are: (1) The inclusion of a third probe in probe-start lamps, (2) the need for an igniter circuit for pulse-start lamps, and (3) the different wiring specification for ballasts of each starting method. Most new applications in the market are pulse-start due to its higher efficacy (pulse-start lamps provide more lumens per watt than probe-start lamps). In the preliminary analysis, DOE did not consider probe versus pulse-starting to be a class-setting factor. While pulse-start lamps are more efficacious than probe-start lamps, probe and pulse-start ballasts can achieve the same levels of ballast efficiency and are used in similar applications. DOE did not receive any adverse comment relating to this preliminary determination, so in this NOPR, DOE proposes that both probe and pulse-start ballasts be included in the same equipment class.

EISA 2007 distinguishes nonpulse-start electronic equipment classes by separating them into two rated lamp wattage ranges (≥150 W and ≤250 W, and >250 W and ≤500 W) and applying a more stringent standard to them than to other ballast types. According to DOE's review of manufacturer catalogs and information provided by manufacturers during interviews, nonpulse-start electronic metal halide lamp fixtures are not available in the market. While EISA 2007 contemplated the creation of additional classes for alternative technologies that could become available in the future, DOE has no information that indicates differences in efficiency or consumer utility based on pulse-start versus nonpulse-start ballast fixtures. Based on this information, in the preliminary analysis, DOE determined that a separate equipment class for nonpulse-start ballasts was unnecessary. DOE did not receive adverse comments relating to this preliminary determination, so in this NOPR, DOE is proposing that nonpulse-start electronic ballasts be included in the same equipment class as all other starting methods. The term nonpulse-start electronic ballast is currently undefined in the CFR. To avoid confusion, DOE is proposing to define 'nonpulse-start electronic ballast' in 10 CFR 431.322 as an electronic ballast with a starting method other than pulse-start.

Due to their apparent interchangeability and lack of unique or separate utility that would affect efficiency, DOE proposes not to use ballast-starting method as a class-setting feature.

g. Conclusions

Based on interested party input and additional research, in this NOPR, DOE has decided to propose the equipment classes in the following table. DOE has revised the wattage bins considered in the preliminary analysis to account for a varying number of efficiency levels, different cost-efficiency relationships in the lower wattages, and the lack of general lighting applications for wattages higher than 2000 W. Additionally, each of these wattage bins is further divided into indoor and outdoor applications to account for the difference in consumer utility and the cost-efficiency relationships for these application types (see section V.C.12 for further details about the cost adders that effect these relationships). Finally, each of these classes is subdivided by input voltage, with one class for ballasts tested at 480 V (in accordance with the 2009 test procedures, supplemented with the testing guidance included in this document), and the non-480 V ballasts in a separate class. Ballasts tested at 480 V include dedicated 480 V ballasts and any ballast capable of being operated at 480 V, but incapable of being operated at the input voltage specified by the amendments to the test procedures proposed in this NOPR (either 120 V or 277 V, depending on lamp wattage). DOE invites comments on these proposed equipment classes.

TABLE V.1—METAL HALIDE LAMP FIXTURE NOPR EQUIPMENT CLASSES

Equipment classes	Rated lamp wattage	Indoor/outdoor †	Input voltage type ‡
1	≥50 W and ≤100 W	Indoor	Tested at 480 V.
2	≥50 W and ≤100 W	Indoor	All others.
3	≥50 W and ≤100 W	Outdoor	Tested at 480 V.
4	≥50 W and ≤100 W	Outdoor	All others.
5	>100 W and <150 W *	Indoor	Tested at 480 V.
6	>100 W and <150 W *	Indoor	All others.
7	>100 W and <150 W *	Outdoor	Tested at 480 V.
8	>100 W and <150 W *	Outdoor	All others.
9	≥150 W ** and ≤250 W	Indoor	Tested at 480 V.
10	≥150 W ** and ≤250 W	Indoor	All others.
11	≥150 W ** and ≤250 W	Outdoor	Tested at 480 V.
12	≥150 W ** and ≤250 W	Outdoor	All others.
13	>250 W and ≤500 W	Indoor	Tested at 480 V.
14	>250 W and ≤500 W	Indoor	All others.
15	>250 W and ≤500 W	Outdoor	Tested at 480 V.
16	>250 W and ≤500 W	Outdoor	All others.
17	>500 W and ≤2000 W	Indoor	Tested at 480 V.
18	>500 W and ≤2000 W	Indoor	All others.

[26] DOE is aware of some metal halide lamps that can be operated by a pulse-start or a probe-start ballast. These lamps are much less common than lamps designed to be operated by ballasts of only one starting method.

TABLE V.1—METAL HALIDE LAMP FIXTURE NOPR EQUIPMENT CLASSES—Continued

Equipment classes	Rated lamp wattage	Indoor/outdoor †	Input voltage type ‡
19	>500 W and ≤2000 W	Outdoor	Tested at 480 V.
20	>500 W and ≤2000 W	Outdoor	All others.

* Includes 150 W fixtures exempted by EISA 2007, which are fixtures rated only for 150 watt lamps; rated for use in wet locations, as specified by the National Electrical Code 2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2001.

** Excludes 150 W fixtures exempted by EISA 2007, which are fixtures rated only for 150 watt lamps; rated for use in wet locations, as specified by the National Electrical Code 2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2001.

† DOE's proposed definitions for ''indoor'' and ''outdoor'' metal halide lamp fixtures are described in section V.A.2.

‡ Input voltage for testing would be specified by the test procedures. Ballasts rated to operate lamps less than 150 W would be tested at 120 V, and ballasts rated to operate lamps ≥150 W would be tested at 277 V. Ballasts not designed to operate at either of these voltages would be tested at the highest voltage the ballast is designed to operate. See section IV.A for further detail.

DOE requests comment on the proposed equipment classes.

B. Screening Analysis

For the screening analysis, DOE consults with industry, technical experts, and other interested parties to develop a list of technology options for consideration and to determine which technology options to consider further and which to screen out.

Section 325(o)(2) of EPCA requires that any new or revised standard achieve the maximum improvement in energy efficiency determined to be technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)) Appendix A to subpart C of 10 CFR part 430, ''Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products'' (the Process Rule), sets forth procedures to guide DOE in its consideration and promulgation of new or revised energy conservation standards. These procedures elaborate on the statutory criteria provided in 42 U.S.C. 6295(o) and, in part, eliminate problematic technologies early in the process of prescribing or amending an energy conservation standard. In particular, sections 4(b)(4) and 5(b) of the Process Rule provide guidance to DOE for determining which design options are unsuitable for further consideration:

Technological feasibility. DOE will consider technologies incorporated in commercial products or in working prototypes to be technologically feasible.

Practicability to manufacture, install, and service. If mass production and reliable installation and servicing of a technology in commercial products could be achieved on the scale necessary to serve the relevant market at the time the standard comes into effect, then DOE will consider that technology practicable to manufacture, install, and service.

Adverse impacts on product utility or product availability. If DOE determines a technology would have significant adverse impacts on the utility of the product to significant subgroups of consumers, or would result in the unavailability of any covered equipment type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as equipment generally available in the United States at the time, it will not consider this technology further.

Adverse impacts on health or safety. If DOE determines that a technology will have significant adverse impacts on health or safety, it will not consider this technology further.

For the preliminary analysis, DOE identified the design options listed in Table V.2 as technologies that could improve MHLF ballast efficiency and pass the screening criteria discussed above. For further details on these design options, see chapter 3 of the NOPR TSD. DOE received several comments, discussed below, in response to the design options presented in the preliminary analysis, particularly on ''improved core steel'' for magnetic ballasts and ''improved components'' for electronic ballasts.

TABLE V.2—METAL HALIDE LAMP FIXTURE PRELIMINARY ANALYSIS DESIGN OPTIONS

Ballast type	Design option		Description
Magnetic	Improved Core Steel		Use a higher grade of electrical steel, including grain-oriented silicon or amorphous steel, to lower core losses.
	Copper Wiring		Use copper wiring in place of aluminum wiring to lower resistive losses.
	Increased Stack Height		Add steel laminations to lower core losses.
	Increased Conductor Cross-Section		Increase conductor cross section to lower winding losses.
	Electronic Ballast		Replace magnetic ballasts with electronic ballasts.
Electronic	Improved Components	Magnetics	Use grain-oriented or amorphous electrical steel to reduce core losses.
			Use optimized-gauge copper or litz wire to reduce winding losses.
			Add steel laminations to lower core losses.
			Increase conductor cross section to lower winding losses.
		Diodes	Use diodes with lower losses.
		Capacitors	Use capacitors with a lower effective series resistance and output capacitance.
		Transistors	Use transistors with lower drain-to-source resistance.

TABLE V.2—METAL HALIDE LAMP FIXTURE PRELIMINARY ANALYSIS DESIGN OPTIONS—Continued

	Improved Circuit Design	Integrated Circuits	Substitute discrete components with an integrated circuit.

DOE received comment on whether improved core steel was a design option or if the highest-grade steels are already used in commercially available ballasts. NEEA was generally in support of the 13 selected design options and DOE's decision to not screen any of them further. However, NEEA did comment that if higher-grade electrical steels are already being utilized in the baseline efficiency ballasts, this may limit DOE's ability to apply ''improved core steel'' as a design option for improving efficiency. (NEEA, No. 31 at p. 4) DOE agrees that some ballasts available on the market today already use some of the highest grades of grain-oriented core steel available. For example, DOE has received feedback that 175 W magnetic ballasts typically require M6 steel, a high-grade, grain-oriented steel, to reach 88 percent, the minimum EISA 2007 requirement. (Philips, Public Meeting Transcript, No. 33 at p. 69–70) However, through manufacturer interviews, DOE has learned that there exists significant opportunity for improvement in the steels used for other wattage ballasts. Therefore, DOE continues to consider higher-grade, grain-oriented silicon steel as a design option to improve magnetic ballast efficiency.

ASAP commented that DOE should evaluate the efficiency potential of using amorphous steel in cores for the highest efficiency levels analyzed. (ASAP, Public Meeting Transcript, No. 33 at pp. 68–69) Conversely, NEMA stated that amorphous steel is neither technologically feasible nor practicable to manufacture for any HID ballast, including metal halide ballasts. NEMA commented that distribution transformers are linear devices that have relatively simpler core configurations. In contrast, metal halide ballasts are non-linear devices that require specific flux leakages and wave shaping. These unique characteristics are achieved through reconfiguring flux pathways within the metal halide ballast by using flux choke points and leakage paths between the primary and secondary circuits. NEMA explained that these manipulations of the core are extremely difficult with relatively brittle amorphous steel without causing fractures. (NEMA, No. 34 at p. 12) Based on this feedback and the lack of any commercially available metal halide ballast or prototype that utilizes amorphous steel cores, DOE proposes to screen out amorphous steels within the ''improved core steel'' design option due to the impracticability to manufacture at the scale necessary to serve the relevant market.

NEMA also commented that commercially available electronic ballasts already utilize the high-quality components. (NEMA, No. 34 at p. 12) Based on its teardown analysis and assessment of the components in commercially available metal halide electronic ballasts, DOE concurs with NEMA that these ballasts generally use low-loss components. However, as discussed in section V.C, DOE found a range of efficiencies commercially available for electronic ballasts. As these efficiency differences were, at least in part, due to variations in components used, DOE believes that ''improved components'' is a valid design option and continues to consider it in the engineering analysis.

C. Engineering Analysis

1. Approach

The engineering analysis develops cost-efficiency relationships depicting the fixture manufacturing costs of achieving increased ballast efficiency. DOE applies two methodologies to estimate manufacturing costs for the engineering analysis: (1) The design-option approach, which provides the incremental costs of adding the design options (*e.g.,* improved core steels) discussed in section V.B to improve the efficiency of a baseline model; and (2) the efficiency-level approach, which estimates the costs of achieving increases in energy efficiency levels, through ballast efficiency testing and teardowns, without regard to the design options used to achieve such increases. Details of the engineering analysis are in chapter 5 of the NOPR TSD. The following discussion summarizes the general steps of the engineering analysis:

Determine Representative Equipment Classes. When multiple equipment classes exist, to streamline testing and analysis, DOE selects certain classes as ''representative'' primarily because of their high market volumes. DOE then adapts the efficiency levels (ELs) from representative equipment classes to those equipment classes it does not analyze directly.

Determine Representative Wattages. Within each representative equipment class, DOE also selects a particular wattage fixture as ''representative'' of the wattage range, primarily because of their high market volumes. In this NOPR, DOE assigns only one representative wattage per representative equipment class.

Representative Fixture Types. To calculate the typical cost of a fixture at each representative wattage, DOE selects certain types of fixtures to analyze as representative.

Select Baseline Units. DOE establishes a baseline unit for each representative wattage. The baseline unit has attributes (circuit type, input voltage capability, electronic configuration) typical of ballasts used in fixtures of that wattage. The baseline unit also has the lowest (base) efficiency for each equipment class. DOE measures changes resulting from potential amended energy conservation standards compared with this baseline. For fixtures subject to existing Federal energy conservation standards, a baseline unit is a metal halide lamp fixture with a commercially available ballast that just meets existing standards. If no standard exists for a fixture, the baseline unit is the metal halide lamp fixture with a ballast within that equipment class with the lowest tested ballast efficiency that is sold. To determine energy savings and changes in price, DOE compares each higher energy-efficiency level with the baseline unit.

To determine the ballast efficiency, DOE tested a range of metal halide ballasts from multiple ballast manufacturers. Appendix 5A of the NOPR TSD presents the test results. In some cases, DOE selects more than one baseline for a representative wattage to ensure consideration of different fixture and ballast types and their associated customer economics.

Select More Efficient Units. DOE selects commercially available metal halide lamp fixtures with higher-than-baseline-efficiency ballasts as replacements for each baseline model in each representative equipment class. In general, DOE can identify the design options associated with each more-efficient ballast model by considering the 12 design options identified in the technology assessment (chapter 3 of the NOPR TSD) and screening analysis (chapter 4 of the NOPR TSD). Where design options cannot be identified for that class by the product number or catalog description, DOE uses a database

of commercially available ballasts. DOE then tests these ballasts to determine their efficiency. Appendix 5A of the NOPR TSD presents these test results. All ballast efficiencies were calculated according to the metal halide ballast test procedures (10 CFR 431.324) unless otherwise specified. DOE estimates the design options likely to be used in the ballast to achieve a higher efficiency based on information gathered during manufacturer interview and information presented in ballast catalogs.

Determine Efficiency Levels. DOE develops ELs based on: (1) The design options associated with the equipment class studied and (2) the maximum technologically feasible (max tech) efficiency level for that class. As just noted and as discussed in section IV.B.2, DOE's efficiency levels are based on catalog data, test data collected from commercially available equipment, and manufacturer input.

Conduct Price Analysis. DOE generated a bill of material (BOM) by disassembling multiple manufacturers' ballasts from a range of efficiency levels and fixtures that span a range of applications for each equipment class. The BOMs describe the equipment in detail, including all manufacturing steps required to make and/or assemble each part. DOE then developed a cost model to convert the BOMs for each representative unit into manufacturer production costs (MPCs). By applying derived manufacturer markups to the MPCs, DOE calculated the manufacturer selling prices [27] and constructed industry cost-efficiency curves. In cases where DOE was not able to generate a BOM for a given ballast, DOE estimated an MSP based on the relationship between teardown data and retail data. DOE also estimated ballast and fixture cost adders necessary to allow replacement of more efficient substitutes for baseline models.

2. Representative Equipment Classes

As described above, DOE selects certain equipment classes as ''representative'' to focus its analysis. The 20 equipment classes proposed in this NOPR (based on rated lamp wattage, test voltage, and indoor or outdoor designation) and the criteria used for development are presented in section V.A.2. Due to their low shipment volume (as indicated through manufacturer interviews), DOE does not directly analyze the equipment classes containing only fixtures with ballasts tested at 480 V. DOE selected all other equipment classes as representative, resulting in a total of ten representative classes covering the full range of lamp wattages, as well as indoor and outdoor designations.

3. Representative Wattages

In the preliminary analysis, DOE selected four representative rated wattages of fixtures (70 W, 250 W, 400 W, and 1000 W) to analyze in the engineering analysis. Each representative wattage was typically the most commonly sold wattage within each equipment class, based on analysis of fixture availability from catalogs and manufacturer input. DOE received several comments relating to the criteria for representative wattage selection, as well as recommendations to change specific wattages analyzed in the preliminary analysis. Also, because of the addition of the 101 W to 150 W equipment classes (discussed in section V.A.2), DOE proposes to add an additional representative wattage at 150 W. These comments and proposed changes are discussed further below.

In general, NEMA recommended that DOE use the lowest-rated-wattage ballast to propose energy efficiency levels and the most prevalent model within a class to determine the volume of shipments. NEMA explained that the highest attainable efficiency for a rated wattage range is determined by the lowest-rated-wattage ballast, while in many cases that equipment may not represent the highest volume. OSI explained that the ballast losses (power dissipated within the ballast) in a lower-rated-wattage ballast represent a higher percentage of the total system wattage, thus resulting in lower efficiencies at lower rated powers. In particular, NEMA, OSI, and NEEA disagreed with the choice of the 250 W fixture as the representative wattage for the 150 W to 250 W equipment class, recommending instead 175 W as a more appropriate wattage due to its high market share. (OSI, Public Meeting Transcript, No. 33 at p. 54; NEEA, No. 31 at p. 4; OSI, No. 27 at p. 3; NEMA, No. 34 at p. 13)

DOE recognizes that lower-rated-wattage ballasts will have lower efficiencies than higher-rated-wattage ballasts. To account for this effect in the NOPR, as discussed in section V.C.9, DOE is proposing to use equations for each wattage range to define minimum efficiency requirements as a function of rated lamp wattage. This equation-based approach allows DOE to, in general, base its selection of representative wattages, and thus the resulting economic analysis, on the high-market-share products, while still ensuring technological feasibility of the entire equipment class. DOE has continued to use 250 W as the representative wattage primarily because it is the only wattage in the 150 W to 250 W equipment class with a range of commercially available magnetic ballast efficiencies above the EISA 2007 minimum requirements. By conducting a cost-efficiency analysis on 250 W fixtures, DOE is able to characterize the potential energy savings of equipment within this class at efficiency levels below those characterized by electronic ballasts.

Although 175 W fixtures may currently have high market share, DOE understands that EISA 2007 has caused, and may continue to cause, a significant shift from 175 W probe-start metal halide fixtures to the 150 W pulse-start fixtures exempted from EISA 2007 standards. DOE believes that this may result in 250 W fixtures gaining market share (relative to 175 W fixtures) in the future. Thus, DOE believes that 250 W is an appropriate representative wattage for analysis.

Because of the current and projected high market share of 150 W fixtures exempted from EISA standards, and to match the newly proposed equipment class for fixtures rated from 100 W to 150 W (discussed in section V.A.2), DOE has decided to add a 150 W representative unit. Based on an assessment of commercially available fixtures and manufacturer interviews, DOE has come to the conclusion that 150 W fixtures represent the vast majority of the equipment class and, therefore, believes it to be an appropriate representative wattage.

In summary, after considering the comments received and changes to the proposed equipment class structure, DOE has selected five representative wattages for analysis: 70 W, 150 W, 250 W, 400 W, and 1000 W.

4. Representative Fixture Types

After selecting representative wattages for analysis, DOE identified the applications commonly served by each equipment class's wattage range in order to select representative Fixture Types. Although DOE is evaluating ballast efficiency only as a metric for reducing MHLF energy consumption, DOE recognizes that technological changes in the ballast, specifically moving from magnetic ballasts to electronic ballasts, can necessitate alterations to the fixture. These changes, discussed in further detail in section V.C.12, often incur additional costs dependent on the Fixture Type that is redesigned. In the engineering analysis, DOE estimates a baseline fixture cost as well as

[27] The MSP is the price at which the manufacturer can recover all production and non-production costs and earn a profit. Non-production costs include selling, general, and administration (SG&A) costs, the cost of research and development, and interest.

incremental costs to the fixture (with increasing ballast efficiency) based on the representative Fixture Types selected.

For the preliminary analysis, DOE selected one to three representative Fixture Types for each rated wattage range. For wattages less than 150 W, DOE selected canopy fixtures as the representative Fixture Types. For wattages from 150 W to 250 W, DOE identified three representative fixture types: canopy, low-bay, and wallpack. For wattages greater than 250 W, DOE chose canopy, flood, and high-bay fixtures as representative fixture types.[28] Georgia Power commented that DOE should consider post tops as a representative fixture for 150 W fixtures. (Georgia Power, No. 28.1 at p. 2) During metal halide lamp fixture manufacturer interviews, DOE requested market data on the most common Fixture Types sold for each wattage range analyzed. For the equipment class represented by the 150 W fixture, DOE did not receive feedback that post-tops were a large portion of that market. Instead, manufacturers responded that area lighting and wallpacks comprised the majority of the 150 W market. Thus, for this NOPR, and similar to the representative fixtures for the 150 W to 250 W equipment, DOE selected canopy, low-bay, and wallpack fixtures as representative fixture types for the 100 W to 150 W equipment class.

5. Ballast Efficiency Testing

After selecting representative wattages and fixture types, DOE purchased and tested a multitude of metal halide ballasts, ranging from low-efficiency magnetic to high-efficiency electronic, in order to evaluate the range of commercially available ballast efficiencies. In selecting units for testing and analysis, DOE focused its effort on representative wattage ballasts with operating characteristics similar to ballasts prevalent in the market. For example, through interviews and an assessment of commercially available products, DOE learned that the majority of metal halide ballasts sold are quad-input voltage ballasts. Thus, DOE primarily tested metal halide ballasts capable of quad-input or multiple-input voltage operation.

Regarding magnetic circuit types, Progress Energy Carolinas commented that there is wide variation between magnetic operating characteristics of the different magnetic ballast types, such as regulated, magnetic regulated, CWA, reactor, and high-power-factor reactor. They suggested that DOE study this issue further to ensure proper selection of representative units for analysis. (Progress Energy Carolinas, No. 24 at p. 2) In response, DOE has investigated the technical differences between magnetic circuit types and provides its assessment in Chapter 3 of the NOPR TSD. In addition, through an assessment of commercially available products and manufacturer interviews, DOE has learned that at low wattages (less than or equal to 150 W), high reactance autotransformer (HX–HPF) ballasts and CWA ballasts are most prevalent. At higher wattages, CWA ballasts compose the vast majority of the market. In consideration of these findings, DOE focused its testing and analysis on HX–HPF and CWA ballasts for the 70 W and 150 W representative units and CWA ballasts for all other wattage units.

Average ballast efficiencies (across four samples) were determined in accordance with metal halide ballast test procedures (10 CFR 431.324) by dividing measured output power by measured input power. As discussed in sections V.C.7 and V.C.8, DOE selects baseline and higher-efficiency representative units for analysis based on these average efficiencies. Also, as discussed in the following section, DOE determines representative ballast input power for each efficiency level based on these tested ballast efficiencies. To determine the efficiency levels under consideration, as discussed in section V.C.9, DOE uses a reported efficiency value based on the four tested samples, pursuant to the metal halide ballast certification procedures in 10 CFR 429.54.

6. Input Power Representations

In the preliminary analysis, ballast input powers for use in the downstream analyses (such as the LCC and NIA analyses) were normalized such that the ballast outputted the rated lamp input power by dividing rated lamp wattage by measured ballast efficiency. In response, NEMA commented that ballast efficiency should not be calculated based on rated lamp power and input power. They remarked that not all ballasts operate lamps at their rated wattages and, thus, these ballasts could appear to have higher efficiencies than technologically feasible if this method is used. (NEMA, No. 34 at p. 13)

To clarify, DOE is not calculating ballast efficiencies based on rated lamp powers. Rather, DOE is using measured ballast efficiencies and rated lamp output to calculate normalized input powers for the downstream energy-use analyses. Although DOE's test results indicate slight variations in ballast output power relative to rated lamp power from unit to unit, based on the marketing of these ballasts, DOE concludes that the metal halide ballasts tested are generally designed to operate lamps at their rated wattages. DOE believes these variations (on the order of three percent of the rated lamp power) are unlikely to significantly affect average ballast efficiency. In this NOPR, DOE continues to utilize normalized input powers in order to best characterize the energy use of all products that meet a particular efficiency level and to eliminate any artifacts due to the particular model chosen.

Additionally, OSI noted that the system wattage of magnetic ballasts increases up to 11 percent over lamp life. In contrast, electronic ballasts do not exhibit this behavior and, thus, have lower energy use relative to a magnetic system of the same efficiency when considering operation over the lifetime of the lamp. (OSI, No. 27 at p. 7) DOE's research indicates that as metal halide lamps age, they require higher voltages. Electronic ballasts have the capability to sense that the lamp voltage has increased and, in response, decrease their output current to maintain constant wattage throughout the life of the ballast. The CA IOUs also noted that electronic ballasts can improve lamp efficacy and lumen maintenance, resulting in higher mean rated lumens over the lifetime of the lamp. The CA IOUs urged DOE to consider scenarios where either reduced-wattage lamps or fewer (but more luminous) total fixtures can be used with electronic ballasts to capture even greater energy savings while maintaining the same mean system light output as the baseline system. (CA IOUs, No. 32 at p. 4)

DOE accounted for the increase in wattage for magnetic ballasts by using a multiplier when calculating magnetic efficiencies. DOE assumed that magnetic ballasts' wattage increase occurs in a linear fashion over the life of the ballast. With this assumption, the ballast would average a 5.5 percent increase in output wattage over its lifetime. Therefore, DOE multiplied the rated lamp wattage by 1.055 when calculating the input power normalized to rated lamp power for all magnetic ballasts, but not for electronic ballasts. To investigate electronic ballast lumen maintenance, DOE reviewed lamp and ballast manufacturer product information, but did not find a consistent description of the impact of an electronic ballast on lumen maintenance. Based on the limited information and uncertainty of the potential impacts, DOE is not proposing an adjustment to electronic ballast input power to account for improved lumen

[28] Descriptions of each of these fixture types can be found in chapter 3 of the NOPR TSD.

maintenance relative to magnetic ballast operation. DOE requests comment on using a 5.5 percent increase when calculating the representative input power of magnetic ballasts.

7. Baseline Ballast Models

DOE selected baseline models as reference points for each representative equipment class, against which DOE measured changes in energy use and price resulting from potential amended energy conservation standards. For metal halide lamp fixtures and ballasts subject to existing Federal energy conservation standards, a baseline model is a commercially available ballast that just meets existing standards and provides basic consumer utility. If no standard exists for a specific fixture type (*e.g.,* less than 150 W or greater than 500 W fixtures), DOE chooses baselines that represent lowest efficiency products (based on average test ballast efficiencies) or highest-volume products within the representative parameters defined (*e.g.,* representative wattage, magnetic circuit type, input voltage). For the preliminary analysis, DOE analyzed a CWA, quad-input voltage, pulse-start baseline ballast for each of the 70 W, 250 W, 400 W, and 1000 W representative wattages. As DOE received no adverse comment to the selection of the 70 W, 250 W, and 400 W baselines, DOE continues to use the same baseline ballasts for the NOPR. The following paragraphs discuss changes to the 1000 W baseline and the additions of a second 70 W baseline and a new 150 W baseline.

a. 70 W Baseline Ballast

In the preliminary analysis, DOE analyzed a single 70 W magnetic ballast with an efficiency of 72.0 percent as the baseline unit. However, through manufacturer interviews, DOE has learned that electronic ballasts compose a significant portion (estimated as more than 25 percent) of the ≥50 W and ≤100 W ballasts shipped with indoor fixtures. Therefore, for this NOPR, DOE has added an electronic baseline ballast for analysis. This ballast utilizes an LFE circuit, operates at quad-voltage, and has an efficiency of 88.0 percent. DOE requests comment on the addition of this electronic 70 W baseline ballast.

150 W Baseline Ballast

As discussed earlier, to analyze the new equipment classes with a rated wattage range of 100 W to 150 W, DOE has added a 150 W representative unit to its analysis. Through market research and ballast efficiency testing, DOE has determined that both CWA and HX–HPF ballasts are common at the 150 W level. Based on test results, DOE found the lowest efficiency ballast that could be incorporated into a fixture exempt from EISA 2007 standards was a magnetic pulse-start, quad-voltage CWA ballast with an efficiency of 81.2 percent, and, thus, analyzed this ballast as a baseline.

1000 W Baseline Ballast

In the preliminary analysis, DOE selected a 1000 W CWA, quad-input voltage, magnetic, pulse-start ballast with an efficiency of 91.8 percent as a baseline for the >500 W equipment class. Since publication of the preliminary analysis, DOE has learned that although pulse-start ballasts are available at the 1000 W level, probe-start, CWA, quad-voltage units predominate in this wattage category, and are, therefore, more appropriate baselines. Because DOE's analysis indicates that ballast efficiency is not affected by starting method, DOE created a probe-start baseline by utilizing the same baseline ballast efficiency (91.8 percent) and applying a manufacturer production cost representative of a probe-start ballast. DOE further discusses the derivation of manufacturing production costs in section V.C.12 of this NOPR and in chapter 5 of the NOPR TSD.

8. Selection of More Efficient Units

After selection of baseline models, DOE used a combination of two methods to determine more efficient units for analysis within each representative equipment class. The first method was by examining DOE's own test data (discussed in section V.C.5) to select commercially available ballasts to represent higher efficiency levels. The second method involved filling in large gaps of efficiency present in the test data (often between commercially available magnetic and electronic ballasts) through estimating efficiency increases due to the implementation of several of the design options described in section V.B. DOE derived those estimates based on manufacturer interviews and by validating or supplementing that input with independent modeling of potential reductions in losses. Specifically, DOE used the watts loss/pound characteristics for various steel types and the resistive losses for various winding materials to determine the levels of efficiency modeled ballasts could achieve. In modeling more efficient magnetic ballasts, DOE maintained the physical size of the higher-efficiency models relative to commercially available products within the representative wattages. DOE seeks comment on whether features or consumer utility of the ballasts such as the physical size, including footprint, stack height, and weight can be maintained or if they would be adversely affected for the magnetic ballast efficiencies associated with the modeled ballasts.

In summary, for the NOPR, DOE developed a maximum technologically feasible magnetic ballast based on either commercially available equipment (for the 1000 W level) or a modeled ballast (for other representative wattages) that utilizes the highest grade steels practicable for manufacturing metal halide ballasts. DOE also developed a maximum technologically feasible electronic ballast (which also serves to represent the maximum technologically feasible level overall) for the 70 W, 150 W, 250 W, and 400 W representative wattages. To determine this level, DOE conducted a survey of the MHLF market and the research fields that support the market. DOE concluded that, within a given equipment class, no working prototypes exist that have a distinguishably higher ballast efficiency than currently available electronic ballasts. As such, the highest-efficiency units analyzed in the engineering analysis represent the most efficient tier of commercially available equipment. For further details on the higher-efficiency units analyzed in the NOPR, see chapter 5 of the NOPR TSD.

DOE received several comments, discussed below, on the higher-efficiency magnetic and electronic units analyzed in the preliminary analysis.

a. Higher-Efficiency Magnetic Ballasts

NEMA noted that magnetic ballasts are already as efficient as possible while still being cost-effective, and further changes to their designs could make them cost-prohibitive and not physically feasible for use in current products. In particular, NEMA stated that 150 W magnetic ballasts only exist on the market due to their current exemption from standards, and to make them any more efficient would involve a size increase and redesign. (NEMA, No. 34 at p. 7, 13–14) Similarly, Philips stated that 88 percent efficiency is the highest possible efficiency for 175 W magnetic ballasts, but it is not achievable for lower-wattage magnetic ballasts. (Philips, Public Meeting Transcript, No. 33 at pp. 69–70)

On the other hand, the CA IOUs recommended that DOE re-examine the maximum technologically feasible efficiency for magnetic ballasts. They noted that according to the CEC database, 12 fixtures (at the representative 400 W level) listed by

manufacturers in 2010 used magnetic ballasts that claimed 93 percent or higher ballast efficiency, which significantly more efficient than DOE's highest magnetic ballast analyzed. (CA IOUs, No. 32 at p. 5–6)

As discussed in the screening analysis (section V.B), DOE recognizes that several commercially available magnetic ballasts (such as the 175 W 88-percent efficient ballast) may already utilize the highest efficiency design options and have reached their efficiency limits. However, based on feedback from manufacturer interviews, DOE has learned that for each of the representative wattages analyzed, there exist design options to improve efficiency. Therefore, DOE utilizes these design options to estimate the maximum technologically feasible efficiency for magnetic ballasts for each representative wattage. DOE does account for efficiency limits of non-representative wattages by creating efficiency-level equations (dependent on rated wattage) for each equipment class. In response to the CA IOUs comment, DOE reviewed the CEC database, but was unable find any of the more-efficient 400 W ballasts available for purchase. As DOE was unable to test these ballasts and confirm their higher efficiencies, DOE could not include them in this analysis.

b. Electronic Ballasts

In the preliminary analysis and in this NOPR, DOE analyzed electronic ballasts as higher-efficiency replacements to magnetic ballasts and based max tech efficiencies on commercially available electronic ballasts independently tested by DOE. In response to those efficiencies, DOE received several comments, discussed below, regarding the appropriate electronic max tech efficiencies, use of high-frequency electronic ballasts as representative units of analysis, and whether electronic ballasts should be considered the maximum technologically feasible level for 1000 W ballasts.

Maximum Technologically Feasible Efficiencies

Regarding the maximum technologically feasible efficiency of electronic ballasts, OSI stated that their commercially available ballasts represent the current max tech. Any further increases in efficiency would be theoretical and not proven through actual performance. (OSI, No. 27 at p. 5) In contrast, the CA IOUs noted that the CEC database contains several electronic ballasts from manufacturers such as Metrolight and Advance with efficiencies significantly higher than those identified as max tech. The CA IOUs encouraged DOE to revisit maximum achievable efficiencies for each equipment class and technology option. (CA IOUs, No. 32 at p. 5–6)

As DOE does not have any indication electronic ballast efficiency can exceed that which is currently commercially available, DOE agrees with OSI's assessment that any efficiency improvement above commercially available electronic ballasts would be widely speculative. Therefore, all of the max tech levels proposed by DOE reflect existing commercially available ballasts. DOE has attempted to purchase and test the highest-efficiency ballasts, as determined through catalog rated efficiencies and the CEC metal halide lamp fixture database. Thus, DOE believes that its max tech electronic ballast efficiencies represent the highest efficiencies that are commercially available and validated by independent testing in accordance with DOE's metal halide ballast test procedures.

High-Frequency Electronic Ballasts

In the preliminary analysis, the maximum technologically feasible level for 400 W fixtures was based on a high-frequency electronic ballast. DOE requested comment on the appropriateness of using high-frequency electronic ballasts as representative units, particularly with respect to lamp and ballast compatibility concerns.

In response, OSI, Philips, and NEMA opposed regulatory requirements obtainable only with high-frequency electronic ballasts. While they recognized that high-frequency electronic ballasts can have higher efficiencies, they noted that their test measurements also have a significantly higher degree of error (as high as five percent) than those obtained with low-frequency ballasts. OSI and NEMA argued that if DOE establishes standards based on high-frequency technology, this increased variation should be accounted for. In addition, all three stakeholders remarked that high-frequency electronic ballast technology is often not compatible with the most efficacious systems, specifically noting their incompatibility with ceramic metal halide lamps, which represent the highest efficacy, best lumen maintenance, and longest life of metal halide lamps. (Philips, Public Meeting Transcript, No. 33 at p. 34, 62–63; OSI, No. 27 at p. 4; NEMA, No. 34 at p. 14) While acknowledging that there are some lamp and ballast compatibility concerns, Empower Electronics stated that high-frequency ballasts can be more efficient and should be used as a representative unit. (Empower Electronics, No. 36 at p. 8)

In response, DOE has researched product application notes in catalogs and technical literature regarding lamp compatibility with high-frequency ballasts. Based on this research, DOE agrees that due to acoustic resonance issues, high-frequency ballasts may have significant compatibility problems with some high-efficacy metal halide lamps, thus, reducing potential energy savings at those levels. Although DOE maintains high-frequency electronic ballasts as a valid design option to improve ballast efficiency, DOE will take the impact of lamp and ballast compatibility into account when adopting any amended standards.

Acuity also commented that high-frequency ballasts are less reliable in outdoor applications because ambient temperature and power quality effects. (Acuity, Public Meeting Transcript, No. 33 at p. 63) DOE is considering in this NOPR (discussed in section V.C.12) fixture redesigns (accounting for increased thermal management and voltage transient suppression) and corresponding incremental costs incurred as a result of implementing electronic ballasts in outdoor applications. DOE has not found evidence of any difference between high-frequency and low-frequency electronic ballasts in this regard. DOE requests clarification on whether high-frequency electronic ballasts require additional thermal and transient protection relative to low-frequency electronic ballasts. If so, DOE requests comment on technical reasons for this difference and whether ballast or fixture redesigns can overcome these barriers.

1000 W Electronic Ballasts

In the preliminary analysis, DOE analyzed only magnetic ballasts as higher efficiency replacements for the 1000 W baseline unit and requested comment on whether 1000 W electronic metal halide ballasts are technologically feasible. Philips and OSI stated that 1000 W electronic ballasts only exist in niche applications, with no ballasts in general lighting or area lighting. Even though 1000 W electronic ballasts are commercially available, Philips pointed out that these ballasts do not have a significant efficiency improvement over the magnetic ballasts at that wattage, but may be preferred for technological reasons (*e.g.,* in high definition TVs). (Philips, Public Meeting Transcript, No. 33 at pp. 63–64; OSI, No. 27 at p. 5) NEEA also recommended that DOE analyze only magnetic ballasts at 1000 W. (NEEA, No. 31 at p. 4) DOE's research has confirmed that the 1000 W electronic ballasts on the market today appear to be for specialized functions,

such as hydroponics and aquariums, rather than general illumination applications. Because these fixtures may have unique thermal characteristics, DOE cannot be certain that incorporating 1000 W electronic ballasts into general lighting fixtures is technologically feasible. Thus, DOE does not consider electronic ballasts as higher efficiency replacements for 1000 W magnetic ballasts.

9. Efficiency Levels

Based on the higher-efficiency ballasts selected for analysis, discussed in section V.C.8, DOE developed four efficiency levels for the 70 W, 150 W, 250 W, and 400 W representative wattages. Due to the fact that DOE did not analyze electronic ballasts for the 1000 W representative wattages, DOE analyzes only two efficiency levels for this wattage. The baseline of each representative equipment class represents the lowest-efficiency commercially available magnetic ballast covered by these standards. EL1 represents a moderately higher efficiency magnetic ballast, and EL2 represents the maximum technologically feasible magnetic ballast. EL1 and EL2 are characterized by a combination of commercially available and modeled magnetic ballasts. EL3 represents the lowest-efficiency commercially available electronic ballast, and EL4 represents the maximum technologically feasible level for all ballasts incorporated into metal halide lamp fixtures.

In the preliminary analysis, DOE considered both binned and equation-based approaches to defining efficiency levels within wattage ranges. In a binned approach, DOE would set the same standard for all wattages within an equipment class. In an equation-based approach, DOE would define equations that relate rated lamp wattage to ballast efficiency such that different wattages within an equipment class would be subject to different efficiency requirements. For the preliminary analysis, DOE analyzed setting standards based on a binned approach and received several comments in response to this decision.

Philips noted that there is significant change in ballast efficiency throughout the 150 W to 250 W range, with a definite trend for higher efficiency as the wattage increases up to 500 W. (Philips, Public Meeting Transcript, No. 33 at pp. 55, 66) Philips suggested that efficiencies in the 150 W to 250 W range could benefit from further delineation, perhaps in the form of a formula approach. (Philips, Public Meeting Transcript, No. 33 at p. 47) Based on manufacturer comments at the preliminary analysis public meeting, NEEA supported the proposal to either divide the 150 W to 250 W range into two classes, or develop efficiency levels in the form of wattage-based equations. (NEEA, No. 31 at pp. 3–4)

In contrast, OSI did not recommend using an equation-based approach for efficiency levels. They commented that having a known, fixed efficiency requirement allows manufacturers to more easily redesign their ballasts to incorporate additional features (such as dimming or 120 V tap). (OSI, No. 27 at p. 4)

After considering all of the comments, DOE agrees with Philips and NEEA that an equation-based approach for efficiency levels would be most appropriate, as it allows DOE to account for changes in efficiency across a rated wattage range. In addition, this approach ensures that efficiency levels for all wattages, even those not analyzed as representative, are technologically feasible. To develop the equation forms and efficiency trends for each wattage range, DOE utilized its own efficiency test data as well as catalog efficiency data. The discussion below describes the equations used in each wattage bin. For further details, see chapter 5 of the NOPR TSD.

For the two lowest wattage bins, which consist of 50 W to 150 W ballasts, DOE used its own test data as well as efficiency trends according to catalog data to generate separate power-law best fits for magnetic (EL1 and EL2) and electronic ballasts (EL3 and EL4).

The next wattage bin consists of 150 W ballasts, excluding the currently exempted 150 W, up through and including 250 W ballasts. Because EISA 2007 covered equipment in this wattage bin, DOE can only evaluate efficiencies equal to or above the existing standards to avoid backsliding. Manufacturers stated during interviews that 150 W magnetic ballasts could not be designed to meet 88 percent and that 175 W ballasts only reached 88 percent by using the high-grade-score steel and increasing the ballast's footprint. DOE's test data also indicated that there are no 150 or 175 W magnetic ballasts available that exceed 88 percent efficiency. Though DOE did not test any 200 W ballasts, a review of catalog data indicates that 200 W ballasts are only available at 88 percent efficiency. Because DOE has no specific information indicating that these ballasts can be designed to be more efficient, DOE assumed that 88 percent is also the max tech magnetic ballast efficiency for wattages up through 200 W. Thus, DOE maintained the EISA 2007 efficiency requirement of 88 percent for ELs designed to represent levels met by magnetic ballasts. DOE did not have any information about the achievable efficiencies for ballasts >200 W and <250 W, as products in this range are not commercially available. Therefore, DOE gradually increased the magnetic efficiency levels (EL1 and EL2) between 200 W and 250 W ballasts using a linear trend from 88 percent to the efficiency of the EL1 and EL2 250 W representative units. For the electronic ballast efficiency levels (EL3 and EL4), DOE continued the power-law function fit from the 50 to 150 W range up to 250 W.

The next wattage bin consists of ballasts higher than 250 W up through and including 500 W. Because the 250 W and 400 W magnetic representative units at EL1 and EL2 have the same efficiency and utilize similar design options, DOE created a flat efficiency requirement for magnetic ballasts within this wattage bin. For the electronic ballast efficiency levels (EL3 and EL4), DOE continued the power-law function fit from the 250 to 500 W range up through 500 W.

The highest wattage bin consists of ballasts higher than 500 W up through and including 2000 W. DOE examined catalog data for market availability and found no electronic ballasts for general lighting applications in this wattage range. Manufacturer feedback confirmed that there are no electronic ballasts for general lighting applications commercially available above 500 W. Thus, there are two only efficiency levels at the highest wattage range rather than four. DOE used a linear fit for ballasts above 500 W through 1000 W after examining the efficiency trends within manufacturers' product lines in this wattage bin. DOE fit the linear trend from the previous wattage bin's 500 W efficiencies at efficiency levels 1 and 2 through the representative units at 1000 W. However, due to the lack of test data and limited wattage offerings for ballasts over 1000 W, DOE could not develop a conclusive trend between wattage and efficiency. Thus DOE created a flat efficiency requirement extending from the tested efficiency of the 1000 W representative unit to 2000 W.

Table V.3 summarizes all of the functions and efficiencies describing each equipment class. DOE requests comment on the described efficiency levels.

TABLE V.3—NOPR EFFICIENCY LEVEL DESCRIPTIONS FOR THE REPRESENTATIVE EQUIPMENT CLASS

Representative equipment class	Rep. wattage	EL	Minimum efficiency equation %
≥50 W and ≤100 W	70 W	EL1	100/(1+3.90*P∧(−0.60)) †
		EL2	100/(1+2.50*P∧(−0.55))
		EL3	100/(1+0.60*P∧(−0.34))
		EL4	100/(1+0.36*P∧(−0.30))
>100 W and <150 W*	150 W	EL1	100/(1+3.90*P∧(−0.60))
		EL2	100/(1+2.50*P∧(−0.55))
		EL3	100/(1+0.60*P∧(−0.34))
		EL4	100/(1+0.36*P∧(−0.30))
≥150 W** and ≤250 W	250 W	EL1	≥150 W and ≤200 W: 88.0 >200 W and ≤250 W: 4.0*10∧(−2)*P + 80.0
		EL2	≥150 W and ≤200 W: 88.0 >200 W and ≤250 W: 7.0*10∧(−2)*P + 74.0
		EL3	100/(1+0.60*P∧(−0.34))
		EL4	100/(1+0.36*P∧(−0.30))
>250 W and ≤500 W	400 W	EL1	90.0
		EL2	91.5
		EL3	100/(1+0.60*P∧(−0.34))
		EL4	100/(1+0.36*P∧(−0.30))
>500 W and ≤2000 W	1000 W	EL1	>500 W and ≤1000 W: 5.0*10∧(−3)*P + 87.5. >1000 W and ≤2000 W: 92.5
		EL2	>500 W and ≤1000 W: 3.2*10∧(−3)*P + 89.9. >1000 W and ≤2000 W: 93.1

* Includes 150 W fixtures exempted by EISA 2007, which are fixtures rated only for 150 watt lamps; rated for use in wet locations, as specified by the National Electrical Code 2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50° C, as specified by UL 1029–2001.

** Excludes 150 W fixtures exempted by EISA 2007, which are fixtures rated only for 150 watt lamps; rated for use in wet locations, as specified by the National Electrical Code 2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50° C, as specified by UL 1029–2001.

† P is defined as the rated wattage of the lamp the fixture is designed to operate.

As discussed in section V.C.5, DOE used a reported efficiency value based on the four tested samples, pursuant to the metal halide ballast certification procedures in 10 CFR 429.54, to describe its representative units and to develop the ELs. DOE invites comment on whether any adjustments to the ELs are necessary to account for sources of variation not captured by the reporting requirements of 10 CFR 429.54.

10. Design Standard

In the preliminary TSD, DOE considered a design standard that would prohibit the sale of probe-start ballasts in newly sold fixtures. DOE notes that under 42 U.S.C. 6295(hh)(4), DOE is permitted to set an energy efficiency standard based on both design and performance requirements. EISA prescribed probe-start ballasts to be 94 percent efficient, effectively banning probe-start ballasts between 150 and 500 W (except those 150 W ballasts exempt by EISA) based on their inability to meet this performance requirement. (42 U.S.C. 6295(hh)(1)(A)(ii) Manufacturers responded to the EISA 2007 standards by shifting their inventory to pulse-start ballasts, which are subject to less stringent standards. The following paragraphs describe comments received and DOE's analysis of a design standard prohibiting probe-start ballasts to be sold in new fixtures in these wattages.

With regards to probe-start ballast availability, OSI, NEMA, Hubbell Lighting Incorporated, Venture Lighting, and NEEA also commented that there are no 70 W probe-start ballasts on the market. (OSI, Public Meeting Transcript, No. 33 at pp. 58–60; NEMA, No. 34 at p. 14; Hubbell, Public Meeting Transcript, No. 33 at pp. 42, 57, 59–60; Venture Lighting, Public Meeting Transcript, No. 33 at pp. 59–60; NEEA, No. 31 at p. 4) Hubbell also clarified that probe-start ballasts are available at wattages of 150 W and above. Hubbell stated that there are a few probe-start ballasts at 150 W and there are no probe-start ballasts at smaller wattages because the seals for the arc tubes in the lamps become too small to contain the third electrode needed to start probe-start ballasts. OSI added that when medium screw-base, low-wattage metal halide lamps were first introduced to the market, they were all pulse-start. The manufacturers never made low-wattage probe-start metal halide lamps. (Hubbell, Public Meeting Transcript, No. 33 at pp. 58–59; OSI, Public Meeting Transcript, No. 33 at p. 59) Even though probe-start has become technically possible at 150 W, OSI and NEMA pointed out that because of EISA 2007, there are no new fixtures using probe-start ballasts less than 500 W, and, therefore, no probe-start ballasts at less than 500 W on the market. (OSI, No. 27 at p. 5; NEMA, No. 34 at p. 15) Hubbell noted that pulse-start ballasts only provide 8 to 15 percent energy savings over probe-start ballasts for 250 W and 400 W products, and anywhere from 0 to 8 percent energy savings over probe-start ballasts in the 1000 W class. (Hubbell, Public Meeting Transcript, No. 33 at p. 42–43) GE put forward one cause for the mistaken impression that there are probe-start ballasts at lower wattages: In the manufacturers' fixture catalogues, the lamp designation given for lower wattages is ''M,'' for metal halide. Even though the starting method of these lower wattage lamps is not explicitly labeled, they are all pulse-start. (GE, Public Meeting Transcript, No. 33 at p. 60) Finally, NEMA and Hubbell commented further that only 1000 W ballasts have a probe-start baseline. (NEMA, No. 34 at p. 14; Hubbell, Public Meeting Transcript, No. 33 at pp. 57–58)

DOE reexamined ballast availability in manufacturer catalogs and, in response to GE, was careful not to consider ''M'' designated lamps as probe-start. DOE determined that probe-start ballasts are only available at wattages above 150 W and also confirmed that there are no 70 W probe-start ballasts currently on the market. EISA 2007 allowed probe-start ballasts in the 150 W to 500 W range, but set a minimum efficiency standard of 94 percent. None of the probe-start ballasts DOE found could meet this minimum efficiency level, so the standards from EISA 2007 essentially prohibit probe-start ballasts less than or equal to 500 W for use in new fixtures. However, because certain fixtures designed for use with lamps rated at 150 W are exempted from EISA 2007 standards, probe-start ballasts can be used at 150 W in new fixtures. However, DOE's review of manufacturer catalogs indicates that probe-start ballasts are not sold at 150 W. Therefore, the only wattage range in which probe-start ballasts are available for use in new fixtures is the greater than 500 W to 2000 W range. In this NOPR, DOE is analyzing the impact of a design standard that would prohibit probe-start ballasts from being sold in new fixtures in the greater than 500 to 2000 W range.

NEMA and Hubbell also commented that at that high wattage, there is very little to be gained from a switch to pulse-start, stating that 1000 W probe-start ballasts are already 92 percent efficient and these lamp-ballast systems produce only slightly fewer mean lumens than pulse-start lamp-ballast systems. (NEMA, No. 34 at p. 14; Hubbell, Public Meeting Transcript, No. 33 at pp. 57–58) Given the absence of probe-start ballasts at the lower wattages, and the insignificant discrepancy between probe-start and pulse-start ballasts at the higher wattages, NEEA did not see much utility in a design standard that prohibits probe-start systems. (NEEA, No. 31 at p. 3) DOE notes that the major motivation for prohibiting probe-start ballasts is not the efficiency difference between the ballasts, but the decreased mean efficacy of probe-start lamps when compared to pulse-start lamps. Even a small percentage gain in mean lamp efficacy could yield energy savings on the order of the ballast efficiency savings calculated in other equipment classes.

Progress Energy Carolinas, however, supported requiring pulse-start ballasts in all wattages. Yet, Progress Energy Carolinas also urged DOE to consider other technologies to realize significant efficiency gains over pulse-start. Specifically, Progress Energy Carolinas cited the examples of ceramic arc tube metal halide lamps and the super metal halide technology as seen in the Elite and Cosmopolis models from Philips. Progress Energy Carolinas argued that both of these measures improve not only efficiency, but also other operating characteristics. While Progress Energy Carolinas noted that the super technology may be sole-source, proprietary technology only available in low- to mid-range wattages, Progress Energy Carolinas commented that Philips may be willing to share the technology with others like they have offered to do with their fluorescent low-mercury lamp technology. (Progress Energy Carolinas, No. 24 at p. 2) DOE will not consider efficiency levels that require proprietary technology like that used in the Philips Elite and Cosmopolis systems. Though a company like Philips may be willing to share technology, DOE is unable to analyze the impacts of the agreement because the terms of the agreement cannot be known in advance. In this MHLF rulemaking, DOE has decided to only consider performance and design requirements that affect the ballast included in a metal halide lamp fixture. Therefore, DOE is not planning to consider a design requirement that mandates the use of ceramic metal halide lamps in new metal halide lamp fixtures.

Empower Electronics disagreed with the use of a design standard, instead recommending that a minimum ballast-and-lamp efficiency standard be established regardless of design to effectively prohibit the use of inefficient probe-start systems. Empower Electronics suggested that this standard be set at 94 percent for fixtures designed to operate lamps rated for 250 W and above, effectively requiring electronic ballast technology. (Empower Electronics, No. 36 at p. 8) DOE notes that it is planning to consider efficiency levels that require electronic ballasts when determining a proposed standard. In addition to this consideration, DOE is also continuing to analyze a design standard as a possibility for a proposed standard.

Georgia Power stated that the concept of using fewer fixtures when replacing existing probe-start systems with pulse-start systems may be practical for indoor applications, but not for outdoor uses. Currently, parking lots have lighting system designs that use probe-start fixtures at an acceptable photometric level. DOE assumes that the poles, bases and conductors are all in place and the investment has been made. Georgia Power said that using fewer pulse-start fixtures on the same poles at the same places will not result in the same photometric design. (Georgia Power, No. 28 at p. 2) In regards to setting a design standard requiring reduced wattage versions of lamps and the expected change in lumen output, Progress Energy Carolinas said that in general, the percent light reduction is half the percent wattage reduction. Progress Energy Carolinas also noted that reduced wattage pulse-start lamps are not currently available; instead, a reduced wattage probe-start lamp is used as a replacement. (Progress Energy Carolinas, No. 24 at p. 3) DOE agrees with Georgia Power that in some applications, changing the spacing of fixtures is not feasible. Instead, users of these applications may use the same number of pulse-start ballasts in their systems, but at reduced wattage to maintain light output. This customer response to a design standard is discussed in more detail in section V.C.10. DOE disagrees with Progress Energy Carolinas that reduced-wattage lamps are only available in the probe-start variety. DOE has found several pulse-start lamps available at reduced wattages such as 320 W and 875 W.

To quantify the difference in mean lumen output of probe-start lamps relative to pulse-start lamps of the same wattage, DOE compared several major manufacturers' 1000 W lamp catalog data for these two lamp start types. DOE paired these lamps from the same manufacturer and of the same characteristics (open vs. enclosed, CRI, percentage of rated life at which the mean lumen value is recorded) and calculated the ratio of probe-start mean lumens divided by pulse-start mean lumens. Then, DOE averaged the ratio of each pairing from every manufacturer and determined that, on average, probe-start metal halide lamps are 5.6 percent less efficacious than comparable pulse-start lamps. Thus, pulse-start metal halide lamp and ballast fixtures can output 5.6 percent more lm/W than probe-start fixtures. Energy savings could be achieved in two ways. Because each pulse-start metal halide lamp fixture outputs 5.6 percent more lumens (for a given wattage) than comparable probe-start lamp fixtures, customers could:

1. Illuminate an area to the same level with 5.6 percent fewer fixtures if they switch from probe-start to pulse-start; or

2. Switch from full-wattage probe-start lamp fixtures to the same number of reduced-wattage pulse-start lamp fixtures, maintaining light output, but reducing energy consumption.

Using fewer fixtures (option 1) would lead to reduced energy consumption and could save administrative and

maintenance costs associated with purchasing and maintaining fewer fixtures. However, this response to the design standard is only feasible in applications that have flexibility in fixture spacing. In some applications, such as small parking lots, changing spacing means moving poles and conductors, which would be expensive and could change the targeting of light in certain areas. For applications in which the height of the fixture is limited, the additional light output of a full-wattage pulse-start system might not be adequately distributed over a larger floor space (because the number of fixtures has been reduced) without fixture redesign.

For customers using reduced-wattage pulse-start fixtures (option 2), a customer could, for example, change a 1000 W probe-start fixture for an 875 W pulse-start fixture, maintaining light output to near the original level. DOE's view is that replacing probe-start lamp fixtures with reduced-wattage pulse-start lamp fixtures is generally more realistic and practical than replacing them with fewer pulse-start lamp fixtures because fixture spacing does not need to be changed. For this reason, DOE assumed reduced-wattage replacements in its analysis of a proposed design standard to prohibit metal halide lamp fixtures that use probe-start as their starting method.

When analyzing the energy-savings impact of a design standard efficiency level, DOE multiplied the normalized input power of the 1000 W ballast tested by 0.944. Because DOE determined that using the same number of reduced-wattage fixtures is the most likely market response to a design standard, DOE did not also scale the cost of a design standard efficiency level by 0.944. Instead, DOE assumed that reduced-wattage systems would cost approximately the same amount as full-wattage systems, with the exception of the addition of an igniter (device that provides a voltage pulse to start the lamp). In the non-design-standard scenario, DOE assumed that the representative cost of a 1000 W ballast would equal the cost of a probe-start ballast as this starting method is the most common in the greater than 500 W but less than or equal to 2000 W equipment classes. However, in the design-standard scenario, an igniter would need to be added, as only pulse-start ballasts could be included in new fixtures.

DOE requests comment on the decision to include a design standard that would prohibit the sale of probe-start ballasts in newly sold fixtures, the proposed methods of analyzing these levels, and the potential for lessening of the utility or the performance through the prohibition of the sale of probe-start ballasts in newly sold fixtures.

11. Scaling to Equipment Classes Not Analyzed

In the preliminary analysis, DOE analyzed all equipment classes as representative and, therefore, did not scale. As discussed in section V.C.2, DOE has added additional equipment classes for the NOPR. Although DOE set efficiency levels for quad-voltage ballasts directly, DOE did not analyze 480 V input voltage ballasts directly. Thus, it was necessary to develop a scaling relationship for this input voltage. To do so, DOE compared quad-voltage ballasts to their 480 V ballast counterparts using catalog data over all representative wattages at various efficiencies. DOE found the average reduction to ballast efficiency to be 0.6 percent. Thus, DOE proposes to apply this scaling factor to the efficiency levels for the quad-volt ballasts to determine the appropriate values for the 480 V ballasts. For the ≥150 W to ≤250 W equipment classes, DOE made adjustments to resulting scaled equations to ensure all efficiency levels were more stringent than the existing standards (see chapter 5 of the NOPR TSD for additional detail). DOE requests comment on this proposal.

12. Manufacturer Selling Prices

For the preliminary analysis, DOE developed the manufacturer selling prices for metal halide lamp fixtures and ballasts by determining a manufacturer production cost (MPC), either through a teardown or retail pricing analysis, and then applying a markups analysis to arrive at the manufacturer selling price (MSP). For further details on this analysis, see chapter 5 of the NOPR TSD.

Based on stakeholder comments and manufacturer interviews, DOE adjusted a number of parameters in its pricing analysis for this NOPR. In calculating prices, DOE adjusted material prices to better reflect current trends based on manufacturer input and commodity prices research. Additionally, for this NOPR, DOE applied incremental costs to fixtures utilizing electronic ballasts based on application characteristics (indoor vs. outdoor). Finally, DOE modified its approach to applying manufacturer markups to align better with existing fixture component manufacturing channels. The following sections describe these changes and approaches.

a. Manufacturer Production Costs

For the NOPR analyses, DOE conducted teardown analyses on a total of 32 commercially available metal halide ballasts (including four 150 W ballasts not presented in the preliminary analysis) and eight metal halide lamp fixtures. Using the information from these teardowns, DOE summed the direct materials, labor, and overhead costs used to manufacture a product to calculate the MPC.[29] In the case of electronic ballasts, direct material costs represent the direct purchase price of components (resistors, connecting wires, etc.). In the case of magnetic ballasts, direct material costs represent the purchase prices of steel laminations, copper wires, and other components. The direct labor costs include fabrication and assembly labor.

When determining material costs, DOE used material prices based on a five-year average to account for the fluctuations in the prices of certain raw materials, such as steel and copper. Several manufacturers of ballasts and fixtures noted the high prices and scarcity of copper and high-grade steels, such as M6 steel. Philips also commented that M6 steel is mostly manufactured in China, resulting in potential import difficulties. Acuity stated that volatility of material markets, especially in the availability and pricing of steel and copper, has greatly increased since the preliminary analysis. Acuity and NEMA suggested that DOE consider availability and price volatility of an improved steel core or copper wiring in their cost analysis. NEMA suggested that DOE factor in expected inflation and price volatility for materials. (Philips, Public Meeting Transcript, No. 33 at p. 71; Hubbell, Public Meeting Transcript, No. 33 at p. 70; NEMA, No. 34 at p. 7, 12, 16; Acuity, Public Meeting Transcript, No. 33 at p. 132–133)

DOE agrees that high-grade steel laminations and copper are materials that have seen high price fluctuations in recent years. Due to the uncertainty of how these prices will continue to change, DOE continues to use five-year average materials prices, rather than projected inflations, to characterize the expected cost impacts in years following the compliance date of the amended standards considered in this rule. For this NOPR, DOE updated these averages to include 2010 price data.

For the preliminary analysis, DOE used financial data to estimate the

[29] When viewed from the company-wide perspective, the sum of all material, labor, and overhead costs equals the company's sales cost, also referred to as the cost of goods sold (COGS).

overhead cost (including indirect material and labor costs, maintenance, depreciation, taxes, and insurance related to assets) by calculating it as a percentage of the MPC. NEEA noted that manufacturers have previously recommended that DOE apply overhead only to labor costs. NEEA urged DOE to ensure that this part of the analysis accurately reflects reality in the manufacturing world relevant to each rulemaking. (NEEA, No. 31 at p. 5) NEMA and OSI noted that manufacturing and overhead costs can vary greatly by manufacturer, production volume, and complexity of the product (*e.g.,* magnetic versus electronic technology). NEMA stated that design and overhead costs for electronic ballasts are inherently higher than those for magnetic ballasts and require different engineering specializations. (NEMA, No. 34 at p. 16; OSI, No. 27 at p. 5)

DOE recognizes that manufacturing and overhead costs can vary and, therefore, developed separate estimates for material, labor, and overhead for each representative unit in the analysis. In response to NEEA's comment, DOE notes that because it calculates overhead from available financial data, it can either calculate overhead as a percentage of the material and labor costs, or labor costs alone. In either case, overhead as a percentage of net sales remains the same. Thus, DOE maintained its approach from the preliminary TSD by utilizing information available in the recent standards rulemaking for fluorescent lamp ballasts.[30] In that rulemaking, DOE used financial data to estimate the overhead cost by calculating it as a percentage of the MPC. DOE estimated the depreciation cost from a representative electronics fabrication company's U.S. Securities and Exchange Commission (SEC) 10–K, and determined that it is approximately 2.6 percent of the cost of goods sold or the MPC. To determine the material and labor percentage, DOE marked down aggregated confidential MSPs to an MPC using the manufacturer markup. Then, DOE computed the ratio of aggregated teardown-sourced material and labor costs to the manufacturer-markdown-sourced MPC. DOE found the material and labor costs to be approximately 93.8 percent of the MPC. DOE then subtracted the materials and labor and depreciation percentages from 100 percent to back out the remainder of overhead as a percentage of MPC. Overhead was estimated to be 3.6 percent of the MPC. DOE found overhead and depreciation to be 6.2 percent of the MPC or 6.6 percent of the material and labor costs. The 6.6 percent factor was then used to mark up the material and labor costs contained in the teardown results to the MPC.

[30] *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/62.*

Incremental Costs for Electronically Ballasted Fixtures

After determining metal halide ballast MPCs and baseline fixture MPCs, DOE considered whether transitioning from magnetic to electronic ballast technology would require any further ballast or fixture design changes to accommodate the electronic ballast or maintain similar utility to the baseline magnetic ballast. In the preliminary analysis, DOE identified three potential sources of additional costs of switching from magnetic to electronic ballasts: Increasing the size of the fixture to accommodate the new footprint of the electronic ballast; increasing the heat sinking of the fixture to reduce thermal build up; and including voltage transient suppression for outdoor applications.

Based on its initial evaluation, DOE did not include any of these incremental costs in the preliminary analysis. In response, Philips and Georgia Power emphasized that electronic ballasts are not direct replacements for magnetic ballasts due to form factor. (Philips Lighting Electronics, Public Meeting Transcript, No. 33 at p. 64; Georgia Power, No. 28 at p. 1) Georgia Power noted that redesign of magnetic ballast fixture housing and optics may be required to accommodate electronic ballasts. (Georgia Power, No. 28 at p. 1) NEEA did not agree that there are no fixture incremental costs associated with a switch to electronic ballasts. NEEA recommended that DOE derive some incremental cost values for the analysis, and to the extent possible, use a distribution of costs for the analysis, perhaps with zero at the bottom end. (NEEA, No. 31 at p. 5)

While DOE agrees that fixtures may require redesign to accommodate a new form factor of ballast, based on its analysis of selected commercially available fixtures, DOE tentatively concludes that this redesign does not necessarily incur additional material or labor costs. Instead, DOE accounts for the capital conversion costs of redesigning fixtures in the MIA, as discussed in section V.I.2. However, for this NOPR, DOE further investigated three sources of potential incremental costs: (1) Outdoor transient protection, (2) thermal management, and (3) 120 V auxiliary power functionality.

Outdoor Transient Protection

In response to the preliminary TSD, DOE received a number of comments indicating that electronic ballasts were unfit to be used outside because of their inability to withstand high voltage surges. Cooper commented that the ANSI standard for area and roadway lighting in the utility division, ANSI C62.41.1–2002, requires that outdoor lighting be able to withstand a voltage transient of 10 kV. (Cooper, Public Meeting Transcript, No. 33 at p. 78) Progress Energy Carolinas specified that an inline MOV (a surge-protection device external to the ballast) is required for electronic ballasts in outdoor fixture. (Progress Energy Carolinas, No. 24 at p. 3) In response, OSI and Empower Electronics commented that some electronic ballasts incorporate integral transient protection and do not require additional technology. (OSI, Public Meeting Transcript, No. 33 at p. 74; Empower Electronics, No. 36 at p. 5) Similarly, NEEA agreed that because many electronic ballasts have voltage transient protection built-in already, transient protection will not be an incremental cost in all cases. (NEEA, No. 31 at p. 5)

DOE recognizes the necessity for outdoor fixtures to be able to withstand large voltage transients, primarily due to lightning strikes. While metal halide fixtures with magnetic ballasts are robust and do not require any additional devices or enhancements to withstand these transients, based on its evaluation of commercially available products, DOE finds that fixtures with electronic ballasts usually require additional design features in order to have adequate protection. Some manufacturers indicated that a portion of their electronic ballasts already have 10 kV surge protection built in, but most electronic ballasts are only rated for 2.5–6 kV voltage spikes. Though magnetic ballasts are known to provide protection in excess of the 10 kV ANSI C62.41.1–2002 Class C rating, for this NOPR, DOE only considers the cost of meeting the 10 kV requirement. Through interviews and an assessment of commercially available voltage-transient suppressors, DOE developed an incremental fixture cost of $19 for 10 kV inline (external to the ballast) surge protection for electronically ballasted outdoor fixtures.

Thermal Management

Commenters also indicated that electronic ballasts are more vulnerable than magnetic ballasts to high ambient temperatures, which, if not managed well, can cause premature ballast failure. In order to correct for this

difference, fixtures housing electronic ballasts would need to be redesigned to account for thermal management in both indoor and outdoor applications.

NEMA expressed concern about electronic ballasts' ability to operate at high ambient temperatures. (NEMA, Public Meeting Transcript, No. 33 at p. 16) NEMA noted that while magnetic ballasts can operate at temperatures as high as 150 °C, electronic ballasts generally cannot operate at temperatures exceeding 90 °C. This temperature limit makes it impossible to place electronic ballasts in a fixture in the traditional location near the lamp. (NEMA, No. 34 at pp. 8–9) NEMA and Progress Energy Carolinas indicated that the sensitivity of electronics to thermal conditions requires redesign of the fixture or ballast, such as larger ballast housing, thermal shields, or fixture venting to sink the heat outside of the fixture. (NEMA, No. 34. at pp. 8–9; Progress Energy Carolinas, No. 24 at p. 3) NEMA noted that these requirements add additional materials, redesigning, engineering, UL testing, and warranty burden costs. (NEMA, No. 34. at pp. 8–9)

In contrast, OSI explained that electronic ballasts are more efficient than magnetic ballasts, and, therefore, generate less heat and run at cooler temperatures. OSI commented that they manufacture an electronic metal halide ballast with a maximum allowable case temperature of 90 °C, and a maximum ambient temperature of 55 °C. These ballasts also use a power foldback feature to manage the temperature of the ballast and prevent damage to the ballast in extreme high-heat conditions. OSI has successfully retrofitted magnetically ballasted fixtures with these electronic ballasts and achieved thermal performance that met the requirements of their five-year warranty. (OSI, No. 27 at p. 2) Empower Electronics noted that several companies have made strides in managing thermal issues surrounding electronic ballasts with a maximum tolerable case temperature of 85 °C. (Empower Electronics, No. 36 at p. 5)

DOE agrees that because of temperature sensitivity concerns, manufacturers cannot directly replace a magnetic ballast with an electronic ballast in fixtures. Instead, the fixtures must be redesigned to tolerate the higher sensitivity to temperature of an electronic ballast. Manufacturers must design new and often larger brackets, and apply additional potting material to create an adequate thermal contact between the ballast and fixture. During interviews, manufacturers gave DOE information about the cost to add thermal management to fixtures with electronic ballasts. In aggregate, manufacturers indicated a 20-percent increase in fixture MPCs associated with thermal management. Additionally, DOE conducted teardown analyses of empty metal halide fixtures. Through analysis of pairs of fixtures designed for electronic ballasts and fixtures designed for comparable magnetic ballasts, DOE also found an approximately 20-percent increase in fixture MPCs to include thermal management for electronic ballasts. Accordingly, in the cost analysis for this rulemaking, all electronically ballasted metal halide lamp fixtures incur a 20-percent incremental cost to the empty fixture MPCs.

120 V Auxiliary Tap

In manufacturer interviews, DOE learned that for indoor applications, a number of magnetic ballasts include a 120 V auxiliary tap. This output is used to operate an emergency incandescent lamp after a temporary loss of power and while the metal halide lamp is still too hot to restart. These taps, primarily used in indoor applications, are generally required for only one out of every ten indoor lamp fixtures. A 120 V tap is easily incorporated into a magnetic ballast due to its traditional core and coil design, and incurs a negligible incremental cost. Electronic ballasts, though, require additional design to add this 120 V auxiliary power functionality. Using a combination of manufacturer information and market research, DOE concluded that a representative value for electronic ballasts to incorporate this auxiliary tap is $7.50. Because this functionality is only needed for 10 percent of ballasts in indoor fixtures, that number is multiplied by 0.10 to get an incremental ballast cost of $0.75 per indoor ballast.

Manufacturer Markups

The last step in determining manufacturer selling prices is development and application of manufacturer markups to scale the MPCs to MSPs. DOE developed initial manufacturer markup estimates by examining the annual SEC 10–K reports filed by publicly traded manufacturers of metal halide ballasts and metal halide lamp fixtures, among other products. DOE recognized that the financial information summarized in the 10–K reports is not usually exclusive to the metal halide portion of their businesses. To account for this, DOE asked manufacturers during interviews to comment on the calculated average MSP, and to provide both the manufacturer markup and manufacturer selling price of metal halide ballasts or metal halide lamp fixtures. Using this information, DOE determined in the preliminary TSD that a manufacturer markup of 1.47 was appropriate for both the metal halide ballast and fixture industries across all distribution channels.

In the preliminary TSD, DOE assumed that fixture manufacturers would not apply an additional markup to the ballasts they either purchase or manufacture in-house. Philips commented that a manufacturer would not carry the overhead of manufacturing their own ballasts if they could realize the same overall margin by purchasing one from a third party. Therefore, Philips found it unreasonable to use a single markup on the ballast. (Philips, Public Meeting Transcript, No. 33 at p. 74) NEEA suggested that DOE use separate markups for ballast manufacturers and fixture manufacturers, with the ballast manufacturer markup split into one value for the Original Equipment Manufacturer (OEM) channel and one value for the distributor channel. (NEEA, No. 31 at p. 4) NEEA also indicated that DOE should take into account the unique distribution channel for outdoor fixtures in its analysis when estimating markups and pricing for fixtures. (NEEA, No. 31 at p. 5)

DOE has revised its markup structure for today's NOPR. Based on feedback from manufacturers, DOE now uses separate markups for ballast manufacturers (1.47) and fixture manufacturers (1.58). DOE also assumes that fixture manufacturers apply the 1.58 markup to the ballasts used in their fixtures rather than to only the empty fixtures as assumed in the preliminary TSD. This assumption is consistent with feedback from both fixture manufacturers that purchase their ballasts and those that produce their ballasts in-house. In aggregate, the markup also accounts for the different markets served by fixture manufacturers. The 1.47 markup for ballast manufacturers now applies only to ballasts sold to fixture OEMs directly impacted by this rulemaking. For the purpose of the LCC analysis, DOE assumes a higher markup of 1.60 for ballasts that are sold to distributors for the replacement market.

D. Markups To Determine Equipment Price

By applying markups to the MSPs estimated in the engineering analysis, DOE estimated the amounts customers would pay for baseline and more efficient equipment. At each step in the distribution channel, companies mark

up the price of the equipment to cover business costs and profit margin. Identifying the appropriate markups and ultimately determining customer equipment price depend on the type of distribution channels through which the equipment moves from manufacturer to customer.

1. Distribution Channels

Before it could develop markups, DOE needed to identify distribution channels (*i.e.,* how the equipment is distributed from the manufacturer to the end-user) for the metal halide lamp fixture designs addressed in this rulemaking. In an electrical wholesaler distribution channel, DOE assumed the fixture manufacturer sells the fixture to an electrical wholesaler (*i.e.,* distributor), who in turn sells it to a contractor, who sells it to the end-user. In a contractor distribution channel, DOE assumed the fixture manufacturer sells the fixture directly to a contractor, who sells it to the end-user. In a utility distribution channel, DOE assumed the fixture manufacturer sells the fixture directly to the end-user (*i.e.,* electrical utility).

2. Estimation of Markups

To estimate wholesaler and utility markups, DOE used financial data from 10–K reports from publicly owned electrical wholesalers and utilities. DOE's markup analysis developed both baseline and incremental markups to transform the fixture MSP into an end-user equipment price. DOE used the baseline markups to determine the price of baseline designs. Incremental markups are coefficients that relate the change in the MSP of higher-efficiency designs to the change in the wholesaler and utility sales prices. These markups refer to higher-efficiency designs sold under market conditions with new and amended energy conservation standards.

In the preliminary analysis, DOE assumed a wholesaler baseline markup of 1.23 and a contractor baseline markup of 1.13, for a total wholesaler distribution channel baseline markup of 1.39 (excluding sales tax). In the public meeting, Philips inquired about documentation for these values. (Philips, Public Meeting Transcript, No. 33 at p. 89) DOE responded that these values were consistent with values used in other lighting-related rules (*e.g.,* for fluorescent lamp ballasts), and that DOE would review the values. In its manufacturer interviews and background research, DOE confirmed that although the individual values for wholesaler and contractor markups varied, the total value was consistent with actual markups. For this proposed rule, DOE retained its wholesaler and contractor markups, and also assumed utility baseline markups of 1.00 and 1.13 for the utility distribution channel in which the manufacturer sells a fixture directly to the end-user, and the channel in which a manufacturer sells a fixture to a contractor who in turn sells it to the end-user, respectively.

The sales tax represents state and local sales taxes applied to the end-user equipment price. For the preliminary analysis, DOE obtained state and local tax data from the Sales Tax Clearinghouse.[31] These data represent weighted averages that include state, county, and city rates. DOE then calculated population-weighted average tax values for each census division and large state, and then derived U.S. average tax values using a population-weighted average of the census division and large state values. This approach provided a national average tax rate of 7.13 percent. DOE received no comments related to sales tax, and retained its approach for this proposed rule.

3. Summary of Markups

Table V.4 summarizes the markups at each stage in the distribution channels and the overall baseline and incremental markups, and sales taxes, for each of the three identified channels.

TABLE V.4—SUMMARY OF FIXTURE DISTRIBUTION CHANNEL MARKUPS

	Wholesaler distribution		Utility distribution			
			Via wholesaler & contractor		Direct to end-user	
	Baseline	Incremental	Baseline	Incremental	Baseline	Incremental
Electrical Wholesaler (Distributor)	1.23	1.05	N/A	N/A	N/A	N/A
Utility	N/A	N/A	1.00	1.00	1.00	1.00
Contractor or Installer	1.13	1.13	1.13	1.13	N/A	N/A
Sales Tax	1.07		1.07		1.07	
Overall	1.49	1.27	1.21	1.21	1.07	1.07

Using these markups, DOE generated fixture end-user prices for each efficiency level it considered, assuming that each level represents a new minimum efficiency standard. Chapter 6 of the NOPR TSD provides additional detail on the markups analysis.

E. Energy Use Analysis

For the energy use analysis, DOE estimated the energy use of metal halide lamp fixtures in actual field conditions. The energy use analysis provided the basis for other DOE analyses, particularly assessments of the energy savings and the savings in operating costs that could result from DOE's adoption of new and amended standard levels.

To develop annual energy use estimates for the preliminary analysis, DOE multiplied annual usage (in hours per year) by the lamp and ballast system input power (in watts). DOE characterized representative lamp and ballast systems in the engineering analysis, which provided measured input power ratings. To characterize the country's average use of fixtures for a typical year, DOE developed annual operating hour distributions by sector, using data published in the 2010 U.S. Lighting Market Characterization: (LMC),[32] the Commercial Building Energy Consumption Survey (CBECS),[33] and the Manufacturer Energy

[31] The Sales Tax Clearinghouse. Available at *https://thestc.com/STRates.stm.* (Last accessed June 24, 2013.)

[32] U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy. 2010 *U.S. Lighting Market Characterization.* 2010. Available at *http://apps1.eere.energy.gov/buildings/publications/pdfs/ssl/2010-lmc-final-jan-2012.pdf.*

[33] U.S. Department of Energy, Energy Information Agency. *Commercial Building Energy Consumption Survey: Micro-Level Data, File 2 Building Activities, Special Measures of Size, and Multi-building Facilities.* 2003. Available at *www.eia.doe.gov/emeu/cbecs/public_use.html.*

Consumption Survey (MECS).[34] NEMA agreed with this approach. (NEMA, No. 34 at p. 17)

In the preliminary analysis, DOE assumed the different operating hours for commercial and industrial (typically indoor) fixtures and for outdoor fixtures. NEMA stated that outdoor equipment operates largely at night. (NEMA, No. 34 at p. 21) NEEA did its own analysis of fixture operating hours and generally supported the estimates DOE used in the preliminary analysis. (NEEA, No. 31 at p.6) For this proposed rule, DOE revised its assumed fixture operating hours to better distinguish indoor and outdoor applications.

DOE's preliminary energy use analysis assumed full operating power and no dimmed operation. NEMA suggested that HID dimming is possible, but significantly increases ballast and fixture cost, whereas fluorescent or other lighting technologies can be more easily and affordably dimmed. (NEMA, No. 34 at p. 8) OSI confirmed that they are developing dimming electronic ballasts for metal halide lamp fixtures. (OSI, No. 27 at p.3) DOE maintains that dimming is still a small portion of the MH market, however, and did not assume dimmed operation in the energy use analysis for this proposed rule. Chapter 7 of the NOPR TSD provides a more detailed description of DOE's energy use analysis. DOE is seeking data and information on the energy use analysis.

F. Life-Cycle Cost and Payback Period Analysis

DOE conducted the LCC and PBP analysis to evaluate the economic effects of potential energy conservation standards for metal halide lamp fixtures on individual customers. For any given efficiency level, DOE measured the PBP and the change in LCC relative to an estimated baseline equipment efficiency level. The LCC is the total customer expense over the life of the equipment, consisting of purchase, installation, and operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounted future operating costs to the time of purchase and summed them over the lifetime of the equipment. The PBP is the estimated amount of time (in years) it takes customers to recover the increased purchase cost (including installation) of more efficient equipment through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost (normally higher) by the change in average annual operating cost (normally lower) that results from the more efficient standard.

Inputs to the calculation of total installed cost include the cost of the equipment—which includes MSPs, distribution channel markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, equipment lifetimes, discount rates, and the year that compliance with new and amended standards is required. To account for uncertainty and variability, DOE created value distributions for selected inputs, including operating hours, electricity prices, discount rates, and sales tax rates. For example, DOE created a probability distribution of annual energy consumption in its energy use analysis, based in part on a range of annual operating hours. The operating hour distributions capture variations across building types, lighting applications, and metal halide systems for three sectors (commercial, industrial, and outdoor stationary). In contrast, fixture MSPs were specific to the representative designs evaluated in DOE's engineering analysis, and price markups were based on limited publicly available financial data. Consequently, DOE used discrete values instead of distributions for these inputs.

The computer model DOE uses to calculate the LCC and PBP, which incorporates Crystal Ball (a commercially available software program), relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and fixture user samples. NOPR TSD chapter 8 and its appendices provide details on the spreadsheet model and all the inputs to the LCC and PBP analysis.

Table V.5 summarizes the approach and data DOE used to develop inputs to the LCC and PBP calculations for the April 2011 preliminary TSD as well as the changes made for today's NOPR. The subsections that follow discuss the initial inputs and DOE's changes to them.

TABLE V.5—SUMMARY OF INPUTS AND KEY ASSUMPTIONS IN THE LCC AND PBP ANALYSIS *

Inputs	Preliminary TSD	Changes for the proposed rule
Equipment Cost.	Derived by multiplying MHLF MSPs by distribution channel markups and sales tax.	No change.
Installation Cost.	Calculated costs using estimated labor times and applicable labor rates from *RS Means Electrical Cost Data* (2009) and U.S. Bureau of Labor Statistics.	No change.
Annual Energy Use.	Determined operating hours by associating building-type-specific operating hours with distributions of various building types using lighting market and building energy consumption survey data: LMC (2002), CBECS (2003), and MECS (2006).	Determined operating hours separately for indoor and outdoor fixtures. Used lighting market data: LMC (2012).
Energy Prices.	Electricity: Based on EIA's Form 861 data for 2010	Electricity: Based on EIA's Form 826 data for 2012. Variability: Energy prices determined at state level; incorporated off-peak electricity prices in the Monte Carlo analysis.
Energy Price Projections.	Projected using *AEO2010*	Projected using *AEO2013*.
Replacement Costs.	Included labor and material costs for lamp and ballast replacement at the end of their lifetimes.	No change.
Equipment Lifetime.	Ballasts: Assumed 50,000 hours for magnetic ballasts and 30,000 hours for electronic ballasts.	Ballasts: Assumed 50,000 hours for magnetic ballasts and 40,000 hours for electronic ballasts.

[34] U.S. Department of Energy, Energy Information Agency. *Manufacturing Energy Consumption Survey, Table 1.4: Number of Establishments Using Energy Consumed for All Purpose.* 2006. Available at *www.eia.doe.gov/emeu/mecs/mecs2006/2006tables.html.*

TABLE V.5—SUMMARY OF INPUTS AND KEY ASSUMPTIONS IN THE LCC AND PBP ANALYSIS *—Continued

Inputs	Preliminary TSD	Changes for the proposed rule
Discount Rates.	Fixtures: Assumed 20 years for indoor fixtures and 25 years for outdoor fixtures.	Fixtures: No change.
	Commercial/Industrial: Estimated cost of capital to affected firms and industries; developed weighted average of the cost to the company of equity and debt financing.	Commercial/Industrial: Developed a distribution of discount rates for each end-use sector.
	Outdoor Stationary: Assumed to be the same as commercial sector.	Outdoor Stationary: Developed a distribution of discount rates for each end-use sector.

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the NOPR TSD.

1. Equipment Cost

To calculate customer equipment costs, DOE multiplied the MSPs developed in the engineering analysis by the distribution channel markups described in section V.D.1 (along with sales taxes). DOE used different markups for baseline equipment and higher-efficiency equipment because the markups estimated for incremental costs differ from those estimated for baseline models.

For the April 2011 preliminary TSD, DOE assumed that the MSPs and retail prices of products meeting various efficiency levels remain fixed, in real terms, after 2010 (the year for which the engineering analysis estimated costs) and throughout the analysis period. Subsequently, examination of historical price data for various appliances and equipment indicates that the assumption of constant real prices and costs may, in many cases, overestimate long-term appliance and equipment price trends. Economic literature and historical data suggest that the real costs of these products may in fact trend downward over time, partially because of ''learning'' or ''experience.'' [35]

On February 22, 2011, DOE published a notice of data availability (February 2011 NODA; 76 FR 9696) stating that DOE may consider improving regulatory analysis by addressing equipment price trends. DOE notes that learning-curve analysis characterizes the reduction in production cost mainly associated with labor-based performance improvement and higher investment in new capital equipment at the microeconomic level. Experience-curve analysis tends to focus more on entire industries and aggregates over various casual factors at the macroeconomic level: ''Experience curve'' and ''progress function'' typically represent generalizations of the learning concept to encompass behavior of all inputs to production and cost (*i.e.,* labor, capital, and materials). The economic literature often uses these two terms interchangeably. The term ''learning'' is used here to broadly cover these general macroeconomic concepts.

For this proposed rule and consistent with the February 2011 NODA, DOE examined two methods for estimating price trends for metal halide lamp fixtures: Using historical producer price indices (PPIs), and using projected price indices (called deflators). With PPI data, DOE found both positive and negative real price trends, depending on the specific time period examined, and did not use this method to adjust fixture prices. DOE instead adjusted fixture prices using deflators used by EIA to develop the *AEO.* When adjusted for inflation, the deflator-based price indices decline from 100 in 2010 to approximately 76 in 2045.

DOE invites comment on methods to improve its fixture price projections beyond the assumption of constant real prices, as well as any data supporting alternate methods. A more detailed discussion of price trend modeling and calculations is provided in appendix 8B of the NOPR TSD.

2. Installation Cost

Installation costs for metal halide lamp fixtures include the costs to install the fixture, maintain the ballast, and replace the lamp. For the April 2011 preliminary TSD, DOE used data collected for its July 2010 HID lamps determination,[36] labor rates for electricians from *RS Means,*[37] and other research to estimate the installation costs. DOE annualized maintenance costs in its preliminary analysis, and NEEA questioned why DOE annualized costs that do not occur annually, but rather occur periodically during the equipment lifetime. (NEEA, Public Meeting Transcript, No. 33 at p. 102) For this NOPR, DOE developed a methodology that allows the use of annualized maintenance costs while maintaining the integrity of the NPV calculations in the NIA. For further detail, see chapter 8 of the NOPR TSD.

3. Annual Energy Use

As discussed in section V.E, DOE estimated the annual energy use of representative metal halide systems using system input power ratings and sector operating hours. The annual energy use inputs to the LCC and PBP analysis are based on weighted average annual operating hours, whereas the Monte Carlo simulation draws on a distribution of annual operating hours to determine annual energy use.

4. Energy Prices

For the April 2011 preliminary TSD, DOE developed weighted average energy prices for 13 U.S. geographic areas consisting of the 9 census divisions, with 4 large states (1. California, 2. Florida, 3. New York, and 4. Texas) treated separately. For census divisions containing one of these large states, DOE calculated the regional average excluding the data for the large state. Prices were based on data from EIA Form 826, ''Monthly Electric Utility Sales and Revenue Data, 2011.'' GE commented that metal halide lighting is commonly used outdoors during off-peak hours, and recommended that DOE account for off-peak electricity prices in the analysis. (GE, Public Meeting Transcript, No. 33 at p. 135) For this proposed rule, DOE incorporated off-peak electricity pricing by using a distribution of percentages of average electricity prices in its Monte Carlo analysis, from which a lower average electricity price for the outdoor sector was calculated and used in the main LCC analysis. For more information, see chapter 8 of the NOPR TSD.

5. Energy Price Projections

To estimate the trends in energy prices, DOE used the price projections

[35] A draft paper, *Using the Experience Curve Approach for Appliance Price Forecasting,* posted on the DOE Web site at *www.eere.energy.gov/buildings/appliance_standards,* provides a summary of the data and literature currently available to DOE that is relevant to price forecasts for selected appliances and equipment.

[36] U.S. Department of Energy–Office of Energy Efficiency and Renewable Energy. Energy Conservation Program for Consumer Equipment: Preliminary Technical Support Document: High-Intensity Discharge Lamps. 2010. Washington, DC *<www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/60>*

[37] R.S. Means Company, Inc. *2010 RS Means Electrical Cost Data.* 2010. Kingston, MA.

in *AEO2013*. To arrive at prices in future years, DOE multiplied current average prices by the projected of annual average price changes in *AEO2013*. Because *AEO2013* projects prices to 2040, DOE used the average rate of change from 2010 to 2040 to estimate the price trend for electricity after 2040. In addition, the spreadsheet tools that DOE used to conduct the LCC and PBP analysis allow users to select price forecasts from the *AEO* low-growth, high-growth, and reference-case scenarios to estimate the sensitivity of the LCC and PBP to different energy price forecasts. DOE received no comments on the April 2011 preliminary TSD concerning its energy price projecting method for the LCC analysis, and retained this approach for this proposed rule.

6. Replacement Costs

In the April 2011 preliminary TSD, DOE addressed ballast and lamp replacements that occur within the LCC analysis period. Replacement costs include the labor and materials costs associated with replacing a ballast or lamp at the end of their lifetimes and are annualized across the years preceding and including the actual year in which equipment is replaced. For the LCC and PBP analysis, the analysis period corresponds with the fixture lifetime that is assumed to be longer than that of either the lamp or the ballast. For this reason, ballast and lamp prices and labor costs are included in the calculation of total installed costs. DOE received comments regarding its annualizing approach concerning replacement costs for the LCC analysis in its April 2011 preliminary TSD and developed a new annualizing methodology for this proposed rule. (NEEA, Public Meeting Transcript, No. 33 at p. 103)

7. Equipment Lifetime

For the April 2011 preliminary TSD, DOE defined equipment lifetime as the age (in hours in operation) when a fixture, ballast, or lamp is retired from service. For fixtures in all equipment classes, DOE assumed lifetimes for indoor and outdoor fixtures of 20 and 25 years, respectively.

Metal halide lamp fixtures are operated by either magnetic or electronic ballasts. In the April 2011 preliminary analysis, DOE assumed that magnetic ballasts last for 50,000 hours and electronic ballasts last for 30,000 hours. NEMA and Empower Electronics agreed with DOE's general estimates about magnetic and electronic ballast lifetimes, but NEMA cautioned that fixtures are often removed before end of service life, especially as new energy-efficient alternatives appear on the market. (NEMA, No. 34 at p. 18; Empower Electronics, No. 36 at p. 11) Similarly, Philips noted that ballasts may be replaced prior to physical failure. (Philips, Public Meeting Transcript, No. 33 at p. 107) OSI suggested an average rated life of 50,000 hours for electronic ballasts, and agreed with NEMA and Philips that fixtures may be replaced before end of service life. (OSI, No. 27 at p. 6) The California IOUs believed that DOE underestimated electronic ballast lifetime by as much as twofold based on their experience with electronic ballast manufacturers. (California IOUs, No. 32 at p. 3) Finally, NEEA suggested that DOE use a distribution of ballast lifetimes for LCC and other analyses. (NEEA, No. 31 at p. 7)

DOE notes that actual ballast lifetime data are limited. However, based on comments and additional research, DOE revised its average electronic ballast lifetime to 40,000 hours and maintained its average lifetime of 50,000 hours for magnetic ballasts for this proposed rule. DOE agrees that ballast lifetimes can vary due to both physical failure and economic factors (*e.g.,* early replacements due to retrofits). Consequently, DOE accounted for variability in lifetime in LCC and PBP via the Monte Carlo simulation, and in the shipments and NIA analyses by assuming a Weibull distribution for lifetimes to accommodate failures and replacements.[38]

Metal halide lamp lifetimes vary by fixture equipment class. For the April 2011 preliminary TSD, DOE assumed that lamps in the 70 W, 250 W, 400 W, and 1000 W equipment classes operate for 12,000, 15,000, 20,000, and 12,000 hours, respectively. Commenters noted that lamp lifetime can vary with operating position (*e.g.,* vertical, horizontal, or tilted), and recommended that DOE consider this variation in developing weighted-average lamp lifetimes. (GE, Public Meeting Transcript, No. 33 at p. 97; Hubbell, Public Meeting Transcript, No. 33 at p. 98) DOE agrees with the comments, and surveyed published MH lamp life ratings in developing weighted-average lamp lifetimes for this proposed rule.

Some public meeting participants asked about the effects of ballast type (*i.e.,* magnetic vs. electronic) on lamp life. (ASAP, Public Meeting Transcript, No. 33 at p. 98; Energy Solutions Public Meeting Transcript, No. 33 at p. 104) Hubbell and Philips acknowledged the lack of industry consensus on this subject and the variability of related lifetime data between manufacturers. (Hubbell, Public Meeting Transcript, No. 33 at p. 98; Philips, Public Meeting Transcript, No. 33 at p. 104) Based on its review of industry data and literature, DOE could not substantiate the effect of ballast type on MH lamp lifetimes, and used published lamp life ratings only in developing weighted-average lamp lifetimes for this proposed rule.

8. Discount Rates

The discount rate is the rate at which future expenditures are discounted to estimate their present value. In this NOPR, DOE estimated separate discount rates for commercial, industrial and outdoor stationary customers. For all such customers, DOE estimated the cost of capital for commercial and industrial companies by examining both debt and equity capital, and developed an appropriately weighted average of the cost to the company of equity and debt financing. For the proposed rule, DOE also developed a distribution of discount rates for each end-use sector from which the Monte Carlo simulation samples.

For each sector, DOE assembled data on debt interest rates and the cost of equity capital for representative firms that use metal halide lamp fixtures. DOE determined a distribution of the weighted-average cost of capital for each class of potential owners using data from the Damodaran online financial database.[39] The average discount rates, weighted by the shares of each rate value in the sectoral distributions, are 4.5 percent for commercial end-users, 4.3 percent for industrial end-users, and 3.4 percent for outdoor stationary end-users.

DOE received no comments on the April 2011 preliminary TSD concerning its estimated discount rates for the LCC analysis and retained this approach for this proposed rule.

9. Analysis Period

DOE calculated the LCC for all end-users as if each one would purchase a new fixture in the year 2016.

10. Fixture Purchasing Events

DOE designed the LCC and PBP analysis for this rulemaking around scenarios where customers need to purchase a metal halide lamp fixture. The ''event'' that prompts the purchase

[38] Weibull distribution is a probability density function; for more information, see *www.itl.nist.gov/div898/handbook/eda/section3/eda3668.htm.*

[39] The data are available at *pages.stern.nyu.edu/~adamodar.*

of a new fixture (either a ballast failure or new construction/renovation) was assumed to influence the cost-effectiveness of the customer purchase decision. DOE assumed that a customer will replace a failed fixture with an identical fixture in the base case, or a new standards-compliant fixture with comparable light output in the standards case. DOE analyzed five representative equipment classes for fixtures and presented the results for each of these representative equipment classes by fixture purchasing event, which influenced the LCC and PBP results.

DOE received no comments on the April 2011 preliminary TSD concerning its assumed fixture purchasing events for the LCC analysis and retained this approach for this proposed rule.

G. National Impact Analysis—National Energy Savings and Net Present Value Analysis

DOE's NIA assessed the national energy savings (NES) and the national net present value (NPV) of total customer costs and savings that would be expected to result from new or amended standards at specific efficiency levels. (''Customer'' in this context refers to users of the regulated equipment.)

DOE used a Microsoft Excel spreadsheet model to calculate the energy savings and the national customer costs and savings from each TSL. The TSD and other documentation for the rulemaking help explain the models and how to use them, allowing interested parties to review DOE's analyses by changing various input quantities within the spreadsheet.

DOE used the NIA spreadsheet to calculate the NES and NPV based on the annual energy use and total installed cost data from the energy use and LCC analyses. DOE projected the energy savings, energy cost savings, equipment costs, and NPV of customer benefits for each equipment class for equipment sold from 2016 through 2045. The projections provided annual and cumulative values for all four output parameters.

DOE evaluated the impacts of new and amended standards for metal halide lamp fixtures 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 new or amended energy conservation standards. DOE compared these projections with projections characterizing the market for each equipment class if DOE adopted new or amended standards at specific energy efficiency levels (*i.e.,* the TSLs or standards cases) for that class. In characterizing the base and standards cases, DOE considered historical shipments, the mix of efficiencies sold in the absence of new standards, and how that mix may change over time. Additional information about the NIA spreadsheet is in the NOPR TSD chapter 11.

Table V.6 summarizes the approach and data DOE used to derive the inputs to the NES and NPV analyses for the April 2011 preliminary TSD, as well as the changes to the analyses for the proposed rule. A discussion of selected inputs and changes follows. See chapter 11 of the NOPR TSD for further details.

TABLE V.6—APPROACH AND DATA USED FOR NATIONAL ENERGY SAVINGS AND CUSTOMER NET PRESENT VALUE ANALYSES

Inputs	Preliminary TSD	Changes for the proposed rule
Shipments	Developed annual shipments from shipments model	See Table V.7.
Annual Energy Consumption per Unit	Established in the energy use characterization (preliminary TSD chapter 7).	See section V.E.
Rebound Effect	0%	No change.
Electricity Price Forecast	*AEO2010*	*AEO2013*.
Energy Site-to-Source Conversion Factor	Assumed to be constant across time: 1 site kWh = 10,239 source Btu.	Used annually variable site kWh to source Btu conversion factor.
Discount Rate	3% and 7% real	No change.
Present Year	2011	2013.

1. Shipments

Equipment shipments are an important component of any estimate of the future impact of a standard. Using a three-step process, DOE developed the shipments portion of the NIA spreadsheet, a model that uses historical data as a basis for projecting future fixture shipments. First, DOE used a combination of historical fixture shipment data from the U.S. Census Bureau for HID fixtures from 1993 to 2001. DOE correlated the HID fixture data with HID lamp data from 1990 to 2010 from the HID lamps rulemaking (EERE–2010–BT–STD–0043). Fixture shipments correlated to roughly a third of lamp shipments. DOE applied this fixture-to-lamp correlation to the larger and more detailed data set of HID lamp data to estimate the total historical shipments of each fixture type analyzed. Second, DOE estimated an installed stock for each fixture in 2016 based on the average service lifetime of each fixture type. Third, DOE developed annual shipment projections for 2016–2045 by modeling fixture purchasing events, such as replacement and new construction, and applying growth rate, replacement rate, and alternative technologies penetration rate assumptions. For details on the shipments analysis, see chapter 10 of the NOPR TSD. DOE is seeking comment on whether the assumptions and methods used to project MHLF shipments are reasonable and likely to occur. DOE is also seeking data and information that could be used to refine DOE's estimates. DOE also requests comment on the impediments that prevent users of metal halide lamp fixtures from switching to LED lighting to garner further energy savings.

TABLE V.7—APPROACH AND DATA USED FOR THE SHIPMENTS ANALYSIS

Inputs	Preliminary TSD	Changes for the proposed rule
Historical Shipments	Used historical shipments for 1990–2008 to develop shipments and stock projections for the analysis period.	Used historical MH lamp shipments for 1990–2010 to develop shipments and stock projections for MH fixtures.

TABLE V.7—APPROACH AND DATA USED FOR THE SHIPMENTS ANALYSIS—Continued

Inputs	Preliminary TSD	Changes for the proposed rule
Fixture Stock	Based projections on the shipments that survive up to a given date; assumed Weibull lifetime distribution.	No change.
Growth	Adjusted based on fixture market	No change.
Base Case Scenarios	Analyzed one scenario incorporating alternative technologies encroaching on fixture shipments.	Developed ''low'' and ''high'' shipments scenarios.
Standards Case Scenarios	Analyzed Roll-up and Shift scenarios	Analyzed Roll-up only.

a. Historical Shipments

For the April 2011 preliminary TSD, DOE reviewed U.S. Census Bureau data from 1993 to 2001 for metal halide lamp fixtures.[40] DOE compared the MHLF census data to NEMA data for historical metal halide lamp shipments from 1990 to 2008 taken from DOE's final determination for HID lamps published on July 1, 2010. 75 FR 37975. DOE found a correlation between metal halide lamp fixture and metal halide lamp shipments. From 1993 to 2001, the number of MHLF shipments on average represented 37 percent of the amount of lamp shipments, with a standard deviation of 3 percent. Using this relationship, DOE multiplied all of the metal halide lamp shipments from 1990 to 2010 by 37 percent to estimate the historical shipments of metal halide lamp fixtures. DOE received no comments on the April 2011 preliminary TSD regarding historical fixture shipments data and estimates and retains this approach for this proposed rule.

b. Fixture Stock Projections

In its preliminary shipments analysis, DOE calculated the installed fixture stock using historical fixture shipments estimated from U.S. Census Bureau Current Industrial Reports data (1993–2001), data from the HID lamps rule, and its projected shipments for future years. DOE estimated the installed stock during the analysis period by using fixture shipments and calculating how many will survive up to a given year based on a Weibull lifetime distribution for each fixture type. DOE received no comments on the April 2011 preliminary TSD regarding its fixture stock projection method and retained this approach for this proposed rule.

c. Base Case Shipment Scenarios

For the April 2011 preliminary TSD, DOE's projection showed fixture shipments increasing until 2020 and then declining. Several manufacturers stated that DOE's projection overestimated fixtures shipments in the near term. (Acuity, Cooper, GE, Philips, Public Meeting Transcript, No. 33 at pp. 112–120) Philips noted that T5 and T8 fluorescent systems are already displacing metal halide systems, with solid-state lighting also starting to penetrate the metal halide lamp fixture market. (Philips, Public Meeting Transcript, No. 33 at p. 113) DOE revisited its preliminary fixture shipment estimates and manufacturer interview data, and revised its projections downward for this proposed rule. DOE assumed that shipments for metal halide lamp fixtures would peak somewhere between 2010 and 2015. From the manufacturer interviews, DOE was able to approximate the shipments in 2010. Through separate data, additional assumptions, and research, DOE was able to approximate the same shipments in 2010 in the DOE model. In the ''low'' shipment scenario, DOE reviewed trends in replacement technologies and projected a decline such that the 2040 shipment projection fell back to the level of the 2000 shipments. In the ''high'' scenario, the decline in metal halide lamp fixture shipments is not as large as in the ''low'' scenario. The shipments in the ''high'' scenario in 2040 roughly equal the shipments in 2006.

d. Standards Case Efficiency Scenarios

Several of the inputs for determining NES (*e.g.,* the annual energy consumption per unit) and NPV (*e.g.,* the total annual installed cost and the total annual operating cost savings) depend on equipment efficiency. For the April 2011 preliminary TSD, DOE used two shipment efficiency scenarios: ''Roll-up'' and ''Shift.'' DOE received no comments on its efficiency scenarios, but eliminated the Shift scenario and retained the Roll-up scenario for this proposed rule. The Roll-up scenario is a standards case in which all equipment efficiencies in the base case that do not meet the standard would 'roll up' to the lowest level that can meet the new standard level. Equipment efficiencies in the base case above the standard level are unaffected in the Roll-up scenario, as these customers are assumed to continue to purchase the same base-case fixtures. The Roll-up scenario characterizes customers primarily driven by the first cost of the analyzed equipment, which DOE believes more accurately characterizes the metal halide lamp fixture marketplace.

2. Site-to-Source Energy Conversion

To estimate the national energy savings expected from appliance standards, DOE uses a multiplicative factor to convert site energy consumption into primary or source energy consumption (the energy required to convert and deliver the site energy). These 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 (*i.e.,* the types of power plants 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 appliance standards.

For the April 2011 preliminary TSD, DOE used the average of all annual site-to-source conversion factors based on the version of NEMS that corresponds to *AEO2010,* which provides energy forecasts through 2035. For 2036–2044, DOE used conversion factors that remain constant at the 2035 values.

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 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,

[40] U.S. Census Bureau. *Manufacturing, Mining, and Construction Statistics.* Current Industrial Reports, Fluorescent Lamp Ballasts, MQ335C. 2008. (Last accessed September 1, 2010). <*www.census.gov/mcd/*>.

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.[41]

The approach used for today's NOPR, and the FFC multipliers that were applied, are described in appendix 11B of the NOPR TSD. NES results are presented in both primary and FFC savings in section VI.B.

H. Customer Subgroup Analysis

The life-cycle cost subgroup analysis evaluates impacts of standards on identifiable groups, such as different customer populations or business types that may be disproportionately affected by any national energy conservation standard level. DOE will estimate LCC savings and PBPs for customers in the commercial, industrial, and outdoor stationary sectors. DOE will also analyze the LCC effects on customers living in or operating different buildings in the commercial and industrial sectors. In addition, DOE will analyze effects on customers in different regions of the country.

I. Manufacturer Impact Analysis

1. Overview

DOE performed a manufacturer impact analysis (MIA) to estimate the financial impact of proposed new and amended energy conservation standards on manufacturers of metal halide lamp fixtures and ballasts, and to estimate the impact of such standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects. The quantitative part of the MIA primarily relies on the GRIM, an industry cash flow model using inputs specific to this rulemaking. The key GRIM inputs are data on the industry cost structure, equipment costs, shipments, and assumptions about markups and conversion expenditures. The key output is the industry net present value (INPV). Different sets of shipment and markup assumptions (scenarios) will produce different results. The qualitative part of the MIA addresses factors such as equipment attributes; characteristics of, and impacts on, particular sub-groups of firms; and market and product trends. Chapter 13 of the NOPR TSD outlines the complete MIA.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1, Industry Profile, DOE prepared an industry characterization based on the market and technology assessment, preliminary manufacturer interviews, and publicly available information. In Phase 2, Industry Cash Flow Analysis, DOE estimated industry cash flows in the GRIM using industry financial parameters derived in Phase 1 and the shipment scenarios used in the NIA. In Phase 3, Sub-Group Impact Analysis, DOE conducted structured, detailed interviews with a representative cross-section of manufacturers that represent more than 65 percent of domestic fixture sales and 90 percent of domestic ballast sales. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics specific to each company, and obtained each manufacturer's view of the MHLF industry as a whole. The interviews provided valuable information that DOE used to evaluate the impacts of new and amended standards on manufacturers' cash flows, manufacturing capacities, and employment levels. See section V.I.4 for a description of the key issues manufacturers raised during the interviews.

During Phase 3, DOE also used the results of the industry characterization analysis in Phase 1 and feedback from manufacturer interviews to group manufacturers that exhibit similar production and cost structure characteristics. DOE identified one sub-group for a separate impact analysis—small manufacturers—using the small business size standards published by the Small Business Administration (SBA).[42] These thresholds include all employees in a business' parent company and any other subsidiaries. Based upon this classification, DOE identified 54 small metal halide lamp fixture manufacturers and five small metal halide ballast manufacturers that qualify as small businesses.

2. GRIM Analysis and Key Inputs

DOE uses the GRIM to quantify the changes in cash flow that result in a higher or lower industry value. The GRIM analysis uses a standard annual cash-flow analysis that incorporates manufacturer costs, markups, shipments, and industry financial information as inputs and models changes in costs, investments, and manufacturer margins that would result from new and amended energy conservation standards. The GRIM spreadsheet uses the inputs to calculate a series of annual cash flows beginning with the base year of the analysis, 2013, and continuing to 2045. DOE computes INPVs by summing the stream of annual discounted cash flows during this period. DOE uses a real discount rate of 9.5 percent and 8.9 percent for fixtures and ballasts, respectively. The discount rate estimates were derived from industry corporate annual reports to the Securities and Exchange Commission (SEC 10-Ks) and then modified according to feedback during manufacturer interviews.

The GRIM calculates cash flows using standard accounting principles and compares changes in INPV between a base case and various TSLs (the standards cases). The difference in INPV between the base case and a standards case represents the financial impact of the new and amended standard on manufacturers. The GRIM results are shown in section VI.B.2. Additional details about the GRIM can be found in chapter 13 of the NOPR TSD.

DOE typically presents its estimates of manufacturer impacts by groups of the major equipment types served by the same manufacturers. Although the covered equipment in today's proposed rulemaking is metal halide lamp fixtures, by requiring a particular ballast efficiency in this regulation, metal halide ballast manufacturers will also be affected by new and amended standards. Because fixture and ballast markets are served by separate groups of manufacturers, DOE presents impacts on metal halide lamp fixture manufacturers and metal halide ballast manufacturers separately.

a. Manufacturer Production Costs

Manufacturing a higher-efficiency product is typically more expensive than manufacturing a baseline product due to the use of components that are more costly than baseline components. The changes in the MPCs of the analyzed equipment can affect the revenues, gross margins, and cash flows of the manufacturer, making these equipment cost data key GRIM inputs for DOE's analysis. DOE employed one of two methods to derive these per-unit production costs. DOE was able to establish a BOM for those ballasts it tore

[41] Docket ID: EERE–2010–BT–NOA–0028, comment by Kirk Lundblade.

[42] DOE determined whether a company is a small business (65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000) and codified at 13 CFR part 121). To be categorized as a small business, a metal halide lamp fixture manufacturer may have up to 500 employees; a metal halide ballast manufacturer may have up to 750 employees.

down. DOE then converted the BOMs at each efficiency level into corresponding MPCs composed of labor, materials, and overhead expenses using its engineering cost model. When DOE was not able to generate a BOM for a given ballast, DOE estimated the per-unit production costs based on the relationship between teardown data and manufacturer-supplied MSPs. DOE included a cost adder for indoor electronic ballasts to account for the additional cost of including a 120 V auxiliary tap in some models. DOE also developed fixture MPCs for several different fixture types using either a teardown analysis or retail price scaling. With these costs for several common fixture types, DOE created a single ''hybrid'' fixture for each of the five representative wattages, reflecting the weighted average of the common fixture types. DOE included a cost adder for all fixtures that use electronic ballasts to account for thermal management and a cost adder for outdoor fixtures that use electronic ballasts to account for voltage transient protection. For a complete description these cost adders, see section V.C.12 of this NOPR. In addition, DOE used teardown cost data to disaggregate the ballast and fixture MPCs into material, labor, and overhead costs.

b. Base Case Shipment Projections

Changes in sales volumes and efficiencies over time can significantly affect manufacturer finances. The GRIM estimates manufacturer revenues based on total unit shipment projections and the distribution of shipments by efficiency level. For this analysis, the GRIM uses the NIA's annual shipment projections from 2013 to 2045, the end of the analysis period. The shipments analysis also estimated the distribution of fixture efficiencies in the base case for all equipment classes.

DOE employed two scenarios that affect base case shipments over the analysis period (2016 through 2045): a low-shipment scenario and a high-shipment scenario. In the low-shipment scenario, DOE reviewed trends in fixture replacement technologies and projected a decline in shipments over the analysis period. In the high-shipment scenario, the decline in metal halide lamp fixture shipments is not as large as in the low-shipment scenario. Manufacturers earn greater revenue under the high-shipment scenario compared to the low-shipment scenario. See chapter 10 of the NOPR TSD for additional details on shipments.

c. Standards Case Shipment Projections

In addition to the two shipment scenarios affecting base case shipments, DOE modeled a roll-up scenario to estimate the standards case efficiency distributions. See chapter 10 of the NOPR TSD for more information on the standards case shipment scenarios.

d. Markup Scenarios

As discussed above, MSPs include direct manufacturing production costs (*i.e.,* labor, material, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.,* selling, general and administrative expenses (SG&A), R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied markups to the MPCs estimated in the engineering analysis for each equipment class and efficiency level. Modifying these markups in the standards cases yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards case markup scenarios to represent the uncertainty regarding impacts on prices and profitability: (1) A flat markup scenario, and (2) a 'preservation of operating profit' markup scenario. These scenarios lead to different markups values, which, when multiplied by the MPCs, result in varying revenue and cash flow impacts.

The flat markup scenario assumes that the cost of goods sold for each product is marked up by a flat percentage to cover SG&A expenses, R&D expenses, and profit. The flat markup scenario uses the baseline manufacturer markup (1.47 for ballasts and 1.58 for fixtures, as discussed in chapter 5 of the NOPR TSD) for all fixture equipment classes in both the base case and the standards case. This scenario represents the upper bound of industry profitability in the standards case because it is designed so that manufacturers can fully pass through additional costs due to standards to their customers. To derive the flat markup percentage, DOE evaluated publicly available financial information for manufacturers of metal halide ballasts or fixtures. DOE also requested feedback on this value during manufacturer interviews.

During interviews, manufacturers expressed skepticism that they would be able to mark up higher equipment costs in the standards case to the same degree as in the base case. In recognition of this concern, DOE also modeled a scenario called the 'preservation of operating profit' markup scenario. In this scenario, markups in the standards case are lowered such that manufacturers are only able to maintain their total base case operating profit in absolute dollars, despite higher product costs and investments. This scenario represents the lower bound of industry profitability following new and amended energy conservation standards because the resulting higher production costs and investments do not yield any additional operating profits. DOE implemented this scenario in the GRIM by lowering the manufacturer markups at each TSL to yield approximately the same earnings before interest and taxes in the standards case in 2017, as in the base case.

e. Product and Capital Conversion Costs

New and 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 are investments in research, development, testing, marketing, and other non-capitalized costs necessary to make product designs comply with the new and amended energy conservation standards. Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new product designs can be fabricated and assembled.

NEMA expressed concern about the costs (in time and dollars) that manufacturers may incur due to this rulemaking, specifically with respect to product redesigns and product testing. NEMA disagreed with DOE's assumption in the preliminary analysis that ballast redesigns would not cause fixture redesigns. NEMA argued that DOE should account for fixture redesign costs for both magnetic and electronic ballast efficiency levels and provided estimates of these costs. (NEMA, No. 34 at p. 7, 21) Acuity and OSI agreed that fixture manufacturers would face increased costs due to additional engineering, testing, and material costs. (Acuity, Public Meeting Transcript, No. 33 at p. 79; OSI, No. 27 at p. 6)

For today's NOPR, DOE has revised its assumption about additional fixture costs and believes that empty fixture costs are likely to increase for standards requiring electronic ballasts, as described in section V.C.12, because of the need to incorporate thermal protection and voltage transient protection. Because the use of electronic ballasts could necessitate fixture redesigns, DOE includes the costs of these fixture redesigns in its product and capital conversion costs. DOE has taken into account the feedback and estimates provided by NEMA in its analysis, as well as the input from individual manufacturers during

confidential manufacturer interviews. DOE's methodology for developing product and capital conversion cost estimates is described below and in chapter 13 of the NOPR TSD. DOE requests comment on the methodology applied to determine the product and capital conversion costs.

Several stakeholders commented that the costs to develop and test electronic ballasts are higher than for magnetic ballasts. (NEMA, No 34 at p. 8; OSI, No. 27 at p. 6) Cooper noted that the cost of UL certification when switching from magnetic to electronic ballasts falls into this category. (Cooper, Public Meeting Transcript, No. 33 at p. 76) Acuity added that long lead times accentuate the cost of UL certification and make it more difficult for manufacturers to quickly bring new products to market. (Acuity, Public Meeting Transcript, No. 33 at p. 79) DOE agrees that the engineering, testing, and certification costs for electronic ballasts may be significant and has included these costs in today's analysis, as described in what follows.

Ballast Industry Conversion Costs

DOE's interviews with ballast manufacturers revealed that they expect the need to develop new and improved circuit designs—as opposed to the purchase of new capital equipment—will account for most of the conversion costs at each TSL. Due to the flexible nature of most ballast production equipment and DOE's assumption that the stack height of magnetic ballasts will not increase, manufacturers do not expect new and amended standards to strand (make obsolete in advance of complete depreciation) a significant share of their production assets. As opposed to other more capital-intensive appliance manufacturers, much of the expenses required to achieve higher efficiency levels would occur through research and development, engineering, and testing efforts.

DOE based its estimates of the product conversion costs that would be required to meet each TSL on information obtained from manufacturer interviews and catalog data on the number and efficiency of models that each major manufacturer supports. DOE estimated the product development costs manufacturers would incur for each model that would need to be converted based on the necessary engineering and testing resources required to redesign each model. DOE assumed higher R&D and testing costs for levels requiring electronic ballasts compared to magnetic ballasts. Testing costs include internal testing, UL testing, additional certifications, pilot runs, and product training. DOE then multiplied these per-model cost estimates for each interviewed manufacturer by the total number of ballast models that would need to be converted at each efficiency level in each wattage bin, based on information from manufacturer catalogs and interviews, to estimate the total product conversion costs.

To separate total product conversion costs into indoor and outdoor equipment classes, DOE assigned costs based on the percentage of indoor or outdoor shipments in the NIA. Finally, DOE scaled these costs to account for the market share of the companies not interviewed. DOE's estimates of the product conversion costs for metal halide ballasts affected by this rulemaking can be found in section VI.B.2, as follows and in chapter 13 of the NOPR TSD.

As discussed above, DOE also estimated the capital conversion costs ballast manufacturers would incur to comply with the potential new and amended energy conservation standards represented by each TSL. During interviews, DOE asked manufacturers to estimate the capital expenditures required to expand the production of higher-efficiency products. These estimates included the required tooling and plant changes that would be necessary if product lines meeting the proposed standard did not currently exist.

DOE estimated capital conversion costs, like product conversion costs, based on interviews with manufacturers. Some manufacturers anticipated minimal to no conversion costs because of the flexibility of their existing equipment or because they source certain ballast types rather than produce them in-house. Other manufacturers expected greater capital conversion costs because they would need to acquire new stamping dies for higher-efficiency magnetic ballasts and/or wave solder machines for electronic ballasts. In general, DOE's view is that significant changes to existing production lines and equipment would not be necessary in response to new or amended standards. It is therefore unlikely that most manufacturers would require high levels of capital expenditures compared to ordinary capital additions or replacements.

DOE scaled its estimated conversion costs based on interviews to account for the market share of the companies not interviewed. DOE's estimates of the capital conversion costs for metal halide ballasts can be found in section VI.B.2, as follows and in chapter 13 of the NOPR TSD.

Fixture Industry Conversion Costs

To estimate conversion costs for fixture manufacturers, DOE again based its estimates on manufacturer interviews and industry research. DOE doubts that the stack height of magnetic ballasts will increase in response to new and amended standards. As such, DOE assumed that fixture manufacturers would be able to use higher-efficiency magnetic ballasts without incurring redesign or capital costs. Even if higher-efficiency levels can be met with magnetic ballasts, DOE expects manufacturers will incur one-time non-capital expenses at these levels associated with testing, literature changes, and marketing costs. These costs are included in DOE's product conversion cost estimates.

At efficiency levels requiring electronic ballasts, DOE expects that fixture manufacturers may face more significant conversion costs. Manufacturers will have to consider thermal protection in their product designs because more-efficient electronic ballasts have lower tolerances for high temperatures than magnetic ballasts do. DOE estimated product conversion costs for fixture manufacturers by multiplying the number of product families in each wattage bin by the expected cost of fixture redesign and testing. DOE then multiplied these totals by the percentage of fixtures that would need to be redesigned at each efficiency level.

DOE employed a similar methodology to estimate fixture capital conversion costs at efficiency levels associated with electronic ballasts. Based on manufacturer interviews, DOE estimated platform tooling and equipment costs, such as costs for die castings, bracketing, and extrusions, and multiplied these costs by the number of fixtures affected by the standard.

To separate total product and capital conversion costs for fixture manufacturers into indoor and outdoor equipment classes, DOE assigned costs based on the percentage of indoor and outdoor fixtures each interviewed manufacturer offers. DOE's estimates of the product and capital conversion costs for metal halide lamp fixtures addressed in this rulemaking can be found in section VI.B.2, as follows and in chapter 13 of the NOPR TSD.

3. Discussion of Comments

During the April 2011 public meeting, interested parties commented on the assumptions and results of the preliminary TSD. DOE addresses those comments below relating to the compliance period, the opportunity cost

of investments, and impacts on competition.

a. Compliance Period

NEMA stated that fixture manufacturers may be unable to meet the compliance date of standards for all products. NEMA believes that it could take one year to redesign the ballasts, one year to test and certify the ballasts, and one year to handle marketing of fixture phase-outs. NEMA said that this entire process may be difficult and burdensome given the scope of the rulemaking. (NEMA, No. 34 at p. 15) OSI also noted its concern about the compliance period, stating that any change in the standard must provide adequate time for the ballast OEMs to develop, test, and begin producing the additional ballast types needed to provide a complete line of electronic metal halide ballasts. Fixture OEMs would, in turn, need adequate time to redesign their products. (OSI, No. 27 at p. 6)

At the same time, OSI stated that ballast OEMs could provide bench-top temperature-rise data to help reduce the UL testing requirements and costs for the fixture OEMs. OSI also stated that several ballast manufacturers are already manufacturing electronic metal halide ballasts and are developing additional products to broaden their product offerings. OSI has plans to expand production capacity to supply market needs. On the fixture side, several manufacturers are already developing fixtures using electronic metal halide ballasts, and these manufacturers will be able to expand their fixture offering as more ballast types become available. (OSI, No. 27 at p. 6, 7)

DOE acknowledges that fixture manufacturers and ballast manufacturers may need to coordinate production to comply with a MHLF energy conservation standard. However, EISA 2007 specifies a compliance date of January 1, 2015, and DOE proposes to adopt this date in today's NOPR. (42 U.S.C. 6295(hh)(2)(B)) DOE requests comment on the impact and feasibility of the compliance date for manufacturers.

b. Opportunity Cost of Investments

Several manufacturers argued that developing products to meet new and amended energy conservation standards has an opportunity cost due to the limited resources at their disposal. Manufacturers are currently focusing on new technologies such as solid-state lighting and controls with greater potential energy savings than mature technologies such as HID. New and amended standards for metal halide lamp fixtures could divert finite resources away from new product development, at a significant cost to the manufacturers. (NEMA, No. 34 at p. 7–8; Philips, Public Meeting Transcript, No. 33 at p. 81; Georgia Power, No. 28 at p.1) Manufacturers may also choose not to convert their products and abandon the market because of the high opportunity cost. This could effectively eliminate the metal halide market and negate any potential energy savings from MHLF and HID lamp standards as well. (Philips, Public Meeting Transcript, No. 33 at p. 132; NEMA, No 34 at p. 16)

DOE recognizes the opportunity cost associated with any investment, and agrees that manufacturers would need to spend capital to meet today's standards that they would not have to spend in the base case. As a result, manufacturers must determine the extent to which they will balance investment in the metal halide market with investment in emerging technologies. The companies will have to weigh tradeoffs between deferring investments and deploying additional capital. DOE includes the costs of meeting today's proposed standard in its analysis.

c. Impact on Competition

NEMA stated that manufacturers who produce only magnetic ballasts would be at a disadvantage should DOE set a standard that requires the use of electronic ballasts. NEMA believed that magnetic ballast manufacturers would not be able to move to electronic ballast production because of the increased cost and complexity of electronic ballast designs and because of the different engineering specializations required. (NEMA, No. 34 at p. 16) OSI stated, however, that no manufacturers produce magnetic ballasts as their only product type, and many of those that offer magnetic ballasts also manufacture LED power supplies and drivers, which require the same or greater technology knowledge to develop and manufacture as electronic ballasts do. (OSI, No. 27 at p. 5)

DOE agrees with NEMA that manufacturers with no experience producing electronic ballasts would face a steeper learning curve than those with experience. DOE doubts that competition will be significantly affected, however. Electronic ballasts are widely used throughout the industry, particularly at lower wattages. Additionally, as suggested by OSI, DOE has not identified any manufacturers that produce only magnetic metal halide ballasts.

4. Manufacturer Interviews

DOE interviewed manufacturers representing more than 65 percent of metal halide lamp fixture sales and 90 percent of metal halide ballast sales. These NOPR interviews were in addition to the preliminary interviews DOE conducted as part of the engineering analysis. The information gathered during these interviews enabled DOE to tailor the GRIM to reflect the unique financial characteristics of the ballast and fixture industries. All interviews provided information that DOE used to evaluate the impacts of potential new and amended energy conservation standards on manufacturer cash flows, manufacturing capacities, and employment levels. Appendix 13A of the NOPR TSD contains the interview guides DOE used to conduct the MIA interviews.

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 included additional concerns in chapter 13 of the NOPR TSD.

a. Ability To Recoup Investments

Several manufacturers worried that new and amended energy conservation standards would force them to invest while their market was shrinking. The increasing market penetration of emerging technologies could strand these investments, particularly as metal halide lamp fixture standards hasten the switch to emerging technologies by narrowing the difference between MHLF and emerging technology purchase prices. If the standard threatens to accelerate the ongoing migration to new technology, manufacturers would be more likely to abandon their metal halide product lines.

To address the emerging technologies issues discussed by manufacturers, DOE included several shipment scenarios in both the NIA and the GRIM. See chapter 10 and chapter 13 of the NOPR TSD for a discussion of the shipment scenarios used in the respective analyses. DOE is seeking comment on whether manufacturers' ability to recoup investment, combined with the opportunity cost of investment would encourage manufacturers to exit the metal halide lamp fixture market.

b. Efficiency Metric Used

Some manufacturers disagreed over which metric should be used to regulate efficiency for metal halide lamp fixtures. Manufacturers agreed that

ballast efficiency is the most straightforward metric to use and the simplest for compliance purposes, but they noted that it ignores opportunities for energy savings from lamps and the fixtures themselves. At the same time, some manufacturers did not favor a lamp and ballast metric because a lamp and ballast metric could confer a competitive advantage to those manufacturers who produce both metal halide lamps and ballasts. Lastly, several manufacturers opposed the use of a fixture efficiency metric.

In today's notice, DOE proposes a ballast efficiency metric for the reasons described in section III.B. DOE notes that it is concurrently conducting a rulemaking for HID lamps, including metal halide lamps, which will examine the lamp efficiency component of the metal halide system.

c. Maintenance of 150 W Exemption

Nearly all manufacturers said that DOE should maintain its exemption for 150 W only fixtures rated for wet (e.g., outdoor) locations and containing ballasts rated to operate in air temperatures higher than 50 °C. Manufacturers stated that it is cost-prohibitive to meet EISA 2007 standard levels with magnetic ballasts, and electronic ballasts are currently less reliable for outdoor applications. Furthermore, manufacturers acknowledged that this exemption created energy savings by pushing customers of the more-expensive 175 W ballasts to the less-expensive 150 W magnetic ballasts. Manufacturers contended that customers would revert back to the 175 W equipment if the exemption were not maintained because of the significant price increase caused by bringing the 150 W ballast into compliance. This cost increase would cause customers to revert to 175 W, they said, thereby negating any potential energy savings that could have been achieved by regulating 150 W products.

DOE, however, is proposing not to maintain the 150 W exemption in today's notice for the reasons detailed in section III.A.1.

J. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a standard. Employment impacts consist of direct and indirect impacts. Direct employment impacts—which are not considered here—are any changes in the number of employees working for manufacturers of the equipment that is the subject of this rulemaking, their suppliers, and related service firms. Indirect employment impacts—the subject of this section—are changes in employment within the larger economy that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient equipment. The MIA addresses the direct employment impacts that concern metal halide lamp fixture manufacturers in section VI.B.2.

The indirect employment impacts of standards consist of the net jobs created or eliminated in the national economy, outside of the manufacturing sector being regulated, because of: (1) Reduced spending on energy by end-users; (2) reduced spending on new energy supplies by the utility industry; (3) increased spending on new equipment to which the new standards apply; and (4) the effects of those three factors throughout the economy. DOE expects the net monetary savings from standards to be redirected to other forms of economic activity, and expects these shifts in spending and economic activity to affect the demand for labor in the short term, as explained as follows.

One method for assessing the possible effects of such shifts in economic activity on the demand for labor is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS). (Data on industry employment, hours, labor compensation, value of production, and the implicit price deflator for output for these industries are available upon request by calling the Division of Industry Productivity Studies (202–691–5618) or by sending a request by email to *dipsweb@bls.gov.* These data are also available at *www.bls.gov/news.release/prin1.nr0.htm.* The BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from the BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy. There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors.[43]

Energy conservation standards reduce 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 manufacturing sectors). Thus, based on the BLS data alone, the Department believes that net national employment will increase due to shifts in economic activity resulting from new and amended standards for metal halide lamp fixtures.

In developing today's proposed standards, DOE estimated indirect national employment impacts using an input/output model of the U.S. economy called Impact of Sector Energy Technologies (ImSET), version 3.1.1. ImSET is a spreadsheet model of the U.S. economy that focuses on 187 sectors most relevant to industrial, commercial, and residential building energy use.[44] ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (I–O) model, designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model with structural coefficients to characterize economic flows among the 187 sectors. ImSET's national economic I–O structure is based on a 2002 U.S. benchmark table,[45] specially aggregated to the 187 sectors. DOE estimated changes in expenditures using the NIA spreadsheet. Using ImSET, DOE estimated the net national, indirect employment impacts on employment by sector of potential new efficiency standards for metal halide ballasts. For more details on the employment impact analysis, see chapter 14 of the NOPR TSD.

DOE notes that ImSET is not a general equilibrium projection model, and understands the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis.[46] Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run for this rule. Because ImSET predicts small job impacts resulting from this rule, regardless of these uncertainties, the actual job impacts are likely to be negligible in the

[43] *See* Bureau of Economic Analysis, *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II),* Washington, DC., U.S. Department of Commerce, 1992.

[44] Roop, J. M., M. J. Scott, and R. W. Schultz, *ImSET 3.1: Impact of Sector Energy Technologies* (PNNL–18412 Pacific Northwest National Laboratory) (2009). Available at *www.pnl.gov/main/publications/external/technical_reports/PNNL-18412.pdf.*

[45] Stewart, R.L., J.B. Stone, and M.L. Streitwieser, ''U.S. Benchmark Input-Output Accounts, 2002,'' *Survey of Current Business* (Oct. 2007).

[46] Scott, M., J.M. Roop, R.W. Schultz, D.M. Anderson, K.A. Cort, ''The Impact of DOE Building Technology Energy Efficiency Programs on U.S. Employment, Income, and Investment.'' *Energy Economics* (Sep. 2008).

overall economy. DOE may consider the use of other modeling approaches for examining long-run employment impacts.

DOE also notes that the employment impacts estimated with ImSET for the entire economy differ from the employment impacts in the lighting manufacturing sector estimated in NOPR TSD chapter 13 using the GRIM. The methodologies used and the sectors analyzed in the ImSET and GRIM models are different.

K. Utility Impact Analysis

The utility impact analysis estimates several important effects on the utility industry of the adoption of new or amended standards. For this analysis, DOE used the NEMS–BT model to generate forecasts of electricity consumption, electricity generation by plant type, and electric generating capacity by plant type, that would result from each considered TSL. DOE obtained the energy savings inputs associated with efficiency improvements to considered products from the NIA. DOE conducts the utility impact analysis as a scenario that departs from the latest *AEO* Reference Case. In the analysis for today's rule, the estimated impacts of standards are the differences between values forecasted by NEMS–BT and the values in the *AEO2013* Reference Case. Chapter 15 of the NOPR TSD describes the utility impact analysis.

L. Emissions Analysis

In the emissions analysis, DOE estimated the reduction in power sector emissions of CO_2, NO_X, SO_2, and Hg from potential energy conservation standards for metal halide lamp fixtures. In addition to estimating impacts of standards on power sector emissions, DOE estimated emissions impacts in production activities that provide the energy inputs to power plants. These are referred to as ''upstream'' emissions. In accordance with the FFC Statement of Policy (76 FR 51281 (August 18, 2011)), this FFC analysis includes impacts on emissions of methane (CH_4) and nitrous oxide (N_2O), both of which are recognized as greenhouse gases.

To estimate impacts on the environment, 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 16 of the NOPR TSD.

EIA prepares the *Annual Energy Outlook* 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 electricity-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. CAIR was remanded to the 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 (Aug. 8, 2011). On August 21, 2012, the D.C. 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 imposition 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, which were announced by EPA on December 21, 2011. 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 that would be established by CSAPR, 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.

CSAPR 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 CSAPR 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 NEMS–BT based on *AEO2013,* which incorporates the MATS.

M. Monetizing Carbon Dioxide and Other Emissions Impacts

As part of the development of this proposed rule, DOE considered the estimated monetary benefits likely to result 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 customer benefit, DOE considered the reduced emissions expected to result over the

lifetime of products shipped in the projection 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 17 of the NOPR TSD.

1. Social Cost of Carbon

The SCC is an estimate of the monetized damages associated with an incremental increase in carbon emissions in a given year. It is intended to include (but is not limited to) changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. Estimates of the SCC are provided in dollars per metric ton of 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 E.O. 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 CO_2 emissions, the analyst faces a number of serious challenges. A recent report from the National Research Council [47] points out that any assessment will suffer from uncertainty, speculation, and lack of information about (1) future emissions of GHGs, (2) the effects of past and future emissions on the climate system, (3) the impact of changes in climate on the physical and biological environment, and (4) the translation of these environmental impacts into economic damages. As a result, any effort to quantify and monetize the harms associated with climate change will raise 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 CO_2 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 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 CO_2 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

Past economic analyses for Federal regulations used a wide range of values to estimate the benefits associated with reducing CO_2 emissions. The model year 2011 Corporate Average Fuel Economy final rule 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. It also included a sensitivity analysis at $80 per metric ton of CO_2.[48] The proposed rule for Model Years 2011–2015 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.[49] 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 CO_2 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

[47] National Research Council. *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use.* National Academies Press: Washington, DC (2009).

[48] 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: *www.nhtsa.gov/fuel-economy*).

[49] 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: *www.nhtsa.gov/fuel-economy*).

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 ton of CO_2. These interim values represent the first sustained interagency effort within the U.S. government to develop an SCC for use in regulatory analysis. The results of this preliminary effort were presented in several proposed and final rules.

c. Current Approach and Key Assumptions

After the release of the interim values, the interagency group reconvened on a regular basis to generate improved SCC estimates. The group considered public comments and further explored the technical literature in relevant fields. The interagency group relied on three integrated assessment models commonly used to estimate the SCC: the FUND, DICE, and PAGE models. These models are frequently cited in the peer-reviewed literature and were used in the last assessment of the Intergovernmental Panel on Climate Change. Each model was given equal weight in the SCC values that were developed. 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.[50]

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.[51] Three values are based on the average SCC from three integrated assessment models, at discount rates of 2.5, 3, and 5 percent. The fourth value, 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 estimated for 2010 grow in real terms over time, as depicted in Table V.8. 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 V.8—ANNUAL SCC VALUES FROM 2010 INTERAGENCY REPORT, 2010–2050

[In 2007 dollars per metric ton CO_2]

	Discount rate			
	5% Avg.	3% Avg.	2.5% Avg.	3% 95th
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

Table V.9 shows the updated sets of SCC estimates in five year increments from 2010 to 2050. Appendix 17B of the NOPR TSD provides the full set of values, as well as the 2013 draft report from the interagency group. 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 V.9—ANNUAL SCC VALUES FROM 2013 INTERAGENCY UPDATE, 2010–2050

[In 2007 dollars per metric ton CO_2]

Year	Discount rate %			
	5	3	2.5	3
	Average	Average	Average	95th Percentile
2010	11	33	52	90
2015	12	38	58	109
2020	12	43	65	129

[50] *Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866, Technical Model Update for the Social Cost of Carbon (SCC).* Interagency Working Group on Social Cost of Carbon, United States Government, May 2013.

[51] *Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866.* Interagency Working Group on Social Cost of Carbon, United States Government, 2010.

TABLE V.9—ANNUAL SCC VALUES FROM 2013 INTERAGENCY UPDATE, 2010–2050—Continued

[In 2007 dollars per metric ton CO_2]

Year	Discount rate %			
	5	3	2.5	3
	Average	Average	Average	95th Percentile
2025	14	48	70	144
2030	16	52	76	159
2035	19	57	81	176
2040	21	62	87	192
2045	24	66	92	206
2050	27	71	98	221

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 recognized 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 CO_2 emissions 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 price deflator. For each of the four cases specified, the values used for emissions in 2015 were $12.9, $40.8, $62.2, and $117 per metric ton avoided (values expressed in 2012$).[52] DOE derived values after 2050 using the growth rate for the 2040–2050 period in the interagency update.

DOE multiplied the CO_2 emissions reduction estimated for each year by the SCC value for that year in each of the four cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SCC values in each case.

2. Valuation of Other Emissions Reductions

DOE investigated the potential monetary benefit of reduced NO_X emissions from the TSLs it considered. As noted above, DOE has taken into account how new or amended energy conservation standards would reduce NO_X emissions in those 22 states that are not affected by the CSAPR. 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. Available estimates suggest a very wide range of monetary values per ton of NO_X from stationary sources, ranging from $468 to $4,809 per ton in 2012$).[53] In accordance with OMB guidance,[54] DOE calculated the monetary benefits using each of the economic values for NO_X and real discount rates of 3 percent and 7 percent.

DOE did not monetize Hg emission reductions because it is currently evaluating estimates of the value of Hg emissions.

VI. Analytical Results

A. Trial Standard Levels

DOE analyzed the benefits and burdens of a number of TSLs for the metal halide lamp fixtures that are the subject of today's proposed rule. Table VI.1 presents the trial standard levels and the corresponding equipment class ELs for representative equipment classes.[55] See the engineering analysis in section V.C.9 of this NOPR for a more detailed discussion of the efficiency levels.

In the following section, DOE presents the analytical results for the TSLs of the equipment classes that DOE analyzed directly. DOE scaled the ELs for these representative equipment classes to create ELs for other equipment classes that were not directly analyzed as set forth in chapter 5 of the NOPR TSD. For more details on the representative equipment classes, please see section V.C.2.

TABLE VI.1—TRIAL STANDARD LEVELS

Rep. wattage	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
70 W Indoor	EL1	EL2	EL2	EL2	EL4
70 W Outdoor	EL1	EL2	EL2	EL3	EL4
150 W Indoor	EL1	EL2	EL4	EL4	EL4
150 W Outdoor	EL1	EL2	EL4	EL4	EL4
250 W Indoor	EL1	EL2	EL2	EL2	EL4
250 W Outdoor	EL1	EL2	EL2	EL2	EL4
400 W Indoor	EL1	EL2	EL2	EL2	EL4

[52] The interagency report presents SCC values through 2050. DOE derived values after 2050 using the 3-percent per year escalation rate used by the interagency group.

[53] 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.

[54] OMB, Circular A–4: Regulatory Analysis (Sept. 17, 2003).

[55] See section V.C.3 for more information on the chosen representative wattages.

TABLE VI.1—TRIAL STANDARD LEVELS—Continued

Rep. wattage	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
400 W Outdoor	EL1	EL2	EL2	EL2	EL4
1000 W Indoor	EL1+DS *	EL2+DS	EL2+DS	EL2+DS	EL2+DS
1000 W Outdoor	EL1+DS	EL2+DS	EL2+DS	EL2+DS	EL2+DS

* DS is a design standard that bans the use of probe-start ballasts in new metal halide lamp fixtures.

TSL1 represents EL1 for each equipment class with a positive NPV at EL1. TSL 1 would set energy conservation standards at EL1 for the indoor and outdoor fixtures at 70 W,[56] 150 W, 250 W, 400 W, and 1000 W. Standards included in TSL 1 typically can be satisfied by magnetic ballasts with mid-grade steel and copper windings. These ballasts are commercially available for the ballasts in indoor and outdoor 70 W, 250 W, and 1000 W fixtures, with the rest being modeled. TSL 1 includes a design standard for indoor and outdoor 1000 W fixtures that prohibits the sale of probe-start ballasts in new fixtures.

TSL 2 represents the max tech magnetic ballast EL for each equipment class. TSL 2 would set energy conservation standards at EL2 for the indoor and outdoor fixtures at 70 W, 150 W, 250 W, 400 W, and 1000 W. EL2 is the max tech EL for the indoor and outdoor 1000 W fixtures. Standards included in TSL 2 typically can be satisfied by fixtures that contain magnetic ballasts with high-grade core steel and copper windings. These ballasts are modeled, except for the 1000 W ballasts, which are commercially available. TSL 2 includes a design standard for the indoor and outdoor 1000 W fixtures that prohibits the sale of probe-start ballasts in new fixtures. TSL 2 sets the same standards for indoor and outdoor representative equipment classes at the same wattage.

TSL 3 represents the maximum energy savings achievable with maximum positive NPV with the requirement that the same efficiency levels for fixtures operating indoors and outdoors be analyzed. TSL 3 would set energy conservation standards at EL2 for indoor and outdoor fixtures at 70 W, 250 W, 400 W, and 1000 W, and EL4 for indoor and outdoor fixtures at 150 W. EL4 is the max tech EL for indoor and outdoor fixtures at 150 W, and EL2 is the max tech EL for indoor and outdoor fixtures at 1000 W. Standards included in TSL 3 typically can be satisfied by fixtures that contain magnetic ballasts with high-grade core steel and copper windings, except for the 150 W fixtures, which require max tech electronic ballasts with high-grade electronic components. The 150 W and 1000 W ballasts are commercially available, while the rest are modeled. TSL 3 includes a design standard for indoor and outdoor 1000 W fixtures that prohibits the sale of probe-start ballasts in new fixtures. TSL 3 sets the same standards for indoor and outdoor representative equipment classes at the same wattage.

TSL 4 represents the maximum energy savings achievable with a positive NPV for each equipment class, considering indoor and outdoor fixtures separately. TSL4 would set energy conservation standards at EL2 for indoor and outdoor 250 W, 400 W, and 1000 W fixtures and indoor 70 W fixtures, EL3 for outdoor 70 W fixtures, and EL4 for indoor and outdoor 150 W fixtures. EL4 is the max tech EL for indoor and outdoor fixtures at 150 W, and EL2 is the max tech EL for indoor and outdoor fixtures at 1000 W. Standards included in TSL 4 typically can be satisfied by fixtures that contain magnetic ballasts with high-grade core steel and copper windings, except for 70 W outdoor fixtures, which require standard-grade electronic ballasts, and 150 W fixtures, which require max tech electronic ballasts with high-grade electronic components. The ballasts for indoor and outdoor 150 W and 1000 W fixtures and outdoor 70 W fixtures are commercially available, and the rest are modeled. TSL 4 includes a design standard for indoor and outdoor 1000 W fixtures that prohibits the sale of probe-start ballasts in new fixtures.

TSL 5 represents all of the max tech efficiency levels, which would set energy conservation standards at EL4 for indoor and outdoor 70, 150, 250, and 400 W fixtures, and EL2 for indoor and outdoor 1000 W fixtures. Standards included in TSL 5 require fixtures to contain the max tech electronic ballasts with high-grade electronic components for indoor and outdoor 70, 150, 250, and 400 W fixtures. High-grade core steel and copper windings are typically used in the ballasts included in 1000 W fixtures. Commercially available ballasts meet TSL 5 for all equipment classes. TSL 5 would require high-frequency electronic ballasts for 400 W indoor and outdoor fixtures, which have limited compatibility with CMH technology. See section V.C.8 for additional detail.TSL 5 includes a design standard for indoor and outdoor 1000 W fixtures that prohibits the sale of probe-start ballasts in new fixtures. TSL 5 sets the same standards for indoor and outdoor representative equipment classes at the same wattage.

DOE requests comment on these proposed trial standard levels.

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Customers

a. Life-Cycle Cost and Payback Period

Customers affected by new or amended standards usually experience higher purchase prices and lower operating costs. Generally, these effects on individual customers are best summarized by changes in LCCs and PBP. DOE calculated the LCC and PBP values for the potential standard levels considered in this rulemaking to provide key inputs for each TSL. These values are reported by equipment class in Table VI.2 through Table VI.13. Each table includes the average total LCC and the average LCC savings, as well as the fraction of equipment customers for which the LCC will either decrease (net benefit) or increase (net cost) relative to the baseline case. The last column in each table contains the median PBPs for the customer purchasing a design compliant with the TSL.

The results for each TSL are presented relative to the energy use in the baseline case (no new or amended standards), based on energy consumption under conditions of actual equipment use. As discussed in section IV.D.2, the presumption PBP is based on test values under conditions prescribed by the DOE test procedures, as required by EPCA. (42 U.S.C. 6295(o)(2)(B)(iii))

[56] The nomenclature 70 W indoor fixture refers to the ≥50 W and ≤100 W indoor equipment class. 70 W is the representative wattage for the equipment class as discussed in section V.C.3. A similar shorthand naming convention is used for other equipment classes.

TABLE VI.2—EQUIPMENT CLASS 1—70 WATT METAL HALIDE LAMP FIXTURES (INDOOR, MAGNETIC BASELINE): LCC AND PBP RESULTS

Trial standard level	Efficiency level	Life-cycle cost 2012$			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
	Baseline ...	537.80	1,379.32	1,917.12	.....	.....	.....	.....
1	1	539.03	1,345.26	1,884.28	32.84	0.0	100.0	0.5
2, 3, 4	2	552.28	1,326.43	1,878.71	38.41	0.0	100.0	4.2
	3	555.25	1,379.56	1,934.80	−17.68	24	76	3.3
5	4	568.68	1,374.61	1,943.29	−26.16	28	72	5.4

TABLE VI.3 EQUIPMENT CLASS 1—70 WATT METAL HALIDE LAMP FIXTURES (INDOOR, ELECTRONIC BASELINE): LCC AND PBP RESULTS

Trial standard level	Efficiency level	Life-cycle cost 2012$			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
1, 2, 3, 4	Baseline/3	555.25	1,379.56	1,934.80	.....	.....	.....	.....
5	4	568.68	1,374.61	1,943.29	−8.48	96	4	32.3

TABLE VI.4—EQUIPMENT CLASS 1—70 WATT METAL HALIDE LAMP FIXTURES (OUTDOOR, MAGNETIC BASELINE): LCC AND PBP RESULTS

Trial standard level	Efficiency level	Life-cycle cost 2012$			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
	Baseline ...	527.98	1,844.61	2,372.59	.....	.....	.....	.....
1	1	529.16	1,803.94	2,333.09	39.50	0.0	100.0	0.6
2, 3	2	541.86	1,784.29	2,326.15	46.44	0.0	100.0	4.4
4	3	580.46	1,722.54	2,303.00	69.59	42	58	12.8
5	4	593.33	1,715.50	2,308.82	63.77	43	57	14.6

TABLE VI.5—EQUIPMENT CLASS 1—70 WATT METAL HALIDE LAMP FIXTURES (OUTDOOR, ELECTRONIC BASELINE): LCC AND PBP RESULTS

Trial standard level	Efficiency level	Life-cycle cost 2012$			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
1, 2, 3, 4	Baseline/3	580.46	1,722.54	2,303.00	.....	.....	.....	.....
5	4	593.33	1,715.50	2,308.82	−5.82	84	16	44.7

TABLE VI.6—EQUIPMENT CLASS 2—150 WATT METAL HALIDE LAMP FIXTURES (INDOOR): LCC AND PBP RESULTS

Trial standard level	Efficiency level	Life-cycle cost 2012$			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
	Baseline ...	657.04	2,110.32	2,767.36	.....	.....	.....	.....
1	1	673.27	2,075.60	2,748.87	18.50	1	99	7.2
2	2	681.07	2,046.61	2,727.68	39.68	0	100	5.8
	3	676.72	2,063.23	2,739.95	27.41	15	85	2.4
3,4,5	4	696.00	2,061.22	2,757.23	10.14	23	77	4.7

TABLE VI.7—EQUIPMENT CLASS 2—150 WATT METAL HALIDE LAMP FIXTURES (OUTDOOR): LCC AND PBP RESULTS

Trial standard level	Efficiency level	Life-cycle cost 2012$			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
	Baseline ...	641.19	2,681.81	3,322.99	.....	.....	.....	.....
1	1	656.74	2,645.59	3,302.33	20.66	0	100	8.3
2	2	664.20	2,614.09	3,278.30	44.70	0	100	6.6
	3	695.81	2,499.35	3,195.16	127.84	16	84	7.9
3, 4, 5	4	714.28	2,496.20	3,210.48	112.51	26	74	10.5

TABLE VI.8—EQUIPMENT CLASS 3—250 WATT METAL HALIDE LAMP FIXTURES (INDOOR): LCC AND PBP RESULTS

Trial standard level	Efficiency level	Life-cycle cost 2012$			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
	Baseline ...	710.86	2,485.37	3,196.24	.....	.....	.....	.....
1	1	734.37	2,455.32	3,189.69	6.55	36	64	12.4
2, 3, 4	2	749.99	2,433.12	3,183.11	13.12	31	69	11.8
	3	790.69	2,485.61	3,276.30	−80.07	52	48	14.4
5	4	783.45	2,472.23	3,255.68	−59.44	44	56	11.5

TABLE VI.9—EQUIPMENT CLASS 3—250 WATT METAL HALIDE LAMP FIXTURES (OUTDOOR): LCC AND PBP RESULTS

Trial standard level	Efficiency level	Life-cycle cost 2012$			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
	Baseline ...	690.34	3,132.65	3,822.99	.....	.....	.....	.....
1	1	712.86	3,103.40	3,816.26	6.73	20	80	14.8
2, 3, 4	2	727.82	3,081.42	3,809.24	13.75	15	85	14.0
	3	802.58	2,996.28	3,798.86	24.13	65	35	28.0
5	4	795.64	2,981.26	3,776.91	46.08	54	46	21.4

TABLE VI.10—EQUIPMENT CLASS 4—400 WATT METAL HALIDE LAMP FIXTURES (INDOOR): LCC AND PBP RESULTS

Trial standard level	Efficiency level	Life-cycle cost 2012$			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
	Baseline ...	784.44	3,453.98	4,238.41	.....	.....	.....	.....
1	1	823.04	3,406.28	4,229.31	9.10	40	60	12.8
2, 3, 4	2	841.82	3,368.36	4,210.18	28.23	18	82	10.5
	3	921.01	3,389.35	4,310.36	−71.95	49	51	13.8
5	4	962.37	3,375.11	4,337.48	−99.07	61	39	16.2

TABLE VI.11—EQUIPMENT CLASS 4—400 WATT METAL HALIDE LAMP FIXTURES (OUTDOOR): LCC AND PBP RESULTS

Trial standard level	Efficiency level	Life-cycle cost 2012$			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
	Baseline ...	760.80	4,173.10	4,933.90	.....	.....	.....	.....
1	1	797.78	4,126.96	4,924.74	9.16	22	78	15.4
2, 3, 4	2	815.77	4,087.66	4,903.43	30.47	7	93	12.3
	3	927.40	3,958.53	4,885.93	47.97	56	44	21.3
5	4	967.02	3,940.38	4,907.40	26.49	63	37	24.4

TABLE VI.12—EQUIPMENT CLASS 5—1000 WATT METAL HALIDE LAMP FIXTURES (INDOOR): LCC AND PBP RESULTS

Trial standard level	Efficiency level	Life-cycle cost 2012$			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
	Baseline ...	1,143.88	11,657.30	12,801.18	.....	.....	.....	.....
	1	1,185.86	11,619.06	12,804.91	−3.73	62	38	16.3
1	1 + DS* ...	1,207.74	11,122.24	12,329.98	471.20	0.0	100.0	1.8
	2	1,199.97	11,570.62	12,770.60	30.58	12	88	9.7
2, 3, 4, 5	2 + DS*	1,221.85	11,077.12	12,298.97	502.21	0.0	100.0	2.0

*DS = Design standard requiring that all fixtures sold shall not contain a probe-start ballast.

TABLE VI.13—EQUIPMENT CLASS 5—1000 WATT METAL HALIDE LAMP FIXTURES (OUTDOOR): LCC AND PBP RESULTS

Trial standard level	Efficiency level	Life-cycle cost 2012$			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
	Baseline ...	1,101.52	9,854.56	10,956.08	.....	.....	.....	.....
	1	1,141.74	9,823.86	10,965.59	−9.52	67	33	24.9
1	1 + DS* ...	1,162.70	9,408.20	10,570.89	385.18	0.0	100.0	2.7
	2	1,155.26	9,783.72	10,938.98	17.10	18	82	14.5
2, 3, 4, 5	2 + DS* ...	1,176.22	9,370.84	10,547.05	409.02	0.0	100.0	3.0

*DS = Design standard requiring that all fixtures sold shall not contain a probe-start ballast.

b. Customer Subgroup Analysis

Using the LCC spreadsheet model, DOE determined the effect of the trial standard levels on the following customer sub-groups: utilities, owners of transportation facilities, and warehouse owners. DOE adjusted particular inputs to the LCC model to reflect conditions faced by the identified subgroups. For utilities, DOE assumed that maintenance costs would be higher than average maintenance costs because utilities have to maintain more equipment than the other subgroups do. DOE assumed that owners of transportation facilities face higher annual operating hours than the average used in the main LCC analysis. For warehouse owners, DOE assumed lower annual operating hours than average used in the main LCC analysis.

Table VI.14 through Table VI.25 show the LCC effects and PBPs for identified sub-groups that purchase metal halide lamp fixtures. In general, the average LCC savings for the identified subgroups at the considered efficiency levels are not significantly different from the average for all customers.

TABLE VI.14—EQUIPMENT CLASS 1—70 WATT METAL HALIDE LAMP FIXTURES (INDOOR, MAGNETIC BASELINE): LCC SUBGROUP RESULTS

Trial standard level	Efficiency level	Life-cycle cost 2012$			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
Subgroup: Utilities								
	Baseline ...	650.30	1,632.71	2,283.01	.....	.....	.....	.....
1	1	651.53	1,598.65	2,250.17	32.84	0.0	100.0	0.5
2, 3, 4	2	664.78	1,579.82	2,244.60	38.41	0.0	100.0	4.2
	3	667.75	1,663.46	2,331.20	−48.19	35	65	3.5
5	4	681.18	1,658.51	2,339.68	−56.67	36	64	5.8
Subgroup: Transportation Facility Owners								
	Baseline ...	537.80	1,428.88	1,966.68	.....	.....	.....	.....
1	1	539.03	1,392.23	1,931.26	35.41	0.0	100.0	0.5
2, 3, 4	2	552.28	1,371.90	1,924.18	42.49	0.0	100.0	3.9
	3	555.25	1,413.15	1,968.39	−1.72	26	74	3.0
5	4	568.68	1,407.13	1,975.80	−9.13	29	71	5.0
Subgroup: Warehouse Owners								
	Baseline ...	537.80	1,372.08	1,909.88	.....	.....	.....	.....
1	1	539.03	1,338.45	1,877.47	32.40	0.0	100.0	0.4

TABLE VI.14—EQUIPMENT CLASS 1—70 WATT METAL HALIDE LAMP FIXTURES (INDOOR, MAGNETIC BASELINE): LCC SUBGROUP RESULTS—Continued

Trial standard level	Efficiency level	Life-cycle cost 2012$			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
2, 3, 4	2	552.28	1,319.92	1,872.20	37.68	0.0	100.0	3.4
	3	555.25	1,373.94	1,929.19	−19.31	14	86	1.9
5	4	568.68	1,369.17	1,937.85	−27.97	15	85	3.2

TABLE VI.15—EQUIPMENT CLASS 1—70 WATT METAL HALIDE LAMP FIXTURES (INDOOR, ELECTRONIC BASELINE): LCC AND PBP RESULTS

Trial standard level	Efficiency level	Life-cycle cost 2012$			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
Subgroup: Utilities								
1, 2, 3, 4	Baseline/3	667.75	1,663.46	2,331.20	.....	.....	.....	.....
5	4	681.18	1,658.51	2,339.68	−8.48	96	4	32.4
Subgroup: Transportation Facility Owners								
1, 2, 3, 4	Baseline/3	555.25	1,413.15	1,968.39	.....	.....	.....	.....
5	4	568.68	1,407.13	1,975.80	−7.41	95	5	31.3
Subgroup: Warehouse Owners								
1, 2, 3, 4	Baseline/3	555.25	1,373.94	1,929.19	.....	.....	.....	.....
5	4	568.68	1,369.17	1,937.85	−8.66	98	2	21.9

TABLE VI.16—EQUIPMENT CLASS 1—70 WATT METAL HALIDE LAMP FIXTURES (OUTDOOR, MAGNETIC BASELINE): LCC AND PBP RESULTS

Trial standard level	Efficiency level	Life-cycle cost 2012$			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
Subgroup: Utilities								
	Baseline ...	640.48	2,205.61	2,846.10	.....	.....	.....	.....
1	1	641.66	2,164.94	2,806.60	39.50	0.0	100.0	0.6
2, 3	2	654.36	2,145.30	2,799.66	46.44	0.0	100.0	4.4
4	3	692.96	2,090.08	2,783.04	63.06	46	54	16.9
5	4	705.83	2,083.03	2,788.86	57.23	48	52	18.7
Sugroup: Transportation Facility Owners								
	Baseline ...	527.98	1,844.61	2,372.59	.....	.....	.....	.....
1	1	529.16	1,803.94	2,333.09	39.50	0.0	100.0	0.6
2, 3	2	541.86	1,784.29	2,326.15	46.44	0.0	100.0	4.4
4	3	580.46	1,722.54	2,303.00	69.59	46	54	16.9
5	4	593.33	1,715.50	2,308.82	63.77	48	52	18.7
Subgroup: Warehouse Owners								
	Baseline ...	527.98	1,844.61	2,372.59				
1	1	529.16	1,803.94	2,333.09	39.50	0.0	100.0	0.6
2, 3	2	541.86	1,784.29	2,326.15	46.44	0.0	100.0	4.4
4	3	580.46	1,722.54	2,303.00	69.59	38	62	12.4
5	4	593.33	1,715.50	2,308.82	63.77	41	59	14.2

TABLE VI.17—EQUIPMENT CLASS 1—70 WATT METAL HALIDE LAMP FIXTURES (OUTDOOR, ELECTRONIC BASELINE): LCC AND PBP RESULTS

Trial standard level	Efficiency level	Life-cycle cost 2012$			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
Subgroup: Utilities								
1, 2, 3, 4	Baseline/3	692.96	2,090.08	2,783.04	.....	.....	.....	.....
5	4	705.83	2,083.03	2,788.86	−5.82	85	15	44.3
Subgroup: Transportation Facility Owners								
1, 2, 3, 4	Baseline/3	580.46	1,722.54	2,303.00	.....	.....	.....	.....
5	4	593.33	1,715.50	2,308.82	−5.82	95	5	31.0
Subgroup: Warehouse Owners								
1, 2, 3, 4	Baseline/3	580.46	1,722.54	2,303.00	.....	.....	.....	.....
5	4	593.33	1,715.50	2,308.82	−5.82	85	15	44.3

TABLE VI.18—EQUIPMENT CLASS 2—150 WATT METAL HALIDE LAMP FIXTURES (INDOOR): LCC AND PBP RESULTS

Trial standard level	Efficiency level	Life-cycle cost 2012$			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
Subgroup: Utilities								
	Baseline ...	792.04	2,416.48	3,208.52	.....	.....	.....	.....
1	1	808.27	2,381.76	3,190.03	18.50	1	99	7.2
2	2	816.07	2,352.77	3,168.84	39.68	0	100	5.8
	3	811.72	2,404.29	3,216.01	−7.48	29	71	2.7
3, 4, 5	4	831.00	2,402.28	3,233.28	−24.76	34	66	5.2
Subgroup: Transportation Facility Owners								
	Baseline ...	657.04	2,225.70	2,882.74	.....	.....	.....	.....
1	1	673.27	2,187.50	2,860.77	21.97	1	99	6.8
2	2	681.07	2,155.69	2,836.76	45.98	0	100	5.4
	3	676.72	2,173.66	2,850.38	32.36	12	88	2.2
3, 4, 5	4	696.00	2,171.29	2,867.29	15.45	20	80	4.4
Subgroup: Warehouse Owners								
	Baseline ...	657.04	2,098.07	2,755.11	.....	.....	.....	.....
1	1	673.27	2,063.78	2,737.05	18.06	0	100	5.8
2	2	681.07	2,035.14	2,716.20	38.91	0	100	4.7
	3	676.72	2,053.01	2,729.73	25.37	8	92	1.3
3, 4, 5	4	696.00	2,051.17	2,747.17	7.93	12	88	2.6

TABLE VI.19—EQUIPMENT CLASS 2—150 WATT METAL HALIDE LAMP FIXTURES (OUTDOOR): LCC AND PBP RESULTS

Trial standard level	Efficiency level	Life-cycle cost 2012$			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
Subgroup: Utilities								
	Baseline ...	776.19	3,115.02	3,891.20	.....	.....	.....	.....
1	1	791.74	3,078.80	3,870.54	20.66	0	100	8.3
2	2	799.20	3,047.30	3,846.51	44.70	0	100	6.5
	3	830.81	2,940.40	3,771.21	120.00	33	67	9.2
3, 4, 5	4	849.28	2,937.25	3,786.53	104.67	38	62	12.2

TABLE VI.19—EQUIPMENT CLASS 2—150 WATT METAL HALIDE LAMP FIXTURES (OUTDOOR): LCC AND PBP RESULTS—Continued

Trial standard level	Efficiency level	Life-cycle cost 2012$			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
Subgroup: Transportation Facility Owners								
	Baseline ...	641.19	2,681.81	3,322.99	.....	.....	.....	.....
1	1	656.74	2,645.59	3,302.33	20.66	0	100	8.3
2	2	664.20	2,614.09	3,278.30	44.70	0	100	6.5
	3	695.81	2,499.35	3,195.16	127.84	33	67	9.2
3, 4, 5	4	714.28	2,496.20	3,210.48	112.51	38	62	12.2
Subgroup: Warehouse Owners								
	Baseline ...	641.19	2,681.81	3,322.99	.....	.....	.....	.....
1	1	656.74	2,645.59	3,302.33	20.66	0	100	8.3
2	2	664.20	2,614.09	3,278.30	44.70	0	100	6.5
	3	695.81	2,499.35	3,195.16	127.84	16	84	7.7
3, 4, 5	4	714.28	2,496.20	3,210.48	112.51	25	75	10.3

TABLE VI.20—EQUIPMENT CLASS 3—250 WATT METAL HALIDE LAMP FIXTURES (INDOOR): LCC AND PBP RESULTS

Trial standard level	Efficiency level	Life-cycle cost 2012$			Life-cycle cost savings			Median payback period ears
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
Subgroup: Utilities								
	Baseline ...	845.86	2,706.30	3,552.16	.....	.....	.....	.....
1	1	869.37	2,676.24	3,545.61	6.55	36	64	12.4
2, 3, 4	2	884.99	2,654.05	3,539.04	13.12	30	70	11.9
	3	925.69	2,741.43	3,667.13	−114.96	57	43	16.9
5	4	918.45	2,728.05	3,646.50	−94.34	49	51	13.0
Subgroup: Transportation Facility Owners								
	Baseline ...	710.86	2,918.78	3,629.64	.....	.....	.....	.....
1	1	734.37	2,885.59	3,619.96	9.69	29	71	11.8
2, 3, 4	2	749.99	2,861.10	3,611.09	18.56	24	76	11.2
	3	790.69	2,918.08	3,708.78	−79.13	50	50	14.3
5	4	783.45	2,903.52	3,686.97	−57.32	43	57	11.1
Subgroup: Warehouse Owners								
	Baseline ...	710.86	2,466.57	3,177.44	.....	.....	.....	.....
1	1	734.37	2,436.94	3,171.31	6.13	17	83	10.1
2, 3, 4	2	749.99	2,415.04	3,165.03	12.40	15	85	9.6
	3	790.69	2,468.82	3,259.52	−82.08	26	74	6.7
5	4	783.45	2,455.53	3,238.98	−61.54	22	78	5.6

TABLE VI.21—EQUIPMENT CLASS 3—250 WATT METAL HALIDE LAMP FIXTURES (OUTDOOR): LCC AND PBP RESULTS

Trial standard level	Efficiency level	Life-cycle cost 2012$			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
Subgroup: Utilities								
	Baseline ...	825.34	3,472.93	4,298.27	.....	.....	.....	.....
1	1	847.86	3,443.68	4,291.54	6.73	20	80	14.8
2, 3, 4	2	862.82	3,421.70	4,284.52	13.75	16	84	14.1
	3	937.58	3,344.40	4,281.98	16.29	72	28	39.8
5	4	930.64	3,329.38	4,260.03	38.25	61	39	28.2

TABLE VI.21—EQUIPMENT CLASS 3—250 WATT METAL HALIDE LAMP FIXTURES (OUTDOOR): LCC AND PBP RESULTS—Continued

Trial standard level	Efficiency level	Life-cycle cost 2012$			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
Subgroup: Transportation Facility Owners								
	Baseline ...	690.34	3,132.65	3,822.99	.....	.....	.....	.....
1	1	712.86	3,103.40	3,816.26	6.73	20	80	14.8
2, 3, 4	2	727.82	3,081.42	3,809.24	13.75	16	84	14.1
	3	802.58	2,996.28	3,798.86	24.13	72	28	39.8
5	4	795.64	2,981.26	3,776.91	46.08	61	39	28.2
Subgroup: Warehouse Owners								
	Baseline ...	690.34	3,132.65	3,822.99	.....	.....	.....	.....
1	1	712.86	3,103.40	3,816.26	6.73	20	80	14.8
2, 3, 4	2	727.82	3,081.42	3,809.24	13.75	16	84	14.1
	3	802.58	2,996.28	3,798.86	24.13	64	36	27.1
5	4	795.64	2,981.26	3,776.91	46.08	54	46	20.7

TABLE VI.22—EQUIPMENT CLASS 4—400 WATT METAL HALIDE LAMP FIXTURES (INDOOR): LCC AND PBP RESULTS

Trial standard level	Efficiency level	Life-cycle cost 2012$			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
Subgroup: Utilities								
	Baseline ...	934.44	3,649.31	4,583.74	.....	.....	.....	.....
1	1	973.04	3,601.60	4,574.64	9.10	40	60	12.9
2, 3, 4	2	991.82	3,563.69	4,555.51	28.23	18	82	10.5
	3	1,071.01	3,623.45	4,694.47	−110.72	56	44	15.5
5	4	1,112.37	3,609.21	4,721.58	−137.84	66	34	18.2
Subgroup: Transportation Facility Owners								
	Baseline ...	784.44	3,880.58	4,665.01	.....	.....	.....	.....
1	1	823.04	3,827.87	4,650.91	14.10	34	66	12.2
2, 3, 4	2	841.82	3,786.15	4,627.97	37.04	14	86	10.0
	3	921.01	3,808.34	4,729.36	−64.34	48	52	13.4
5	4	962.37	3,792.38	4,754.75	−89.74	58	42	15.9
Subgroup: Warehouse Owners								
	Baseline ...	784.44	3,423.90	4,208.33	.....	.....	.....	.....
1	1	823.04	3,376.86	4,199.90	8.43	20	80	10.4
2, 3, 4	2	841.82	3,339.44	4,181.25	27.08	9	91	8.5
	3	921.01	3,362.34	4,283.36	−75.02	25	75	7.5
5	4	962.37	3,348.56	4,310.93	−102.59	30	70	8.9

TABLE VI.23—EQUIPMENT CLASS 4—400 WATT METAL HALIDE LAMP FIXTURES (OUTDOOR): LCC AND PBP RESULTS

Trial standard level	Efficiency level	Life-cycle cost 2012$			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
Subgroup: Utilities								
	Baseline ...	910.80	4,462.71	5,373.51	.....	.....	.....	.....
1	1	947.78	4,416.57	5,364.35	9.16	23	77	15.4
2, 3, 4	2	965.77	4,377.27	5,343.04	30.47	7	93	12.4
	3	1,077.40	4,256.85	5,334.25	39.26	61	39	24.5
5	4	1,117.02	4,238.70	5,355.73	17.79	68	32	27.7

TABLE VI.23—EQUIPMENT CLASS 4—400 WATT METAL HALIDE LAMP FIXTURES (OUTDOOR): LCC AND PBP RESULTS—Continued

Trial standard level	Efficiency level	Life-cycle cost 2012$			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
Subgroup: Transportation Facility Owners								
	Baseline ...	760.80	4,173.10	4,933.90	.....	.....	.....	.....
1	1	797.78	4,126.96	4,924.74	9.16	23	77	15.4
2, 3, 4	2	815.77	4,087.66	4,903.43	30.47	7	93	12.4
	3	927.40	3,958.53	4,885.93	47.97	61	39	24.5
5	4	967.02	3,940.38	4,907.40	26.49	68	32	27.7
Subgroup: Warehouse Owners								
	Baseline ...	760.80	4,173.10	4,933.90	.....	.....	.....	.....
1	1	797.78	4,126.96	4,924.74	9.16	23	77	15.4
2, 3, 4	2	815.77	4,087.66	4,903.43	30.47	7	93	12.4
	3	927.40	3,958.53	4,885.93	47.97	55	45	21.0
5	4	967.02	3,940.38	4,907.40	26.49	62	38	24.1

TABLE VI.24—EQUIPMENT CLASS 5—1000 WATT METAL HALIDE LAMP FIXTURES (INDOOR): LCC AND PBP RESULTS

Trial standard level	Efficiency level	Life-Cycle Cost *2012$*			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
Subgroup: Utilities								
	Baseline ...	1,353.88	12,420.47	13,774.35	.....	.....	.....	.....
1	1 + DS*	1,417.74	11,885.42	13,303.15	471.20	0.0	100.0	1.8
2, 3, 4, 5	2 + DS*	1,431.85	11,840.29	13,272.15	502.21	0.0	100.0	2.0
Subgroup: Transportation Facility Owners								
	Baseline ...	1,143.88	13,479.99	14,623.87	.....	.....	.....	.....
1	1 + DS*	1,207.74	12,835.48	14,043.22	580.65	0.0	100.0	1.5
2, 3, 4, 5	2 + DS*	1,221.85	12,780.37	14,002.23	621.64	0.0	100.0	1.7
Subgroup: Warehouse Owners								
	Baseline ...	1,143.88	11,657.30	12,801.18	.....	.....	.....	.....
1	1 + DS*	1,207.74	11,122.24	12,329.98	471.20	0.0	100.0	1.4
2, 3, 4, 5	2 + DS*	1,221.85	11,077.12	12,298.97	502.21	0.0	100.0	1.6

* DS = Design standard requiring all fixtures sold shall not contain a probe-start ballast.

TABLE VI.25—EQUIPMENT CLASS 5—1000 WATT METAL HALIDE LAMP FIXTURES (OUTDOOR): LCC AND PBP RESULTS

Trial standard level	Efficiency level	Life-Cycle Cost *2012$*			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
Subgroup: Utilities								
	Baseline ...	1,311.52	10,528.44	11,839.96	.....	.....	.....	.....
1	1 + DS*	1,372.70	10,082.08	11,454.77	385.18	0.0	100.0	2.6
2, 3, 4, 5	2 + DS*	1,386.22	10,044.72	11,430.93	409.02	0.0	100.0	3.0
Subgroup: Transportation Facility Owners								
	Baseline ...	1,101.52	9,854.56	10,956.08	.....	.....	.....	.....
1	1 + DS*	1,162.70	9,408.20	10,570.89	385.18	0.0	100.0	2.6
2, 3, 4, 5	2 + DS*	1,176.22	9,370.84	10,547.05	409.02	0.0	100.0	3.0

TABLE VI.25—EQUIPMENT CLASS 5—1000 WATT METAL HALIDE LAMP FIXTURES (OUTDOOR): LCC AND PBP RESULTS—Continued

Trial standard level	Efficiency level	Life-Cycle Cost *2012$*			Life-cycle cost savings			Median payback period years
		Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percent of customers that experience		
						Net cost	Net benefit	
Subgroup: Warehouse Owners								
	Baseline ...	1,101.52	9,854.56	10,956.08	.....	.....	.....	.....
1	1 + DS*	1,162.70	9,408.20	10,570.89	385.18	0.0	100.0	2.6
2, 3, 4, 5	2 + DS*	1,176.22	9,370.84	10,547.05	409.02	0.0	100.0	3.0

* DS = Design standard requiring that all fixtures sold shall not contain a probe-start ballast.

Rebuttable Presumption Payback

As discussed in section IV.D.2, EPCA provides a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for equipment that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. DOE's LCC and PBP analysis generates values for calculating the PBP for customers affected by potential energy conservation standards. This includes the 3-year PBP contemplated under the rebuttable presumption test discussed in section IV.D.2. DOE, however, routinely conducts an economic analysis that considers the full range of impacts—including those on consumers, manufacturers, the nation, and the environment—as required under 42 U.S.C. 6295(o)(2)(B)(i).

For this proposed rule, DOE calculated a rebuttable presumption PBP for each TSL. DOE used discrete values rather than distributions for inputs and, as required by EPCA, based the calculations on using the applicable DOE test procedures for metal halide lamp fixtures. DOE then calculated a single rebuttable presumption payback value, rather than a distribution of PBPs, for each TSL. Table VI.26 shows the rebuttable presumption PBPs that are less than 3 years.

While DOE examined the rebuttable-presumption criterion, it also conducted a more detailed analysis of the economic impacts of these levels to determine whether the proposed standard levels are economically justified pursuant to 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE to evaluate the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification).

TABLE VI.26—FIXTURE EFFICIENCY LEVELS WITH A REBUTTABLE PAYBACK PERIOD OF LESS THAN THREE YEARS

Equipment class	Efficiency level	Median payback period *years*
70 W (indoor, magnetic baseline)	1	0.5
70 W (outdoor, magnetic baseline)	1	0.5
1000 W (indoor)	1 + DS*	1.7
	2 + DS*	1.9
1000 W (outdoor)	1 + DS*	2.4
	2 + DS*	2.7

* DS = Design standard requiring that all fixtures shall not contain a probe-start ballast.

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of new and amended energy conservation standards on manufacturers of metal halide lamp fixtures and metal halide ballasts. The section below describes the expected impacts on manufacturers at each TSL. Chapter 13 of the NOPR TSD explains the analysis in further detail.

a. Industry Cash-Flow Analysis Results

The tables below depict the financial impacts (represented by changes in INPV) of new and amended energy standards on manufacturers as well as the conversion costs that DOE estimates manufacturers would incur at each TSL. DOE breaks out the impacts on manufacturers of ballasts and fixtures separately. Within each industry, DOE presents the results for all equipment classes in one group because most equipment classes are generally made by the same manufacturers. To evaluate the range of cash flow impacts on the ballast and fixture industries, DOE modeled four different scenarios using different assumptions for markups and shipments that correspond to the range of anticipated market responses to new and amended standards. Each scenario results in a unique set of cash flows and corresponding industry values at each TSL.

Two of these market response scenarios are presented below, corresponding to the outer bounds of a range of market responses that DOE anticipates could occur in the standards case. In the following discussion, the INPV results refer to the difference in industry value between the base case and the standards case that result from the sum of discounted cash flows from the base year (2013) through the end of the analysis period. The results also discuss the difference in cash flow between the base case and the standards case in 2015. This figure represents the size of the required conversion costs relative to the cash flow generated by the industry in the absence of new and amended energy conservation standards.

Cash-Flow Analysis Results by TSL for Metal Halide Ballasts

To assess the upper (less severe) end of the range of potential impacts on metal halide ballast manufacturers, DOE modeled a flat markup scenario. The flat markup scenario assumes that in the standards case, manufacturers would be able to pass along all the higher production costs required for more efficient products to their customers. Specifically, the industry would be able to maintain its average base case gross margin, as a percentage of revenue, despite the higher product costs in the standards case. In general, the larger the product price increases, the less likely manufacturers are to achieve the cash flow from operations calculated in this scenario because it is less likely that manufacturers would be able to fully markup these larger cost increases.

DOE also used the high-shipment scenario to assess the upper bound of impacts. Under the high-shipment scenario, base case shipments of metal halide lamp fixtures decrease at a slower rate over the analysis period compared to the low-shipment scenario. Of all the scenario combinations analyzed in the MIA, the flat markup and high-shipment scenario provides the best conditions for cash flow generation—the annual shipment volume and the ability to preserve gross margins are greatest. Thus, this scenario set yields the greatest modeled industry profitability.

To assess the lower (more severe) end of the range of potential impacts on the metal halide ballast industry, DOE modeled the 'preservation of operating profit' markup scenario. The scenario represents the lower end of the range of potential impacts on manufacturers because no additional operating profit is earned on the higher production costs, eroding profit margins as a percentage of total revenue.

DOE also used the low-shipment scenario to assess the lower bound of impacts. Under the low-shipment scenario, metal halide lamp fixture shipments decrease at a faster rate over the analysis period compared to the high-shipment scenario. Of all the scenarios analyzed in the MIA, this combination of scenarios ('preservation of operating profit' markup and low-shipment) most restricts manufacturers' ability to pass on costs to customers and assumes the lowest level of shipments. Thus, this scenario set estimates the largest manufacturer impacts.

TABLE VI.27—MANUFACTURER IMPACT ANALYSIS FOR METAL HALIDE BALLASTS—FLAT MARKUP AND HIGH-SHIPMENT SCENARIO

	Units	Base case	Trial standard level				
			1	2	3	4	5
INPV	(2012$ millions)	123	123	126	127	127	159
Change in INPV	(2012$ millions)	.....	0.8	3.3	4.5	4.7	36.5
	(%)	.....	0.7%	2.7	3.7	3.8	29.8
Product Conversion Costs	(2012$ millions)	.....	9	12	13	14	20
Capital Conversion Costs	(2012$ millions)	.....	10	17	16	14	7
Total Conversion Costs	(2012$ millions)	.....	19	30	29	28	26

TABLE VI.28—MANUFACTURER IMPACT ANALYSIS FOR METAL HALIDE BALLASTS—PRESERVATION OF OPERATING PROFIT MARKUP AND LOW-SHIPMENT SCENARIO

	Units	Base case	Trial standard level				
			1	2	3	4	5
INPV	(2012$ millions)	103	86	77	77	79	79
Change in INPV	(2012$ millions)	.....	(17.1)	(26.8)	(25.9)	(24.8)	(24.1)
	(%)	.....	−16.6%	−25.9	−25.0	−24.0	−23.3
Product Conversion Costs	(2012$ millions)	.....	9	12	13	14	20
Capital Conversion Costs	(2012$ millions)	.....	10	17	16	14	7
Total Conversion Costs	(2012$ millions)	.....	19	30	29	28	26

TSL 1 is EL1 for all ten equipment classes (the 70 W indoor and outdoor, 150 W indoor and outdoor, 250 W indoor and outdoor, 400 W indoor and outdoor, and 1000 W indoor and outdoor fixtures). At TSL 1, DOE estimates impacts on INPV range from $0.8 million to −$17.1 million, or a change in INPV of 0.7 percent to −16.6 percent. At TSL 1, industry free cash flow (operating cash flow minus capital expenditures) under the low-shipment scenario is estimated to decrease by approximately 68 percent to $3.4 million, compared to the base case value of $10.7 million in 2015. Under the high-shipment scenario, industry free cash flow is estimated to decrease by approximately 69 percent to $3.3 million, compared to the base case value of $10.6 million in 2015.

Impacts on INPV are slightly positive to moderately negative at TSL 1. TSL 1 requires the use of more efficient magnetic ballasts for the 70 W indoor and outdoor, 150 W indoor and outdoor, 250 W indoor and outdoor, 400 W indoor and outdoor, and 1000 W indoor and outdoor equipment classes. DOE projects that in 2016 100 percent of 70 W indoor shipments, 5 percent of 150 W indoor shipments, 14 percent of 250 W indoor shipments, 23 percent of 400 W indoor shipments, 10 percent of 1000 W indoor shipments, 30 percent of 70 W outdoor shipments, zero percent of 150 W outdoor shipments, 10 percent of 250 W outdoor shipments, 10 percent of 400 W outdoor, and 6 percent of 1000 W outdoor shipments would meet TSL 1 or higher in the base case.

Conversion costs are expected to be moderate at TSL 1. DOE expects ballast manufacturers to incur $9 million in product conversion costs for model redesigns and testing and $10 million in capital conversion costs for equipment

such as stamping dies to process more efficient steel cores.

At TSL 1, under the flat markup scenario the shipment-weighted average MPC increases by 25 percent relative to the base case MPC. Manufacturers are able to fully pass on this cost increase to customers under this scenario. Additionally, under the high-shipment scenario, shipments are 191 percent higher than shipments under the low-shipment scenario in the last year of the analysis period. Thus, manufacturers generate the most revenue under this combination (flat markup and high-shipment) of scenarios. The moderate price increase applied to a large quantity of shipments mitigates the impact of the $19 million in conversion costs estimated at TSL 1, resulting in slightly positive impacts at TSL 1 under the flat markup and high-shipment scenarios.

Under the 'preservation of operating profit' markup scenario, manufacturers earn the same operating profit as would be earned in the base case in 2017, but manufacturers do not earn additional profit from their investments. The 22 percent MPC increase is outweighed by a lower average markup of 1.44 in the 'preservation of operating profit' markup scenario (compared to the flat markup scenario markup of 1.47) and $19 million in conversion costs, resulting in greater negative impacts at TSL 1 under this scenario. On a percentage basis, the low-shipment scenario exacerbates these impacts relative to the high-shipment scenario because the base case INPV against which the absolute change in INPV is compared is 16 percent lower in the low shipment scenario compared to the high shipment scenario.

TSL 2 is EL2 for all ten equipment classes (the 70 W indoor and outdoor, 150 W indoor and outdoor, 250 W indoor and outdoor, 400 W indoor and outdoor, and 1000 W indoor and outdoor fixtures). At TSL 2, DOE estimates impacts on INPV to range from $3.3 million to −$26.8 million, or a change in INPV of 2.7 percent to −25.9 percent. At this proposed level, industry free cash flow under the low-shipment scenario is estimated to decrease by approximately 106 percent to −$0.7 million, compared to the base case value of $10.7 million in 2015. Under the high-shipment scenario, industry free cash flow is estimated to decrease by approximately 108 percent to −$0.8 million, compared to the base case value of $10.6 million in 2015.

TSL 2 is the highest efficiency level the engineering analysis assumes manufacturers can meet with magnetic ballasts for all equipment classes. DOE projects that in 2016, 100 percent of 70 W indoor shipments, 5 percent of 150 W indoor shipments, 10 percent of 250 W indoor, 15 percent of 400 W indoor, 5 percent of 1000 W indoor shipments, and 3 percent of 1000 W outdoor shipments would meet TSL 2 or higher in the base case. No shipments from the 70 W outdoor, 150 W outdoor, 250 W outdoor, and 400 W outdoor equipment classes would meet TSL 2 or higher in the base case. At TSL 2, product conversion costs rise to $12 million and capital conversion costs rise to $17 million as manufacturers need to purchase additional equipment and tooling to upgrade magnetic production lines.

At TSL 2, under the flat markup scenario the shipment-weighted average MPC increases 40 percent over the base case MPC. In this scenario INPV impacts are slightly positive because manufacturers' ability to pass on the higher equipment costs to customers outweighs the $30 million in conversion costs. Under the 'preservation of operating profit' markup scenario, the 35 percent MPC increase is outweighed by a lower average markup of 1.42 and $30 million in conversion costs, resulting in moderately negative INPV impacts at TSL 2.

TSL 3 includes, for the first time, EL4 for two equipment classes (the 150 W indoor and outdoor fixtures) and EL2 for the other eight equipment classes (the 70 W indoor and outdoor, 250 W indoor and outdoor, 400 W indoor and outdoor, and 1000 W indoor and outdoor fixtures). At TSL 3, DOE estimates impacts on INPV to range from $4.5 million to −$25.9 million, or a change in INPV of 3.7 percent to −25.0 percent. At this proposed level, industry free cash flow under the low-shipment scenario is estimated to decrease by approximately 102 percent to −$0.2 million, compared to the base case value of $10.7 million in 2015. Under the high-shipment scenario, industry free cash flow is estimated to decrease by approximately 104 percent to −$0.4 million, compared to the base case value of $10.6 million in 2015.

The technology changes from TSL 2 to TSL 3 are that manufacturers must use max tech level electronic ballasts for the 150 W indoor and outdoor equipment classes at TSL 3. This has a negligible effect on total conversion costs, which slightly decreases to $29 million. DOE projects that no 150 W indoor or outdoor shipments would meet TSL 3 or higher in 2016 in the base case. DOE expects product conversion costs to increase slightly to $13 million and capital conversion costs to decrease slightly to $16 million.

At TSL 3, under the flat markup scenario the shipment-weighted average MPC increases 40 percent over the base case MPC. In this scenario the additional revenues earned from passing on these higher MPC costs outweigh the $29 million in conversion costs and higher working capital requirements, resulting in slightly positive INPV impacts. Under the 'preservation of operating profit' markup scenario, the 35 percent MPC increase is outweighed by a lower average markup of 1.42 and $29 million in conversion costs, resulting in INPV results remaining moderately negative at TSL 3.

TSL 4 is EL4 for two equipment classes (the 150 W indoor and outdoor fixtures), EL3 for one equipment class (the 70 W outdoor fixtures), and EL2 for the remaining seven equipment classes (the 70 W indoor fixtures, 250 W indoor and outdoor fixtures, 400 W indoor and outdoor fixtures, and 1000 W indoor and outdoor fixtures). At TSL 4, DOE estimates impacts on INPV to range from $4.7 million to −$24.8 million, or a change in INPV of 3.8 percent to −24.0 percent. At this proposed level, industry free cash flow under the low-shipment scenario is estimated to decrease by approximately 97 percent to $0.3 million, compared to the base case value of $10.7 million in 2015. Under the high-shipment scenario, industry free cash flow is estimated to decrease by approximately 98 percent to $0.2 million, compared to the base case value of $10.6 million in 2015.

The technology changes from TSL 3 to TSL 4 are that manufacturers must use electronic ballasts for the 70 W outdoor equipment class at TSL 4. DOE projects that no 70 W outdoor shipments would meet TSL 4 or higher in 2016 in the base case. Total conversion costs decrease from $29 million at TSL 3 to $28 million at TSL 4, because of the flexibility of electronic ballast production within the lighting manufacturing industry.

At TSL 4, under the flat markup scenario the shipment-weighted average MPC increases 39 percent over the base case MPC. In this scenario the additional revenues earned from passing on these higher MPC costs outweigh the $28 million in conversion costs, resulting in slightly positive impacts on INPV. Under the 'preservation of operating profit' markup scenario, the 34 percent MPC increase is outweighed by a lower average markup of 1.42 and $28 million in conversion costs, resulting in INPV results remaining moderately negative at TSL 4.

TSL 5 is EL4 for eight equipment classes (the 70 W indoor and outdoor fixtures, 150 W indoor and outdoor fixtures, 250 W indoor and outdoor

fixtures, and 400 W indoor and outdoor fixtures) and EL2 for two equipment classes (the 1000 W indoor and outdoor fixtures). At TSL 5, DOE estimates impacts on INPV to range from $36.5 million to −$24.1 million, or a change in INPV of 29.8 percent to −23.3 percent. At this proposed level, industry free cash flow under the low-shipment scenario is estimated to decrease by approximately 83 percent to $1.8 million, compared to the base case value of $10.7 million in 2015. Under the high-shipment scenario, industry free cash flow is estimated to decrease by approximately 84 percent to $1.7 million, compared to the base case value of $10.6 million in 2015.

At TSL 5, the stringency of standards increases to max tech ballasts for the 70 W indoor and outdoor, 250 W indoor and outdoor, and 400 W outdoor equipment classes compared to TSL 4. DOE projects that 1 percent of 70 W indoor shipments would meet TSL 5 or higher in 2016 in the base case. No shipments from the 70 W outdoor, 250 W indoor or outdoor, and 400 W indoor or outdoor equipment classes would meet TSL 5 or higher in the base case. As a result, product conversion costs increase to $20 million because of the need to redesign and test additional models, and capital conversion costs decrease to $7 million due to the flexibility of electronic ballast production.

At TSL 5, under the flat markup scenario the shipment-weighted average MPC increases 76 percent over the base case MPC. In this scenario the additional revenues earned from passing on these higher MPC costs outweigh the decreased conversion costs of $26 million, resulting in a significantly positive impact on INPV. Under the 'preservation of operating profit' markup scenario, the 67 percent MPC increase is outweighed by a lower average markup of 1.39 and $26 million in conversion costs, resulting in INPV results remaining moderately negative at TSL 5.

Cash Flow Analysis Results by TSL for Metal Halide Lamp Fixtures

DOE incorporated the same scenarios to represent the upper and lower bounds of industry impacts for metal halide lamp fixtures as for metal halide ballasts: The flat markup scenario with the high-shipment scenario and the 'preservation of operating profit' markup scenario with the low-shipment scenario. Note that the TSLs below represent the same sets of efficiency levels as discussed above in the description of impacts on ballast manufacturers.

TABLE VI.29—MANUFACTURER IMPACT ANALYSIS FOR METAL HALIDE LAMP FIXTURES—FLAT MARKUP AND HIGH-SHIPMENT SCENARIO

	Units	Base case	Trial standard level				
			1	2	3	4	5
INPV	(2012$ millions)	630	667	694	695	703	741
Change in INPV	(2012$ millions)	.....	37.0	63.9	64.8	73.6	111.3
(%)		5.9%	10.2	10.3	11.7	17.7	
Product Conversion Costs	(2012$ millions)	.....	3	3	9	13	62
Capital Conversion Costs	(2012$ millions)	.....	0	0	6	10	75
Total Conversion Costs	(2012$ millions)	.....	3	3	15	23	137

TABLE VI.30—MANUFACTURER IMPACT ANALYSIS FOR METAL HALIDE LAMP FIXTURES—PRESERVATION OF OPERATING PROFIT MARKUP AND LOW-SHIPMENT SCENARIO

	Units	Base case	Trial standard level				
			1	2	3	4	5
INPV	(2012$ millions)	540	534	532	523	516	423
Change in INPV	(2012$ millions)	.....	(6.1)	(8.1)	(17.3)	(23.8)	(116.9)
(%)		−1.1%	−1.5	−3.2	−4.4	−21.6	
Product Conversion Costs	(2012$ millions)	.....	3	3	9	13	62
Capital Conversion Costs	(2012$ millions)	.....	0	0	6	10	75
Total Conversion Costs	(2012$ millions)	.....	3	3	15	23	137

At TSL 1, DOE estimates impacts on INPV to range from $37.0 million to −$6.1 million, or a change in INPV of 5.9 percent to -1.1 percent. At TSL 1, industry free cash flow under the low-shipment scenario is estimated to decrease by approximately 2 percent to $58.7 million, compared to the base case value of $59.8 million in 2015. Under the high-shipment scenario, industry free cash flow is estimated to decrease by approximately 2 percent to $58.0 million, compared to the base case value of $59.1 million in 2015.

DOE expects minimal conversion costs for fixture manufacturers at TSL 1. Fixture manufacturers would incur $3 million in product conversion costs for the testing of redesigned ballasts. Because the stack height of magnetic ballasts is not expected to change in response to the standards, fixture manufacturers would not incur any capital conversion costs at magnetic ballast levels such as TSL 1.

At TSL 1, under the flat markup scenario the shipment-weighted average MPC increases by 12 percent from the base case MPC. In this scenario manufacturers maximize revenue since they are able to fully pass on this cost increase to customers. The moderate price increase applied to a large quantity of shipments outweighs the impact of the $3 million in conversion costs for TSL 1, resulting in positive impacts at TSL 1 under the flat markup and high-shipment scenarios.

Under the 'preservation of operating profit' markup scenario, the 10 percent MPC increase is outweighed by a lower average markup of 1.56 (compared to the flat manufacturer markup of 1.58) and $3 million in conversion costs,

resulting in slightly negative impacts at TSL 1. These impacts increase on a percentage basis under the low-shipment scenario relative to the high-shipment scenario because the base case INPV against which changes are compared is 14 percent lower.

At TSL 2, DOE estimates impacts on INPV to range from $63.9 million to −$8.1 million, or a change in INPV of 10.2 percent to −1.5 percent. At this proposed level, industry free cash flow under the low-shipment scenario is estimated to decrease by approximately 2 percent to $58.7 million, compared to the base case value of $59.8 million in 2015. Under the high-shipment scenario, industry free cash flow is estimated to decrease by approximately 2 percent to $58.0 million, compared to the base case value of $59.1 million in 2015.

At TSL 2, DOE expects conversion costs to remain low at $3 million for the testing of redesigned ballasts and catalog updates. Under the flat markup scenario the shipment-weighted average MPC increases 19 percent over the base case MPC. In this scenario the INPV impacts are positive because the ability to pass on the higher equipment costs to customers outweighs the $3 million in estimated conversion costs. Under the 'preservation of operating profit' markup scenario, the 15 percent MPC increase is outweighed by a lower average markup of 1.53 and $3 million in conversion costs, resulting in slightly negative INPV impacts at TSL 2.

At TSL 3, DOE estimates impacts on INPV to range from $64.8 million to −$17.3 million, or a change in INPV of 10.3 percent to −3.2 percent. At this proposed level, industry free cash flow under the low-shipment scenario is estimated to decrease by approximately 9 percent to $54.2 million, compared to the base case value of $59.8 million in 2015. Under the high-shipment scenario, industry free cash flow is estimated to decrease by approximately 9 percent to $53.5 million, compared to the base case value of $59.1 million in 2015. DOE expects product conversion costs to increase to $9 million because of the additional cost of redesigning fixtures for thermal protection to accommodate 150 W indoor and outdoor electronic ballasts. Manufacturers would also incur an estimated $6 million in capital costs for 150 W indoor fixture changes.

At TSL 3, the electronic fixture cost increases for the 150 W indoor and outdoor equipment classes because of fixture adders for thermal protection and voltage transient protection. Under the flat markup scenario, the shipment-weighted average MPC increases 21 percent over the base case MPC. This increase in revenue outweighs the increase of $15 million in conversion costs, resulting in positive impacts at TSL 3. Under the 'preservation of operating profit' markup scenario, the 17 percent MPC increase is outweighed by a lower average markup of 1.53 and $15 million in conversion costs, resulting in slightly negative INPV impacts at TSL 3.

At TSL 4, DOE estimates impacts on INPV to range from $73.6 million to −$23.8 million, or a change in INPV of 11.7 percent to −4.4 percent. At this proposed level, industry free cash flow under the low-shipment scenario is estimated to decrease by approximately 14 percent to $51.4 million, compared to the base case value of $59.8 million in 2015. Under the high-shipment scenario, industry free cash flow is estimated to decrease by approximately 14 percent to $50.7 million, compared to the base case value of $59.1 million in 2015.

The technology changes from TSL 3 to TSL 4 are that manufacturers must use electronic ballasts to meet the required efficiencies for the 70 W outdoor fixture class at TSL 4. This increases the product conversion costs from $9 million at TSL 3 to $13 million at TSL 4 and increases the capital conversion costs from $6 million at TSL 3 to $10 million at TSL 4.

At TSL 4, under the flat markup scenario the shipment-weighted average MPC increases 26 percent over the base case MPC. In this scenario the additional revenue results in slightly more positive impacts on INPV at TSL 4 compared to TSL 3. Under the 'preservation of operating profit' markup scenario the 21 percent MPC increase is outweighed by a lower average markup of 1.52 and $23 million in conversion costs, resulting in slightly more negative INPV impacts at TSL 4 compared to TSL 3.

At TSL 5, DOE estimates impacts on INPV to range from $111.3 million to -$116.9 million, or a change in INPV of 17.7 percent to -21.6 percent. At this proposed level, industry free cash flow under the low-shipment scenario is estimated to decrease by approximately 89 percent to $6.5 million, compared to the base case value of $59.8 million in 2015. Under the high-shipment scenario, industry free cash flow is estimated to decrease by approximately 90 percent to $5.8 million, compared to the base case value of $59.1 million in 2015.

At TSL 5, product conversion costs significantly increase to $62 million as manufacturers must redesign all equipment classes to accommodate the most efficient electronic ballasts. Capital conversion costs also significantly increase to $75 million because of the need for additional equipment and tooling, such as new castings, to incorporate thermal protection in all equipment classes.

At TSL 5, DOE estimates impacts on INPV to range from $111.3 million to -$116.9 million, or a change in INPV of 17.7 percent to -21.6 percent. At this proposed level, industry free cash flow under the low-shipment scenario is estimated to decrease by approximately 89 percent to $6.5 million, compared to the base case value of $59.8 million in 2015. Under the high-shipment scenario, industry free cash flow is estimated to decrease by approximately 90 percent to $5.8 million, compared to the base case value of $59.1 million in 2015.

At TSL 5, product conversion costs significantly increase to $62 million as manufacturers must redesign all equipment classes to accommodate the most efficient electronic ballasts. Capital conversion costs also significantly increase to $75 million because of the need for additional equipment and tooling, such as new castings, to incorporate thermal protection in all equipment classes.

At TSL 5, under the flat markup scenario the shipment-weighted average MPC increases 57 percent over the base case MPC. In this scenario the revenue increase from TSL 4 to TSL 5 outweighs the increase in conversion costs of $137 million, resulting in greater positive impacts on INPV at TSL 5 compared to TSL 4. Under the 'preservation of operating profit' markup scenario, the 46 percent MPC increase is outweighed by a lower average markup of 1.47 and $137 million in conversion costs, resulting in significantly more negative INPV impacts at TSL 5 compared to TSL 4.

b. Impacts on Employment

DOE quantitatively assessed the impacts of potential new and amended energy conservation standards 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 2045. DOE used statistical data from the U.S. Census Bureau's 2009 Annual Survey of Manufacturers (ASM), 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 involved with the manufacture of the product are a function of the labor

intensity of the product, the sales volume, and an assumption that wages remain fixed in real terms over time.

In the GRIM, DOE used the labor content of each product and the manufacturing production costs to estimate the annual labor expenditures in the industry. DOE used Census data and 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 only workers up to the line-supervisor level who are directly involved in fabricating and assembling a product within an OEM facility. Workers performing services that are closely associated with production operations, such as material handing with a forklift, are also included as production labor. DOE's estimates account for only production workers who manufacture the specific products covered by this rulemaking. For example, a worker on a fluorescent lamp ballast line would not be included with the estimate of the number of metal halide ballast or fixture workers.

The employment impacts shown in the tables below represent the potential production employment that could result following new and amended energy conservation standards. The upper bound of the results estimates the maximum change in the number of production workers that could occur after compliance with new and amended energy conservation standards when assuming that manufacturers continue to produce the same scope of covered equipment in the same production facilities. It also assumes that domestic production does not shift to lower-labor-cost countries. Because there is a real risk of manufacturers evaluating sourcing decisions in response to new and amended energy conservation standards, the lower bound of the employment results 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 U.S. While the results present a range of employment impacts following 2016, the sections below also include qualitative discussions 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 14 of the NOPR TSD.

Employment Impacts for Metal Halide Ballasts

Based on 2009 ASM data and interviews with manufacturers, DOE estimates that less than 40 domestic production workers would be involved in manufacturing metal halide ballasts in 2016, as the vast majority of metal halide ballasts are manufactured abroad. DOE's view is that manufacturers could face moderate positive impacts on domestic employment levels because increasing equipment costs at each TSL would result in higher labor expenditures per unit, causing manufacturers to hire more workers to meet demand for metal halide ballasts, assuming that production remains in domestic facilities. Many manufacturers, however, do not expect a significant change in total employment at their facilities. Although manufacturers are concerned that higher prices for metal halide ballasts will drive customers to alternate technologies, most manufacturers offer these alternate technologies and can shift their employees from metal halide ballast production to production of other technologies in their facilities. Most manufacturers believe that domestic employment will only be significantly adversely affected if customers shift to foreign imports, causing the total lighting market share of the major domestic manufacturers to decrease.

Employment Impacts for Metal Halide Lamp Fixtures

Using 2009 ASM data and interviews with manufacturers, DOE estimates that approximately 60 percent of the metal halide lamp fixtures sold in the United States are manufactured domestically. With this assumption, DOE estimates that in the absence of new and amended energy conservation standards, there would be between 519 and 525 domestic production workers involved in manufacturing metal halide lamp fixtures in 2016. The tables below show the range of the impacts of potential new and amended energy conservation standards on U.S. production workers in the metal halide lamp fixture industry.

TABLE VI.31—POTENTIAL CHANGES IN THE TOTAL NUMBER OF DOMESTIC METAL HALIDE LAMP FIXTURE PRODUCTION WORKERS IN 2016

[Flat markup and high-shipment scenario]

Base case		Trial standard level				
		1	2	3	4	5
Total Number of Domestic Production Workers in 2016 (without changes in production locations)	525	588	626	625	630	684
Potential Changes in Domestic Production Workers in 2016 *		63–(525)	101–(525)	100–(525)	105–(525)	159–(525)

* DOE presents a range of potential employment impacts. Numbers in parentheses indicate negative numbers

TABLE VI.32—POTENTIAL CHANGES IN THE TOTAL NUMBER OF DOMESTIC METAL HALIDE LAMP FIXTURE PRODUCTION WORKERS IN 2016

[Preservation of operating profit markup and low-shipment scenario]

Base case		Trial standard level				
		1	2	3	4	5
Total Number of Domestic Production Workers in 2016 (without changes in production locations)	519	581	619	618	623	676
Potential Changes in Domestic Production Workers in 2016 *		62–(519)	100–(519)	99–(519)	104–(519)	157–(519)

At the upper end of the range, all examined TSLs show slight to moderate positive impacts on domestic employment levels. The increasing equipment cost at each higher TSL would result in higher labor expenditures per unit, causing manufacturers to hire more workers to meet demand levels of metal halide fixtures, assuming that production remains in domestic facilities. Many manufacturers, however, do not expect a significant change in total employment at their facilities. Although manufacturers are concerned that higher prices for metal halide lamp fixtures will drive customers to alternate technologies, most manufacturers offer these alternate technologies and can shift their employees from metal halide lamp fixture production to production of other technologies in their facilities. As with ballast manufacturers, most fixture manufacturers believe that domestic employment will only be significantly adversely affected if customers shift to foreign imports, causing the total lighting market share of the major domestic manufacturers to decrease. Because of the potentially high cost of shipping fixtures from overseas, many manufacturers believe that this shift is unlikely to occur. This is particularly true for the significant portion of the market served by small manufacturers, for whom the per-unit shipping costs of sourcing products would be even greater because of the lower volumes that they sell.

Based on the above, DOE does not expect the proposed energy conservation standards for metal halide lamp fixtures, at TSL 3, to have a significant negative impact on direct domestic employment levels. DOE notes that domestic employment levels could be negatively affected in the event that small fixture businesses choose to exit the market due to standards. However, discussions with small manufacturers indicated that most small businesses will be able to adapt to new and amended regulations. The impacts on small businesses are discussed in section VII.B.

c. Impacts on Manufacturing Capacity

Both ballast and fixture manufacturers stated that they do not anticipate any capacity constraints at efficiency levels that can be met with magnetic ballasts, which are the efficiency levels being proposed for eight of the 10 equipment classes in today's NOPR, the two exceptions are the 150W indoor and outdoor equipment classes. If the production of higher-efficiency magnetic ballasts decreases the throughput on production lines, manufacturers stated that they would be able to add shifts on existing lines and maintain capacity.

At efficiency levels that require electronic ballasts, however, manufacturers are concerned about the current worldwide shortage of electrical components. The components most affected by this shortage are high-efficiency parts, for which demand would increase even further following new and amended energy conservation standards. The increased demand could exacerbate the component shortage, thereby impacting manufacturing capacity in the near term, according to manufacturers. The only equipment classes requiring electronic ballasts that are being proposed in today's NOPR are the 150W indoor and outdoor equipment classes. DOE does not anticipate a significant increase in demand for electric components due to today's proposed energy conservation standards. While DOE recognizes that the premium component shortage is currently a significant issue for manufacturers, DOE views it as a relatively short-term phenomenon to which component suppliers will ultimately adjust. According to several manufacturers, suppliers have the ability to ramp up production to meet ballast component demand by the compliance date of potential new standards, but those suppliers have hesitated to invest in additional capacity due to economic uncertainty and skepticism about the sustainability of demand. The state of the macroeconomic environment through 2016 will likely affect the duration of the premium component shortage. Potential mandatory standards, however, could create more certainty for suppliers about the eventual demand for these components. Additionally, the premium components at issue are not new technologies; rather, they have simply not historically been demanded in large quantities by ballast manufacturers.

d. Impacts on Subgroups of Manufacturers

Using average cost assumptions to develop an industry cash-flow estimate may not be adequate for assessing differential impacts among manufacturer subgroups. Small manufacturers, niche equipment manufacturers, and manufacturers exhibiting cost structures substantially different from the industry average could be affected disproportionately. DOE analyzed the impacts to small businesses in section VII.B and did not identify any other adversely impacted subgroups for metal halide ballasts or fixtures for this rulemaking based on the results of the industry characterization.

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 appliance efficiency.

During previous stages of this rulemaking, DOE identified a number of requirements, in addition to new and amended energy conservation standards for metal halide lamp fixtures, that manufacturers will face for products and equipment they manufacture approximately 3 years prior to and 3 years after the compliance date of the new and amended standards. 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.

Several manufacturers expressed concern about the overall volume of DOE energy conservation standards with which they must comply. Most metal halide lamp fixture manufacturers also make a full range of lighting products and share engineering and other resources with these other internal manufacturing divisions for different products (including certification testing for regulatory compliance). Manufacturers worried that today's proposed standards could punish compliant manufacturers while potentially driving others to noncompliance, creating an unfair playing field. NEMA referenced general service fluorescent lamps, incandescent reflector lamps, fluorescent lamp ballasts, and high-intensity discharge lamps as other products subject to DOE regulation. (NEMA, No. 34 at p. 17) NEMA and Philips also raised concerns about other regulatory actions, including ENERGY STAR standards utilizing separate metrics from DOE's standards and potential outdoor lighting legislation. (NEMA, Public Meeting Transcript, No. 33 at p. 16; Philips, Public Meeting Transcript, No. 33 at p. 132; NEMA, No. 34 at p. 17) Other regulations noted by manufacturers during interviews include California Title 20 and Title 24.

DOE discusses these and other requirements in chapter 13 of the NOPR TSD. DOE takes into account the cost of compliance with other published Federal energy conservation standards in weighing the benefits and burdens of today's proposed rulemaking. DOE does not describe the quantitative impacts of standards that have not yet been finalized because any impacts would be speculative. DOE also notes that certain standards, such as ENERGY STAR, are optional for manufacturers.

3. National Impact Analysis

a. Significance of Energy Savings

For each TSL, DOE projected energy savings for metal halide lamp fixtures purchased in the 30-year period that begins in the year 2016, ending in the year 2045. 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. Table VI.33 presents the estimated primary energy savings for each TSL for the low- and high-shipment scenarios, which represent the minimum and maximum energy savings resulting from all the scenarios analyzed. Table VI.34 presents the estimated FFC energy savings for each considered TSL. Chapter 11 of the NOPR TSD describes these estimates in more detail.

TABLE VI.33—CUMULATIVE NATIONAL PRIMARY ENERGY SAVINGS FOR METAL HALIDE LAMP FIXTURE TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2016–2045

Trial standard level	Equipment class	National Primary Energy Savings quads	
		Low-shipments scenario	High-shipments scenario
1	70 W	0.01	0.01
	150 W	0.03	0.05
	250 W	0.02	0.03
	400 W	0.10	0.13
	1000 W	0.27	0.37
Total		0.44	0.58
2	70 W	0.05	0.06
	150 W	0.06	0.09
	250 W	0.04	0.06
	400 W	0.20	0.27
	1000 W	0.31	0.42
Total		0.66	0.89
3	70 W	0.05	0.06
	150 W	0.19	0.26
	250 W	0.04	0.06
	400 W	0.20	0.27
	1000 W	0.31	0.42
Total		0.79	1.06
4	70 W	0.15	0.19
	150 W	0.19	0.26
	250 W	0.04	0.06
	400 W	0.20	0.27
	1000 W	0.31	0.42
Total		0.89	1.20
5	70 W	0.18	0.24
	150 W	0.19	0.26
	250 W	0.35	0.49
	400 W	0.77	1.08

TABLE VI.33—CUMULATIVE NATIONAL PRIMARY ENERGY SAVINGS FOR METAL HALIDE LAMP FIXTURE TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2016–2045—Continued

Trial standard level	Equipment class	National Primary Energy Savings quads	
		Low-shipments scenario	High-shipments scenario
	1000 W	0.31	0.42
Total		1.80	2.49

TABLE VI.34—CUMULATIVE NATIONAL FULL-FUEL-CYCLE ENERGY SAVINGS FOR METAL HALIDE LAMP FIXTURE TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2016–2045

Trial standard level	Equipment class	National FFC energy savings quads	
		Low-shipments scenario	High-shipments scenario
1	70 W	0.01	0.01
	150 W	0.03	0.05
	250 W	0.02	0.03
	400 W	0.10	0.13
	1000 W	0.28	0.38
Total		0.45	0.59
2	70 W	0.05	0.06
	150 W	0.06	0.09
	250 W	0.04	0.06
	400 W	0.21	0.28
	1000 W	0.31	0.42
Total		0.67	0.90
3	70 W	0.05	0.06
	150 W	0.19	0.27
	250 W	0.04	0.06
	400 W	0.21	0.28
	1000 W	0.31	0.42
Total		0.80	1.08
4	70 W	0.16	0.20
	150 W	0.19	0.27
	250 W	0.04	0.06
	400 W	0.21	0.28
	1000 W	0.31	0.42
Total		0.91	1.22
5	70 W	0.19	0.24
	150 W	0.19	0.27
	250 W	0.36	0.50
	400 W	0.78	1.10
	1000 W	0.31	0.42
Total		1.83	2.53

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 nine rather than 30 years of fixture 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.[57] We would note that the review timeframe established in EPCA generally does not overlap with the equipment lifetime, equipment manufacturing cycles or other factors specific to metal halide lamp fixtures. 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 analytical period are presented in Table VI.35. The impacts are counted over the lifetime of fixtures purchased in 2016–2024.

[57] EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3 year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6 year period and that the 3-year compliance date may yield to the 6-year backstop.

TABLE VI.35—CUMULATIVE NATIONAL PRIMARY ENERGY SAVINGS FOR METAL HALIDE LAMP FIXTURE TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2016–2024

Trial standard level	Equipment class	National primary energy savings quads	
		Low-shipments scenario	High-shipments scenario
1	70 W	0.01	0.01
	150 W	0.02	0.02
	250 W	0.01	0.01
	400 W	0.06	0.07
	1000 W	0.15	0.16
Total		0.25	0.28
2	70 W	0.03	0.03
	150 W	0.03	0.03
	250 W	0.02	0.03
	400 W	0.11	0.12
	1000 W	0.16	0.18
Total		0.36	0.40
3	70 W	0.03	0.03
	150 W	0.09	0.10
	250 W	0.02	0.03
	400 W	0.11	0.12
	1000 W	0.16	0.18
Total		0.42	0.46
4	70 W	0.09	0.10
	150 W	0.09	0.10
	250 W	0.02	0.03
	400 W	0.11	0.12
	1000 W	0.16	0.18
Total		0.48	0.53
5	70 W	0.11	0.12
	150 W	0.09	0.10
	250 W	0.17	0.19
	400 W	0.36	0.40
	1000 W	0.16	0.18
Total		0.89	0.99

b. Net Present Value of Customer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for customers that would result from the TSLs considered for metal halide lamp fixtures. In accordance with OMB's guidelines on regulatory analysis,[58] DOE calculated the 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 as well as corporate capital. This discount rate approximates the opportunity cost of capital in the private sector (OMB analysis has found the average rate of return on capital to be near this rate). The 3-percent rate reflects the potential effects of standards on private consumption (*e.g.,* through higher prices for products and reduced purchases of energy). 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 United States Treasury notes), which has averaged about 3 percent for the past 30 years.

Table VI.36 shows the customer NPV results for each TSL DOE considered for metal halide lamp fixtures, using both 7-percent and 3-percent discount rates. In each case, the impacts cover the lifetime of equipment purchased in 2016–2045. See chapter 11 of the NOPR TSD for more detailed NPV results.

[58] OMB Circular A–4, section E (Sept. 17, 2003). Available at: *www.whitehouse.gov/omb/circulars_a004_a-4.*

TABLE VI.36—NET PRESENT VALUE OF CUSTOMER BENEFITS FOR METAL HALIDE LAMP FIXTURE TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2016–2045

Trial standard level	Equipment class	Net present value billion 2012$			
		Low-shipments scenario		High-shipments scenario	
		7-percent discount rate	3-percent discount rate	7-percent discount rate	3-percent discount rate
1	70 W	0.039	0.068	0.042	0.073
	150 W	0.036	0.094	0.044	0.124
	250 W	0.009	0.065	0.012	0.084
	400 W	0.009	0.109	0.014	0.140
	1000 W	0.596	1.292	0.728	1.680
Total		0.688	1.629	0.840	2.100
2	70 W	0.054	0.124	0.060	0.144
	150 W	0.083	0.205	0.104	0.274
	250 W	0.028	0.146	0.038	0.194
	400 W	0.108	0.383	0.140	0.507
	1000 W	0.636	1.393	0.779	1.815
Total		0.909	2.251	1.121	2.933
3	70 W	0.054	0.124	0.060	0.144
	150 W	0.125	0.408	0.162	0.558
	250 W	0.028	0.146	0.038	0.194
	400 W	0.108	0.383	0.140	0.507
	1000 W	0.636	1.393	0.779	1.815
Total		0.951	2.454	1.179	3.217
4	70 W	0.029	0.330	0.034	0.406
	150 W	0.125	0.408	0.162	0.558
	250 W	0.028	0.146	0.038	0.194
	400 W	0.108	0.383	0.140	0.507
	1000 W	0.636	1.393	0.779	1.815
Total		0.927	2.660	1.153	3.479
5	70 W	−0.015	0.278	−0.018	0.344
	150 W	0.125	0.408	0.162	0.558
	250 W	−0.055	0.287	−0.050	0.430
	400 W	−0.344	0.134	−0.394	0.256
	1000 W	0.636	1.393	0.779	1.815
Total		0.347	2.500	0.478	3.401

The NPV results based on the aforementioned 9-year analytical period are presented in Table VI.37. The impacts are counted over the lifetime of fixtures purchased in 2016–2024. 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 VI.37—NET PRESENT VALUE OF CUSTOMER BENEFITS FOR METAL HALIDE LAMP FIXTURE TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2016–2024

Trial standard level	Equipment class	Net present value billion 2012$			
		Low-shipments scenario		High-shipments scenario	
		7-percent discount rate	3-percent discount rate	7-percent discount rate	3-percent discount rate
1	70 W	0.039	0.068	0.042	0.073
	150 W	0.023	0.053	0.025	0.058
	250 W	0.004	0.037	0.004	0.041
	400 W	0.001	0.062	0.001	0.069
	1000 W	0.419	0.779	0.457	0.856
Total		0.485	0.999	0.530	1.097
2	70 W	0.047	0.099	0.051	0.107
	150 W	0.053	0.113	0.059	0.124
	250 W	0.013	0.078	0.015	0.086
	400 W	0.061	0.206	0.068	0.227

TABLE VI.37—NET PRESENT VALUE OF CUSTOMER BENEFITS FOR METAL HALIDE LAMP FIXTURE TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2016–2024—Continued

Trial standard level	Equipment class	Net present value billion 2012$			
		Low-shipments scenario		High-shipments scenario	
		7-percent discount rate	3-percent discount rate	7-percent discount rate	3-percent discount rate
	1000 W	0.445	0.834	0.486	0.916
Total		0.620	1.329	0.678	1.461
3	70 W	0.047	0.099	0.051	0.107
	150 W	0.075	0.209	0.082	0.231
	250 W	0.013	0.078	0.015	0.086
	400 W	0.061	0.206	0.068	0.227
	1000 W	0.445	0.834	0.486	0.916
Total		0.642	1.426	0.702	1.567
4	70 W	0.024	0.216	0.025	0.236
	150 W	0.075	0.209	0.082	0.231
	250 W	0.013	0.078	0.015	0.086
	400 W	0.061	0.206	0.068	0.227
	1000 W	0.445	0.834	0.486	0.916
Total		0.618	1.542	0.676	1.696
5	70 W	−0.010	0.178	−0.012	0.194
	150 W	0.075	0.209	0.082	0.231
	250 W	−0.063	0.099	−0.068	0.110
	400 W	−0.280	−0.027	−0.305	−0.027
	1000 W	0.445	0.834	0.486	0.916
Total		0.166	1.292	0.183	1.424

Finally, DOE evaluated the NPV results for both indoor and outdoor fixtures for each equipment class. Table VI.38 gives the NPV associated with each equipment class broken down into indoor and outdoor fixture environments.

TABLE VI.38—NET PRESENT VALUE OF CUSTOMER BENEFITS FOR METAL HALIDE LAMP FIXTURE TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2016–2045

[Low shipments, by fixture environment]

Trial standard level	Equipment class	Net present value billion 2012$			
		Indoor fixtures		Outdoor fixtures	
		7-percent discount rate	3-percent discount rate	7-percent discount rate	3-percent discount rate
1	70 W	0.000	0.000	0.039	0.068
	150 W	0.011	0.028	0.025	0.066
	250 W	0.005	0.024	0.004	0.041
	400 W	0.007	0.037	0.002	0.072
	1000 W	0.183	0.378	0.413	0.914
Total		0.205	0.468	0.483	1.161
2	70 W	0.000	0.000	0.054	0.124
	150 W	0.025	0.059	0.058	0.146
	250 W	0.012	0.048	0.017	0.098
	400 W	0.036	0.115	0.072	0.268
	1000 W	0.197	0.411	0.439	0.981
Total		0.269	0.633	0.640	1.618
3	70 W	0.000	0.000	0.054	0.124
	150 W	0.019	0.012	0.106	0.396
	250 W	0.012	0.048	0.017	0.098
	400 W	0.036	0.115	0.072	0.268
	1000 W	0.197	0.411	0.439	0.981
Total		0.263	0.586	0.688	1.868
4	70 W	0.000	0.000	0.029	0.330
	150 W	0.019	0.012	0.106	0.396

TABLE VI.38—NET PRESENT VALUE OF CUSTOMER BENEFITS FOR METAL HALIDE LAMP FIXTURE TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2016–2045—Continued

[Low shipments, by fixture environment]

Trial standard level	Equipment class	Net present value billion 2012$			
		Indoor fixtures		Outdoor fixtures	
		7-percent discount rate	3-percent discount rate	7-percent discount rate	3-percent discount rate
	250 W	0.012	0.048	0.017	0.098
	400 W	0.036	0.115	0.072	0.268
	1000 W	0.197	0.411	0.439	0.981
Total		0.263	0.586	0.664	2.074
5	70 W	−0.012	−0.018	−0.003	0.296
	150 W	0.019	0.012	0.106	0.396
	250 W	−0.042	−0.120	−0.012	0.407
	400 W	−0.148	−0.284	−0.196	0.418
	1000 W	0.197	0.411	0.439	0.981
Total		0.013	0.002	0.334	2.499

c. Impacts on Employment

DOE estimated the indirect employment impacts of potential standards on the economy in general, assuming that energy conservation standards for metal halide lamp fixtures will reduce energy bills for fixture users and the resulting net savings will be redirected to other forms of economic activity. DOE used an input/output model of the U.S. economy to estimate these effects, including the demand for labor as described in section V.H.

The input/output model results suggest that today's proposed standards are likely to increase the net labor demand. The gains, however, would most likely be small relative to total national employment, and neither the BLS data nor the input/output model DOE uses includes the quality or wage level of the jobs. As shown in Table VI.39, DOE estimates that net indirect employment impacts from proposed fixture standards are small relative to the national economy.

TABLE VI.39—NET CHANGE IN JOBS FROM INDIRECT EMPLOYMENT EFFECTS UNDER FIXTURE TSLS

Analysis period year	Trial standard level	Net national change in jobs	
		Low shipments scenario, roll-up	High shipments scenario, roll-up
2017	1	10	8
	2	−30	−36
	3	76	73
	4	170	168
	5	352	346
2020	1	376	392
	2	511	530
	3	791	827
	4	1,091	1,142
	5	2,336	2,445

4. Impact on Utility or Performance of Equipment

As presented in section V.B of this notice, DOE concluded that none of the TSLs that were analyzed would reduce the utility or performance of the products under consideration in this rulemaking. Furthermore, manufacturers of these products currently offer ballasts that meet or exceed the proposed standards. (42 U.S.C. 6295(o)(2)(B)(i)(IV))

5. Impact of Any Lessening of Competition

DOE also considered any lessening of competition that is likely to result from new and amended energy conservation standards. The Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination to the Secretary, together with an analysis of the nature and extent of such impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii))

To assist the Attorney General in making such determination, DOE has provided DOJ with copies of this notice and the TSD for review. DOE will consider DOJ's comments on the proposed rule in preparing the final rule, and DOE will publish and respond to DOJ's comments in that document.

6. Need of the Nation To Conserve Energy

An improvement in the energy efficiency of the products subject to today's rule 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. Reductions in national electric generating capacity estimated for each considered TSL are reported in chapter 14 of the NOPR TSD.

Energy savings from new and amended energy conservation standards for fixtures could produce

environmental benefits in the form of reduced emissions of air pollutants and GHGs associated with electricity production. Table VI.40 and Table VI.41 provide DOE's estimate of cumulative emissions reductions projected to result from the TSLs considered in this rulemaking, for the low and high shipment scenarios, respectively. The tables include both power sector emissions and upstream emissions. The upstream emissions were calculated using the multipliers discussed in section V.L. DOE reports annual emissions reductions for each TSL in the emissions analysis in chapter 16 the NOPR TSD.

TABLE VI.40—CUMULATIVE EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR METAL HALIDE LAMP FIXTURES

[Low Shipments Scenario]

	Trial standard level				
	1	2	3	4	5
Power Sector Emissions*					
CO_2 *(million metric tons)*	25.90	38.85	46.04	52.32	104.72
NO_X *(thousand tons)*	17.39	26.22	31.20	35.41	71.71
Hg *(tons)*	0.06	0.09	0.11	0.12	0.24
N_2O *(thousand tons)*	0.48	0.72	0.86	0.98	2.00
CH_4 *(thousand tons)*	2.90	4.37	5.18	5.89	11.86
SO_2 *(thousand tons)*	36.23	54.37	64.42	73.25	146.53
Upstream Emissions					
CO_2 *(million metric tons)*	1.40	2.11	2.50	2.84	5.70
NO_X *(thousand tons)*	19.27	28.98	34.37	39.08	78.45
Hg *(tons)*	0.001	0.001	0.001	0.002	0.003
N_2O *(thousand tons)*	0.01	0.02	0.03	0.03	0.06
CH_4 *(thousand tons)*	116.89	175.81	208.58	237.15	476.16
SO_2 *(thousand tons)*	0.30	0.45	0.54	0.61	1.22
Total Emissions					
CO_2 *(million metric tons)*	27.30	40.96	48.53	55.16	110.43
NO_X *(thousand tons)*	36.66	55.20	65.57	74.48	150.16
Hg *(tons)*	0.06	0.09	0.11	0.12	0.24
N_2O *(thousand tons)*	0.49	0.74	0.89	1.01	2.06
CH_4 *(thousand tons)*	119.79	180.18	213.76	243.04	488.01
SO_2 *(thousand tons)*	36.53	54.82	64.95	73.85	147.75

TABLE VI.41—CUMULATIVE EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR METAL HALIDE LAMP FIXTURES

[High shipments scenario]

	Trial standard level				
	1	2	3	4	5
Power Sector Emissions*					
CO_2 *(million metric tons)*	33.93	51.48	61.61	69.58	143.59
NO_X *(thousand tons)*	23.50	35.86	43.14	48.58	101.88
Hg *(tons)*	0.08	0.12	0.14	0.16	0.34
N_2O *(thousand tons)*	0.66	1.01	1.22	1.37	2.90
CH_4 *(thousand tons)*	3.85	5.87	7.04	7.95	16.50
SO_2 *(thousand tons)*	47.41	71.94	86.07	97.26	200.46
Upstream Emissions					
CO_2 *(million metric tons)*	1.85	2.81	3.37	3.81	7.88
NO_X *(thousand tons)*	25.44	38.69	46.36	52.37	108.39
Hg *(tons)*	0.001	0.002	0.002	0.002	0.004
N_2O *(thousand tons)*	0.02	0.03	0.03	0.04	0.08
CH_4 *(thousand tons)*	154.45	234.93	281.50	317.98	658.29
SO_2 *(thousand tons)*	0.40	0.60	0.72	0.82	1.69
Total Emissions					
CO_2 *(million metric tons)*	35.78	54.29	64.98	73.39	151.47
NO_X *(thousand tons)*	48.94	74.55	89.50	100.95	210.26
Hg *(tons)*	0.08	0.12	0.15	0.16	0.34
N_2O *(thousand tons)*	0.68	1.04	1.25	1.41	2.98
CH_4 *(thousand tons)*	158.30	240.80	288.54	325.92	674.79
SO_2 *(thousand tons)*	47.80	72.54	86.79	98.08	202.14

As discussed in section V.L, DOE did not report SO_2 emissions reductions from power plants because there is uncertainty about the effect of energy conservation standards on the overall level of SO_2 emissions in the United States due to new emissions standards for power plants under the MATS rule. DOE also did not include NO_X emissions reductions from power plants in states subject to CAIRR because an energy conservation standard would not affect the overall level of NO_X emissions in those states due to the emissions caps.

As part the analysis for this proposed rule, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X that DOE estimated for each of the TSLs considered. As discussed in section V.M.1, 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 $12.9/ton, $40.8/ton, $62.2/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 increases.

Table VI.42 and Table VI.43 present the global value of CO_2 emissions reductions at each TSL for the low and high shipment scenarios, respectively. DOE calculated domestic values as a range from 7 percent to 23 percent of the global values, and these results are presented in chapter 17 of the NOPR TSD.

TABLE VI.42—GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR METAL HALIDE LAMP FIXTURES

[Low Shipments Scenario]

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 Emissions				
1	180.6	824.4	1,309.4	2,521.8
2	268.6	1,230.7	1,956.1	3,766.3
3	316.6	1,453.6	2,311.6	4,449.4
4	360.3	1,653.5	2,629.2	5,061.5
5	709.1	3,276.7	5,218.2	10,037.1
Upstream Emissions				
1	9.6	44.2	70.3	135.5
2	14.3	66.2	105.3	202.8
3	16.9	78.3	124.6	239.9
4	19.3	89.1	141.8	273.0
5	38.0	177.1	282.3	543.0
Total Emissions				
1	190.2	868.7	1,379.7	2,657.2
2	283.0	1,296.9	2,061.5	3,969.1
3	333.5	1,531.9	2,436.2	4,689.3
4	379.5	1,742.6	2,771.0	5,334.5
5	747.2	3,453.8	5,500.6	10,580.1

* For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.9, $40.8, $62.2 and $117.0 per metric ton (2012$).

TABLE VI.43—GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR METAL HALIDE LAMP FIXTURES

[High shipments scenario]

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 Emissions				
1	226.5	1,052.4	1,678.3	3,225.1
2	340.4	1,587.8	2,534.4	4,868.3
3	404.3	1,891.8	3,021.8	5,802.1

TABLE VI.43—GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR METAL HALIDE LAMP FIXTURES—Continued

[High shipments scenario]

TSL	SCC Scenario*			
	5% discount rate, average	3% discount rate, average	2.5% discount rate, average	3% discount rate, 95th percentile
4	458.2	2,141.2	3,418.9	6,566.6
5	924.3	4,359.1	6,975.4	13,379.6
Upstream Emissions				
1	12.2	56.9	90.9	174.7
2	18.3	86.1	137.6	264.4
3	21.8	102.8	164.3	315.5
4	24.7	116.3	185.9	357.1
5	50.1	237.6	380.6	730.0
Total Emissions				
1	238.7	1,109.3	1,769.2	3,399.8
2	358.7	1,674.0	2,672.0	5,132.7
3	426.2	1,994.6	3,186.1	6,117.6
4	482.9	2,257.5	3,604.9	6,923.7
5	974.3	4,596.7	7,356.0	14,109.6

* For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.9, $40.8, $62.2 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 evolve rapidly. Thus, any value placed in this rulemaking 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 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 and Hg emissions reductions anticipated to result from amended metal halide lamp fixture standards. Estimated monetary benefits for CO_2 and NO_X emission reductions are detailed in chapter 17 of the NOPR TSD.

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the customer savings calculated for each TSL considered in this proposed rulemaking. The dollar-per-ton values that DOE used are discussed in section V.M. Table VI.44 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 VI.44—PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR METAL HALIDE LAMP FIXTURES

TSL	Low shipments scenario		High shipments scenario	
	3% discount rate	7% discount rate	3% discount rate	7% discount rate
	million 2012$			
Power Sector Emissions				
1	24.4	12.3	30.9	14.7
2	36.3	18.1	46.5	21.8
3	42.8	21.2	55.4	25.7
4	48.7	24.1	62.7	29.1
5	96.3	46.6	127.3	57.2
Upstream Emissions				
1	27.2	13.6	34.1	16.2
2	40.5	20.0	51.3	24.0
3	47.7	23.4	60.9	28.3
4	54.3	26.6	69.0	32.1

TABLE VI.44—PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR METAL HALIDE LAMP FIXTURES—Continued

TSL	Low shipments scenario		High shipments scenario	
	3% discount rate	7% discount rate	3% discount rate	7% discount rate
5	106.9	51.4	139.1	63.0
Total Emissions				
1	51.6	25.9	65.0	30.9
2	76.8	38.1	97.8	45.8
3	90.6	44.6	116.3	53.9
4	103.0	50.8	131.7	61.2
5	203.2	98.1	266.4	120.3

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the customer savings calculated for each TSL considered in this rulemaking. Table VI.45 and Table VI.46 present 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 customer savings calculated for each TSL considered in this rulemaking, at both a 7-percent and a 3-percent discount rate, and for the low and high shipment scenarios, respectively. The CO_2 values used in the columns of each table correspond to the four scenarios for the valuation of CO_2 emission reductions discussed above.

TABLE VI.45—METAL HALIDE LAMP FIXTURE TSLS: NET PRESENT VALUE OF CUSTOMER SAVINGS COMBINED WITH NET PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

[Low shipments scenario]

TSL	Customer NPV at 3% discount rate added with:			
	SCC Value of $12.9/metric ton CO_2* and low value for NO_X**	SCC Value of $40.8/metric ton CO_2* and medium value for NO_X**	SCC Value of $62.2/metric ton CO_2* and medium value for NO_X**	SCC Value of $117.0/metric ton CO_2* and high value for NO_X**
	billion 2012$			
1	*1.828*	*2.549*	*3.060*	*4.380*
2	*2.547*	*3.624*	*4.389*	*6.360*
3	*2.803*	*4.076*	*4.981*	*7.308*
4	*3.058*	*4.506*	*5.534*	*8.182*
5	*3.284*	*6.157*	*8.204*	*13.451*
	Customer NPV at 7% Discount Rate added with:			
	billion 2012$			
1	*0.883*	*1.583*	*2.094*	*3.393*
2	*1.199*	*2.244*	*3.008*	*4.947*
3	*1.293*	*2.528*	*3.432*	*5.722*
4	*1.315*	*2.720*	*3.749*	*6.354*
5	*1.112*	*3.899*	*5.946*	*11.106*

*These label values represent the global SCC in 2015, in 2012$. The present values have been calculated with scenario-consistent discount rates.

**Low Value corresponds to $468 per ton of NO_X emissions. Medium Value corresponds to $2,639 per ton of NO_X emissions. High Value corresponds to $4,809 per ton of NO_X emissions.

TABLE VI.46—METAL HALIDE LAMP FIXTURE TSLS: NET PRESENT VALUE OF CUSTOMER SAVINGS COMBINED WITH NET PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

[High shipments scenario]

TSL	Customer NPV at 3% discount rate added with:			
	SCC Value of $12.9/metric ton CO_2* and low value for NO_X**	SCC Value of $40.8/metric ton CO_2* and medium value for NO_X**	SCC Value of $62.2/metric ton CO_2* and medium value for NO_X**	SCC Value of $117.0/metric ton CO_2* and high value for NO_X**
	billion 2012$			
1	*2.351*	*3.275*	*3.935*	*5.619*
2	*3.309*	*4.705*	*5.703*	*8.244*
3	*3.664*	*5.328*	*6.520*	*9.547*
4	*3.985*	*5.868*	*7.215*	*10.642*
5	*4.423*	*8.264*	*11.023*	*17.996*
	Customer NPV at 7% Discount Rate added with:			
	billion 2012$			
1	*1.085*	*1.981*	*2.641*	*4.297*
2	*1.488*	*2.841*	*3.839*	*6.337*
3	*1.614*	*3.227*	*4.419*	*7.395*
4	*1.647*	*3.472*	*4.819*	*8.188*
5	*1.474*	*5.195*	*7.955*	*14.807*

*These label values represent the global SCC in 2015, in 2012$. The present values have been calculated with scenario-consistent discount rates.

**Low Value corresponds to $468 per ton of NO_X emissions. Medium Value corresponds to $2,639 per ton of NO_X emissions. High Value corresponds to $4,809 per ton of NO_X emissions.

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 emissions 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 emissions-related benefits are performed with different computer models, leading to different time frames for analysis. For fixtures, the present value of national customer savings is measured for the period in which units shipped in 2016–2045 continue to operate. The SCC values, on the other hand, reflect the present value of future climate-related impacts resulting from the emission of one metric ton of CO_2 in each year. These impacts continue well beyond 2100.

C. Proposed Standards

DOE is subject to the EPCA requirement that any new or amended energy conservation standard for any type (or class) of covered equipment be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens to the greatest extent practicable, in light of the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

DOE considered the impacts of MHLF standards at each trial standard level, beginning with the max tech 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 trial standard level in the following sections based on the quantitative analytical results for each trial standard level (presented in section VI.A) such as national energy savings, net present value (discounted at 7 and 3 percent), emissions reductions, industry net present value, life-cycle cost, 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.

To aid the reader as DOE discusses the benefits and burdens of each trial standard level, DOE has included the following tables (Table VI.47 and Table VI.48) that summarize DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. Section VI.B.1 presents the estimated impacts of each TSL for the LCC subgroup analysis.

TABLE VI.47—SUMMARY OF RESULTS FOR METAL HALIDE LAMP FIXTURES

[Low-shipments scenario]

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
National Energy Savings (quads).	0.45	0.67	0.80	0.91	1.83
NPV of Customer Benefits (2012 billion)					
3% discount rate	1.63	2.25	2.45	2.66	2.50
7% discount rate	0.69	0.91	0.95	0.93	0.35
Industry Impacts*					
Ballast + Fixture Industry NPV (2012 $ million). (Base Case Industry NPV of $643 million).	620	609	600	595	502
Ballast + Fixture Industry NPV (change in 2012$ million).	(23.2)	(34.9)	(43.2)	(48.6)	(141.0)
Ballast + Fixture Industry NPV (% change).	−3.6%	−5.4%	−6.7%	−7.6%	−21.9%
Cumulative Emissions Reduction					
CO_2 (Mt)	27.30	40.96	48.53	55.16	110.43
SO_2 (kt)	36.53	54.82	64.95	73.85	147.75
NO_X (kt)	36.66	55.20	65.57	74.48	150.16
Hg (t)	0.06	0.09	0.11	0.12	0.24
CH_4 (kt)	119.79	180.18	213.76	243.04	488.01
N_2O (kt)	0.49	0.74	0.89	1.01	2.06
Value of Cumulative Emissions Reduction					
CO_2 (2012$ billion) **	0.2 to 2.7	0.3 to 4.0	0.3 to 4.7	0.4 to 5.3	0.7 to 10.6
NO_X—3% discount rate (2012$ million) **.	51.6	76.8	90.6	103.0	203.2
NO_X—7% discount rate (2012$ million) **.	25.9	38.1	44.6	50.8	98.1
Mean LCC Savings (and Percent Customers Experiencing Net Benefit) * (2012$)**					
50to100W_Ind_OtherV ****† (magnetic baseline).	32.84 (100)	38.41 (100)	38.41 (100)	38.41 (100)	−26.16 (72)
50to100W_Outd_OtherV (magnetic baseline).	39.50 (100)	46.44 (100)	46.44 (100)	69.59 (58)	63.77 (57)
50to100W_Ind_OtherV (electronic baseline)					−8.48 (4)
50to100W_Outd_OtherV (electronic baseline).					−5.82 (16)
100to150W_Ind_OtherV‡	18.50 (99)	39.68 (100)	10.14 (77)	10.14 (77)	10.14 (77)
100to150W_Outd_OtherV	20.66 (100)	44.70 (100)	112.51 (74)	112.51 (74)	112.51 (74)
150to250W_Ind_OtherV‡	6.55 (64)	13.12 (69)	13.12 (69)	13.12 (69)	−59.44 (56)
150to250W_Outd_OtherV	6.73 (80)	13.75 (85)	13.75 (85)	13.75 (85)	46.08 (46)
250to500W_Ind_OtherV	9.10 (60)	28.23 (82)	28.23 (82)	28.23 (82)	−99.07 (39)
250to500W_Outd_OtherV	9.16 (78)	30.47 (93)	30.47 (93)	30.47 (93)	26.49 (37)
500to2000W_Ind_OtherV	471.20 (100)	502.21 (100)	502.21 (100)	502.21 (100)	502.21 (100)
500to2000W_Outd_OtherV	385.18 (100)	409.02 (100)	409.02 (100)	409.02 (100)	409.02 (100)
Median PBP (years)					
50to100W_Ind_OtherV (magnetic baseline).	0.5	4.2	4.2	4.2	5.4
50to100W_Outd_OtherV (magnetic baseline).	0.6	4.4	4.4	12.8	14.6
50to100W_Ind_OtherV (electronic baseline).					32.3
50to100W_Outd_OtherV (electronic baseline).					44.7
100to150W_Ind_OtherV‡	7.2	5.8	4.7	4.7	4.7
100to150W_Outd_OtherV	8.3	6.6	10.5	10.5	10.5
150to250W_Ind_OtherV‡	12.4	11.8	11.8	11.8	11.5
150to250W_Outd_OtherV	14.8	14.0	14.0	14.0	21.4
250to500W_Ind_OtherV	12.8	10.5	10.5	10.5	16.2

TABLE VI.47—SUMMARY OF RESULTS FOR METAL HALIDE LAMP FIXTURES—Continued

[Low-shipments scenario]

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
250to500W_Outd_OtherV	15.4	12.3	12.3	12.3	24.4
500to2000W_Ind_OtherV	1.8	2.0	2.0	2.0	2.0
500to2000W_Outd_OtherV	2.7	3.0	3.0	3.0	3.0
Employment Impacts					
Direct Employment Impacts	41–(502)	97–(502)	96–(502)	101–(502)	152–(502)
Indirect Domestic Jobs‖	376	511	791	1,091	2,336

* INPV results are shown under the preservation of operating profit markup scenario.

** 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 $2,636/ton.

*** For LCCs, a negative value means an increase in LCC by the amount indicated.

**** ''Indoor'' and ''outdoor'' as defined in section V.A.2.

† Equipment class abbreviations in the form of 50to100W_Ind_OtherV refers to the equipment class of fixtures with (1) a rated lamp wattage of 50 W to 100 W, (2) an indoor operating location, and (3) a tested input voltage other than 480 V. See section V.A.2 for more detail on equipment class distinctions.

‡ The >100 W and ≤150 W equipment classes include 150 W fixtures exempted by EISA 2007, which are fixtures rated only for 150 watt lamps that are also rated for use in wet locations, as specified by the National Electrical Code 2002, section 410.4(A) and contain a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2001. The ≥150 W and ≤250 W equipment classes contain all other covered fixtures that are rated only for 150 watt lamps.

‖ Changes in 2020.

TABLE VI.48—SUMMARY OF RESULTS FOR METAL HALIDE LAMP FIXTURES

[High-shipments scenario]

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
National Energy Savings (quads).	0.59	0.90	1.08	1.22	2.53
NPV of Customer Benefits (2012$ billion)					
3% discount rate	2.10	2.93	3.22	3.48	3.40
7% discount rate	0.84	1.12	1.18	1.15	0.48
Industry Impacts					
Ballast + Fixture Industry NPV (2012$ million) (Base Case Industry NPV of $752 million).	790	820	822	831	900
Ballast + Fixture Industry NPV (change in 2012$ million).	37.8	67.3	69.2	78.3	147.9
Ballast + Fixture Industry NPV (% change).	5.0%	8.9%	9.2%	10.4%	19.7%
Cumulative Emissions Reduction					
CO_2 (Mt)	35.78	54.29	64.98	73.39	151.47
SO_2 (kt)	47.80	72.54	86.79	98.08	202.14
NO_X (kt)	48.94	74.55	89.50	100.95	210.26
Hg (t)	0.08	0.12	0.15	0.16	0.34
CH_4 (kt)	158.30	240.80	288.54	325.92	674.79
N_2O (kt)	0.68	1.04	1.25	1.41	2.98
Value of Cumulative Emissions Reduction					
CO_2 (2012$ billion) **	0.2 to 3.4	0.4 to 5.1	0.4 to 6.1	0.5 to 6.9	1.0 to 14.1
NO_X—3% discount rate (2012$ million) **.	65.0	97.8	116.3	131.7	266.4
NO_X—7% discount rate (2012$ million) **.	30.9	45.8	53.9	61.2	120.3
*Mean LCC Savings (and Percent Customers Experiencing Net Benefit) ** (2012$)*					
50to100W_Ind_OtherV **** † (magnetic baseline).	32.84 (100)	38.41 (100)	38.41 (100)	38.41 (100)	−26.16 (72)
50to100W_Outd_OtherV (magnetic baseline).	39.50 (100)	46.44 (100)	46.44 (100)	69.59 (58)	63.77 (57)

TABLE VI.48—SUMMARY OF RESULTS FOR METAL HALIDE LAMP FIXTURES—Continued

[High-shipments scenario]

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
50to100W_Ind_OtherV (electronic baseline).	.....	.....	.....	.....	−8.48 (4)
50to100W_Outd_OtherV (electronic baseline).	.....	.....	.....	.....	−5.82 (16)
100to150W_Ind_OtherV‡	18.50 (99)	39.68 (100)	10.14 (77)	10.14 (77)	10.14 (77)
100to150W_Outd_OtherV	20.66 (100)	44.70 (100)	112.51 (74)	112.51 (74)	112.51 (74)
150to250W_Ind_OtherV‡	6.55 (64)	13.12 (69)	13.12 (69)	13.12 (69)	−59.44 (56)
150to250W_Outd_OtherV	6.73 (80)	13.75 (85)	13.75 (85)	13.75 (85)	46.08 (46)
250to500W_Ind_OtherV	9.10 (60)	28.23 (82)	28.23 (82)	28.23 (82)	−99.07 (39)
250to500W_Outd_OtherV	9.16 (78)	30.47 (93)	30.47 (93)	30.47 (93)	26.49 (37)
500to2000W_Ind_OtherV	471.20 (100)	502.21 (100)	502.21 (100)	502.21 (100)	502.21 (100)
500to2000W_Outd_OtherV ...	385.18 (100)	409.02 (100)	409.02 (100)	409.02 (100)	409.02 (100)
Median PBP (years)					
50to100W_Ind_OtherV (magnetic baseline).	0.5	4.2	4.2	4.2	5.4
50to100W_Outd_OtherV (magnetic baseline).	0.6	4.4	4.4	12.8	14.6
50to100W_Ind_OtherV (electronic baseline).	.....	.....	.....	.....	32.3
50to100W_Outd_OtherV (electronic baseline).	.....	.....	.....	.....	44.7
100to150W_Ind_OtherV‡	7.2	5.8	4.7	4.7	4.7
100to150W_Outd_OtherV	8.3	6.6	10.5	10.5	10.5
150to250W_Ind_OtherV‡	12.4	11.8	11.8	11.8	11.5
150to250W_Outd_OtherV	14.8	14.0	14.0	14.0	21.4
250to500W_Ind_OtherV	12.8	10.5	10.5	10.5	16.2
250to500W_Outd_OtherV	15.4	12.3	12.3	12.3	24.4
500to2000W_Ind_OtherV	1.8	2.0	2.0	2.0	2.0
500to2000W_Outd_OtherV ...	2.7	3.0	3.0	3.0	3.0
Employment Impacts					
Direct Employment Impacts ..	41–(508)	98–(508)	97–(508)	102–(508)	154–(508)
Indirect Domestic Jobs √√	392	530	827	1,142	2,445

* INPV results are shown under the -flat markup scenario.

** 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 $2,636/ton.

*** For LCCs, a negative value means an increase in LCC by the amount indicated.

**** ''Indoor'' and ''outdoor'' as defined in section V.A.2.

† Equipment class abbreviations in the form of 50to100W_Ind_OtherV refers to the equipment class of fixtures with (1) a rated lamp wattage of 50 W to 100 W, (2) an indoor operating location, and (3) a tested input voltage other than 480 V. See section V.A.2 for more detail on equipment class distinctions.

‡ The >100 W and ≤150 W equipment classes include 150 W fixtures exempted by EISA 2007, which are fixtures rated only for 150 watt lamps that are also rated for use in wet locations, as specified by the National Electrical Code 2002, section 410.4(A) and contain a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2001. The ≥150 W and ≤250 W equipment classes contain all other covered fixtures that are rated only for 150 watt lamps.

‖ Changes in 2020.

As discussed in previous DOE standards rulemakings and the February 2011 NODA (76 FR 9696, (Feb. 22, 2011)), DOE also notes that the economics literature provides a wide-ranging discussion of how customers trade off upfront costs and energy savings in the absence of government intervention. Much of this economics literature attempts to explain why customers appear to undervalue energy efficiency improvements.

This undervaluation suggests that regulation promoting energy efficiency can produce significant net private gains (as well as producing social gains by, for example, reducing pollution). There is evidence that customers undervalue future energy savings as a result of (1) a lack of information, (2) a lack of sufficient savings to warrant accelerating or altering purchases (*e.g.,* an inefficient ventilation fan in a new building or the delayed replacement of a water pump), (3) inconsistent weighting of future energy cost savings relative to available returns on other investments, (4) computational or other difficulties associated with the evaluation of relevant tradeoffs, and (5) a divergence in incentives (*e.g.,* renter versus owner; builder vs. purchaser). Other literature indicates that with less-than-perfect foresight and a high degree of uncertainty about the future, it may be rational for customers to trade off these types of investments at a higher-than-expected rate between current consumption and uncertain future energy cost savings. Some studies suggest that this seeming undervaluation may be explained in certain circumstances by differences between tested and actual energy savings, or by uncertainty and irreversibility of energy investments. There may also be ''hidden'' welfare losses to customers if newer energy efficient products are imperfect substitutes for the less efficient products they replace, in terms of performance or other attributes that customers value. In the abstract, it may be difficult to say how a welfare gain from correcting

potential under-investment in energy conservation compares in magnitude to the potential welfare losses associated with no longer purchasing a machine or switching to an imperfect substitute, both of which still exist in this framework.

The mix of evidence in the empirical economics literature suggests that if feasible, analysis of regulations mandating energy-efficiency improvements should explore the potential for both welfare gains and losses and move toward a fuller economic framework where all relevant changes can be quantified.[59] While DOE is not prepared at present to provide a fuller quantifiable framework for this discussion, DOE seeks comments on how to assess these possibilities.[60] In particular, DOE requests comment on whether there are features or attributes of the more energy efficient ballasts that manufacturers would produce to meet the standards in this proposed rule that might affect the welfare, positively or negatively, of consumers who purchase MHLFs. One example of such an effect might result from the use of electronic ballasts in outdoor applications, which DOE's analysis models for compliance with TSL3 for 150 watt fixtures. In TSL4, electronic ballasts are also modeled for outdoor applications for 70 watt fixtures. As discussed above, currently magnetic ballasts are generally favored over electronic ballasts for outdoor applications, but there are some commercially available fixtures using electronic ballasts that are designed for outdoor applications. DOE requests comment specifically on whether the more widespread use of electronic ballasts would involve any performance or reliability effects for either 70-watt or 150-watt fixtures, and how any such effects should be weighed in the choice of standards for these two wattage categories for the final rule.

1. Trial Standard Level 5

DOE first considered the most efficient level, TSL 5, which would save an estimated total of 1.8 to 2.5 quads of energy for fixtures shipped in 2016–2045—a significant amount of energy. For the nation as a whole, TSL 5 would have a net savings of $0.35 billion–$0.48 billion at a 7-percent discount rate, and $2.5 billion–$3.4 billion at a 3-percent discount rate. The emissions reductions at TSL 5 are estimated to be 110–151 million metric tons (Mt) of CO_2, 148–202 kt of SO_2, 150–210 kt of NO_X, and 0.24–0.34 tons of Hg. As seen in section VI.B.1, for over half of the representative equipment classes, customers have available designs that result in positive mean LCC savings, ranging from $10.14–$502.21, at TSL 5. The equipment classes with positive mean LCC savings at TSL 5 are outdoor 70 W fixtures [56] (for the magnetic ballast baseline), indoor and outdoor 150 W fixtures, outdoor 250 W fixtures, outdoor 400 W fixtures, and indoor and outdoor 1000 W fixtures. However, DOE's NPV analysis indicates (see Table VI.38) that most equipment classes experience a negative NPV at TSL 5. The equipment classes that have negative NPV at TSL 5 are indoor and outdoor 70 W, 250 W, and 400 W fixtures. The equipment classes with positive NPV at TSL 5 are indoor and outdoor 150 W and 1000 W fixtures. The projected change in industry value for metal halide ballast manufacturers would range from an increase of $36.5 million to a decrease of $24.1 million, or a net gain of 29.8 percent to a net loss of 23.3 percent in INPV. The projected change in industry value for metal halide lamp fixture manufacturers would range from an increase of $111.3 million to a decrease of $116.9 million, or a net gain of 17.7 percent to a net loss of 21.6 percent in INPV.

DOE based TSL 5 on the most efficient commercially available equipment for each representative equipment class analyzed. This TSL corresponds to a commercially available low-frequency electronic ballast for indoor and outdoor 70 W, 150 W, 250 W fixtures, a commercially available high-frequency electronic ballast for indoor and outdoor 400 W fixtures, and a commercially available magnetic ballast in 1000 W fixtures. DOE notes that there is limited compatibility between the high-frequency electronic ballasts required for indoor and outdoor 400W fixtures and high efficiency CMH lamps. This could potentially limit energy savings opportunities through the use of CMH lamps. See section V.C.8 for additional detail. TSL 5 also prohibits the use of probe-start ballasts in new 1000 W fixtures.

After considering the analysis, the comments that DOE received on the preliminary analysis, and the benefits and burdens of TSL 5, the Secretary has reached the following tentative conclusion: The benefits of energy savings, emissions reductions (both in physical reductions and the monetized value of those reductions), and positive net economic savings to the nation are outweighed by negative NPV experienced in some equipment classes at both a 3-percent and 7-percent discount rate, the negative mean LCC savings experienced in some equipment classes, and the potential decrease in INPV for manufacturers. Consequently, the Secretary has tentatively concluded that trial standard level 5 is not economically justified.

2. Trial Standard Level 4

DOE then considered TSL 4, which would save an estimated total of 0.91 to 1.2 quads of energy for fixtures shipped in 2016–2045—a significant amount of energy. For the nation as a whole, TSL 4 would have a net savings of $0.93 billion–$1.2 billion at a 7-percent discount rate, and $2.7 billion–$3.5 billion at a 3-percent discount rate. The emissions reductions at TSL 4 are estimated to be 55–73 Mt of CO_2, 74–98 kt of SO_2, 74–101 kt of NO_X, and 0.12–0.16 tons of Hg. As seen in section VI.B.1, for all representative equipment classes, customers have available designs that result in positive mean LCC savings, ranging from $10.14–$502.21, at TSL 4. DOE's NPV analysis indicates (see Table VI.38) that each equipment class has a positive NPV at TSL 4. The projected change in industry value for metal halide ballast manufacturers would range from an increase of $4.7 million to a decrease of $24.8 million, or a net gain of 3.8 percent to a net loss of 24.0 percent in INPV. The projected change in industry value for metal halide lamp fixture manufacturers would range from an increase of $73.6 million to a decrease of $23.8 million, or a net gain of 11.7 percent to a net loss of 4.4 percent in INPV.

TSL 4 represents the maximum energy savings achievable with positive NPV for each representative equipment class, considering indoor and outdoor fixtures separately. This TSL corresponds to a modeled magnetic ballast in indoor 70 W fixtures, indoor and outdoor 250 W fixtures and indoor and outdoor 400 W fixtures; a commercially available low-frequency electronic ballast in outdoor 70 W fixtures and indoor and outdoor 150 W fixtures; and a commercially available magnetic ballast in indoor and outdoor 1000 W fixtures. TSL 4 sets different standards for 70 W fixtures for the indoor versus outdoor equipment classes. TSL 4 also prohibits the use of probe-start ballasts in new 1000 W fixtures.

[59] A good review of the literature related to this issue can be found in Gillingham, K., R. Newell, K. Palmer. (2009). ''Energy Efficiency Economics and Policy,'' *Annual Review of Resource Economics,* 1: 597–619; and Tietenberg, T. (2009). ''Energy Efficiency Policy: Pipe Dream or Pipeline to the Future?'' *Review of Environmental Economics and Policy.* Vol. 3, No. 2: 304–320.

[60] A draft paper, ''Notes on the Economics of Household Energy Consumption and Technology Choice,'' proposes a broad theoretical framework on which an empirical model might be based and is posted on the DOE Web site along with this notice at *www.eere.energy.gov/buildings/appliance_standards.*

Setting different standards for the indoor versus outdoor fixtures of the same wattage has the potential for certification issues and lost energy savings. Indoor 70 W fixtures require EL2 magnetic ballasts while outdoor 70 W fixtures require electronic ballasts. Because the indoor magnetic ballast can provide the features necessary for outdoor operation, there is potential for indoor fixtures to be used outdoors in applications where moisture is a smaller concern. For example, a parking garage or other semi-covered structure is less likely to sustain direct water contact. Additionally, the indoor EL2 magnetically ballasted fixtures are less expensive than the outdoor EL3 electronically ballasted fixtures. This creates an economic incentive for outdoor customers to use the indoor EL2 fixtures. This substitution could decrease the expected energy savings, and could reduce the reliability and lifetime of the misapplied indoor fixtures. Furthermore, setting different standards for indoor versus outdoor equipment classes increases compliance, certification, and enforcement costs for manufacturers. Fixture manufacturers would use different ballasts for indoor and outdoor fixtures of the same wattage, complicating fixture-ballast matching and increasing the number of basic models.

After considering the analysis, the comments that DOE received on the preliminary analysis, and the benefits and burdens of TSL 4, the Secretary has reached the following tentative conclusion: At TSL 4, the benefits of energy savings, emissions reductions (both in physical reductions and the monetized value of those reductions), and positive net economic savings to the nation would be outweighed by the potential for certification issues and lost energy savings resulting from setting different standards for the indoor versus outdoor fixtures of the same wattage, and the potential decrease in INPV for manufacturers. Consequently, the Secretary has tentatively concluded that trial standard level 4 is not economically justified.

3. Trial Standard Level 3

DOE then considered TSL 3, which would save an estimated total of 0.80 to 1.1 quads of energy for fixtures shipped in 2016–2045—a significant amount of energy. For the nation as a whole, TSL 3 would have a net savings of $0.95 billion–$1.2 billion at a 7-percent discount rate, and $2.5 billion–$3.2 billion at a 3-percent discount rate. The emissions reductions at TSL 3 are estimated to be 49–65 Mt of CO_2, approximately 65–87 kt of SO_2, 66–90 kt of NO_X, and 0.11–0.15 tons of Hg. As seen in section VI.B.1, for all representative equipment classes, customers have available designs that result in positive mean LCC savings, ranging from $10.14–$502.21, at TSL 3. DOE's NPV analysis indicates (see Table VI.38) that each equipment class has a positive NPV at TSL 3. The projected change in industry value for metal halide ballast manufacturers would range from an increase of $4.5 million to a decrease of $25.9 million, or a net gain of 3.7 percent to a net loss of 25.0 percent in INPV. The projected change in industry value for metal halide lamp fixture manufacturers would range from an increase of $64.8 million to a decrease of $17.3 million, or a net gain of 10.3 percent to a net loss of 3.2 percent in INPV.

TSL 3 represents the maximum positive NPV (when comparing the total NPV associated with TSL 3 to all other TSLs) and sets the same efficiency levels for fixtures operating indoors and outdoors be analyzed. This TSL corresponds to a modeled magnetic ballast in 70 W, 250 W, and 400 W fixtures; a commercially available low-frequency electronic ballast in 150 W fixtures; and a commercially available magnetic ballast in 1000 W fixtures. TSL 3 also prohibits the use of probe-start ballasts in new 1000 W fixtures. Because the 150 W fixtures are subject to a more stringent standard (EL4, max tech) than other equipment classes (EL2), there is potential for customers to switch to the higher wattage fixtures to avoid the more stringent standards. This customer behavior could reduce the energy savings associated with TSL 3.

After considering the analysis, the comments that DOE received on the preliminary analysis, and the benefits and burdens of TSL 3, the Secretary has reached the following tentative conclusion: TSL 3 offers the maximum improvement in efficiency that is technologically feasible and economically justified, and will result in significant conservation of energy. The benefits of energy savings, emissions reductions (both in physical reductions and the monetized value of those reductions), positive net economic savings (NPV) at discount rates of 3-percent and 7-percent at each representative equipment class would outweigh the potential reduction in INPV for manufacturers. Therefore, DOE today proposes to adopt energy conservation standards for metal halide lamp fixtures at TSL 3. DOE seeks comment on its proposal of adopting energy conservation standards for metal halide lamp fixtures at TSL 3. DOE will consider the comments and information received in determining the final energy conservation standards.

D. Backsliding

As discussed in section II.A, EPCA contains what is commonly known as an ''anti-backsliding'' provision, which mandates that the Secretary not prescribe any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) DOE is evaluating amended standards in terms of ballast efficiency, which is the same metric that is currently used in energy conservation standards. Therefore, DOE compared the existing standards to the proposed amendments to confirm that none of the proposals constituted backsliding.

The existing standards for ballast efficiency for metal halide lamp fixtures, set by EISA 2007, mandated that ballasts rated at wattages ≥150 W and ≤500 W operate at a minimum of 88 percent efficiency if pulse-start, 94 percent if probe-start magnetic, 90 percent if nonpulse-start electronic ≥150 W and ≤250 W, and 92 percent if nonpulse-start electronic >250 W and ≤500 W. These standards excluded fixtures with regulated-lag ballasts, fixtures that use 480 V electronic ballasts, and fixtures that (1) are only rated for use with 150 W lamps; (2) are rated for use in wet locations; and (3) contain a ballast that is rated to operate above 50 °C. This rulemaking is proposing to cover fixtures with ballasts rated at ≥50 W and ≤2000 W, retain the exemptions for fixtures with regulated lag ballasts or 480 V electronic ballasts, and remove the exemption for 150 W fixtures used in wet locations with ballasts rated that operate above 50 °C.

As presented in the following table, DOE is not proposing any efficiency standards that would qualify as backsliding. In the ≥50 W and <150 W [61] range, there are no existing federal efficiency standards. Thus, any standard set by DOE in this rulemaking would not be backsliding, as it would be prescribing a standard where there previously was not one. The 150 W ballasts currently exempt by EISA (those only rated for use with 150 W lamps, rated for wet locations, and rated to operate at temperatures greater than 50 °C) are not covered by any existing

[61] This wattage range contains those fixtures that are rated only for 150 watt lamps that are also rated for use in wet locations, as specified by the National Electrical Code 2002, section 410.4(A); and contain a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2001.

federal energy conservation standards, so amended standards set for such ballasts would likewise not be subject to backsliding. Similarly, in the >500 W and ≤2000 W range, there are no existing federal energy conservation standards, so standards proposed in this rulemaking would not backslide. Finally for the ≥150 W [62] and ≤500 W range (not including the exempt 150 W fixtures), EISA currently prescribes standards. DOE is also proposing standards for fixtures in this wattage range. The proposed standard changes with wattage, but always requires ballasts in new fixtures to be at least 88 percent efficient (88 percent efficiency for pulse-start ballasts is the least stringent of the various EISA 2007 requirements). If the efficiency standard proposed by DOE is lower than the standard prescribed by EISA for any ballast types or wattages (e.g., 94 percent efficiency requirement for probe-start ballasts), then the EISA standard will take precedence and prevent any potential backsliding.

On the basis of this section, the standards proposed in this NOPR are either higher than the existing standards, primarily because they set standards for previously unregulated fixtures, or if the EISA standards are higher than those proposed in this NOPR then the EISA standard is given precedence. As such, the proposed standards do not decrease the minimum required energy efficiency of the covered equipment and, therefore, do not violate the anti-backsliding provision in EPCA.

TABLE VI.49—EXISTING FEDERAL EFFICIENCY STANDARDS AND PROPOSED EFFICIENCY STANDARDS

Rated lamp wattage	Indoor/ outdoor ***	Test input voltage ‡	Existing standards (efficiency)	Proposed efficiency standards/equations %
≥50 W and ≤100 W	Indoor	480 V	N/A	99.4/(1+2.5*P∧(−0.55)) †.
≥50 W and ≤100 W	Indoor	All others	N/A	100/(1+2.5*P∧(−0.55)).
≥50 W and ≤100 W	Outdoor	480 V	N/A	99.4/(1+2.5*P∧(−0.55)).
≥50 W and ≤100 W	Outdoor	All others	N/A	100/(1+2.5*P∧(−0.55)).
>100 W and <150 W *	Indoor	480 V	N/A	99.4/(1+0.36*P∧(−0.30)).
>100 W and <150 W *	Indoor	All others	N/A	100/(1+0.36*P∧(−0.30)).
>100 W and <150 W *	Outdoor	480 V	N/A	99.4/(1+0.36*P∧(−0.30)).
>100 W and <150 W *	Outdoor	All others	N/A	100/(1+0.36*P∧(−0.30)).
≥150 W ** and ≤250 W	Indoor	480 V	Varies from 88% to 94% depending on ballast type.	For ≥150 W and ≤200 W: 88.0. For >200 W and ≤250 W: 6.0*10∧(−2)*P + 76.0.
≥150 W ** and ≤250 W	Indoor	All others	Varies from 88% to 94% depending on ballast type.	For ≥150 W and ≤200 W: 88.0. For >200 W and ≤250 W: 7.0*10∧(−2)*P + 74.0.
≥150 W ** and ≤250 W	Outdoor	480 V	Varies from 88% to 94% depending on ballast type.	For ≥150 W and ≤200 W: 88.0. For >200 W and ≤250 W: 6.0*10∧(−2)*P + 76.0.
≥150 W ** and ≤250 W	Outdoor	All others	Varies from 88% to 94% depending on ballast type.	For ≥150 W and ≤200 W: 88.0. For >200 W and ≤250 W: 7.0*10∧(−2)*P + 74.0.
>250 W and ≤500 W	Indoor	480 V	Varies from 88% to 94% depending on ballast type.	91.0.
>250 W and ≤500 W	Indoor	All others	Varies from 88% to 94% depending on ballast type.	91.5.
>250 W and ≤500 W	Outdoor	480 V	Varies from 88% to 94% depending on ballast type.	91.0.
>250 W and ≤500 W	Outdoor	All others	Varies from 88% to 94% depending on ballast type.	91.5.
>500 W and ≤2000 W	Indoor	480 V	N/A	For >500 W to <1000 W: 0.994*(3.2*10∧(−3)*P + 89.9). For ≥1000 W to ≤2000 W: 92.5.
>500 W and ≤2000 W	Indoor	All others	N/A	For >500 W to <1000 W: 3.2*10∧(−3)*P + 89.9. For ≥1000 W to ≤2000 W: 93.1.
>500 W and ≤2000 W	Outdoor	480 V	N/A	For >500 W to <1000 W: 0.994*(3.2*10∧(−3)*P + 89.9). For ≥1000 W to ≤2000 W: 92.5.
>500 W and ≤2000 W	Outdoor	All others	N/A	For >500 W to <1000 W: 3.2*10∧(−3)*P + 89.9. For ≥1000 W to ≤2000 W: 93.1.

* Includes 150 W fixtures exempted by EISA 2007, which are fixtures rated only for 150 watt lamps; rated for use in wet locations, as specified by the National Electrical Code 2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2001.

** Excludes 150 W fixtures exempted by EISA 2007, which are fixtures rated only for 150 watt lamps; rated for use in wet locations, as specified by the National Electrical Code 2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2001.

*** DOE's proposed definitions for ''indoor'' and ''outdoor'' metal halide lamp fixtures are described in section V.A.2.

† P is defined as the rated wattage of the lamp the fixture is designed to operate.

[62] This wattage range contains all covered fixtures that are rated only for 150 watt lamps that are not also rated for use in wet locations, as specified by the National Electrical Code 2002, section 410.4(A); and do not also contain a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2001.

‡ Input voltage for testing would be specified by the test procedures. Ballasts rated to operate lamps less than 150 W would be tested at 120 V, and ballasts rated to operate lamps ≥150 W would be tested at 277 V. Ballasts not designed to operate at either of these voltages would be tested at the highest voltage the ballast is designed to operate.

VII. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Section 1(b)(1) of E.O. 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 addressed by today's standards are as follows:

(1) There is a lack of customer information and/or information-processing capability about energy-efficiency opportunities in the commercial equipment market.

(2) There is asymmetric information (one party to a transaction has more and better information than the other) and/or high transaction costs (costs of gathering information and affecting exchanges of goods and services).

(3) There are external benefits resulting from improved energy efficiency of metal halide lamp fixtures 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 greenhouse gases.

In addition, DOE has determined that today's regulatory action is an ''economically significant regulatory action'' under section 3(f)(1) of E.O. 12866. Accordingly, section 6(a)(3) of the E.O. requires that DOE prepare a regulatory impact analysis (RIA) on today's proposed rule and that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) review this proposed rule. DOE presented to OIRA for review the draft rule and other documents prepared for this rulemaking, including the RIA, and has included these documents in the rulemaking record. The assessments prepared pursuant to E.O. 12866 can be found in the technical support document for this rulemaking.

DOE has also reviewed this regulation pursuant to E.O. 13563, issued on January 18, 2011 (76 FR 3281 (Jan. 21, 2011)). E.O. 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in E.O. 12866. To the extent permitted by law, agencies are required by E.O. 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 E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, OIRA has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that today's NOPR is consistent with these principles, including the requirements that, to the extent permitted by law, benefits justify costs and 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 E. O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' (67 FR 53461 (Aug. 16, 2002)), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. (68 FR 7990) DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*). DOE reviewed the potential standard levels considered in today's NOPR under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

As a result of this review, DOE has prepared an IRFA for metal halide ballasts and metal halide lamp fixtures, a copy of which DOE will transmit to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C 605(b). As presented and discussed below, the IRFA describes potential impacts on small metal halide ballast and metal halide lamp fixture manufacturers and discusses alternatives that could minimize these impacts.

A statement of the reasons for the proposed rule, and the objectives of and legal basis for the proposed rule, are set forth elsewhere in the preamble and not repeated here.

1. Description and Estimated Number of Small Entities Regulated

a. Methodology for Estimating the Number of Small Entities

For manufacturers of metal halide ballasts and metal halide lamp fixtures, 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, 30850 (May 15, 2000), as amended at 65 FR 53533, 53545 (Sept. 5, 2000) and codified at 13 CFR part 121). The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.* Metal halide ballast manufacturing is classified under NAICS 335311, ''Power, Distribution and Specialty Transformer Manufacturing.'' The SBA sets a threshold of 750 employees or less for an entity to be considered as a small business for this category. Metal halide lamp fixture manufacturing is classified under NAICS 335122, ''Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing.'' The SBA sets a threshold of 500 employees

or less for an entity to be considered as a small business for this category.

To estimate the number of companies that could be small business manufacturers of equipment covered by this rulemaking, DOE conducted a market survey using all available public information to identify potential small manufacturers. DOE's research involved industry trade association membership directories (including NEMA), individual company Web sites, and market research tools (*e.g.,* Dun and Bradstreet reports and Hoovers reports) to create a list of every company that manufactures or sells metal halide ballasts or metal halide lamp fixtures 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 previous DOE public meetings. DOE contacted companies on its list, as necessary, to determine whether they met the SBA's definition of a small business manufacturer of covered equipment. DOE screened out companies that did not offer equipment covered by this rulemaking, did not meet the definition of a ''small business,'' or were foreign owned and operated.

DOE initially identified at least 25 potential manufacturers of metal halide ballasts sold in the U.S. DOE reviewed publicly available information on these 25 potential manufacturers and determined that 13 were either large manufacturers, manufacturers that were foreign owned and operated, or did not manufacture ballasts covered by this rulemaking. DOE then attempted to contact the remaining 12 companies that were potential small business manufacturers. DOE was able to determine that five companies meet the SBA's definition of a small business and likely manufacture ballasts covered by this rulemaking.

For metal halide lamp fixtures sold in the U.S., DOE initially identified at least 134 potential manufacturers. DOE reviewed publicly available information on these 134 potential manufacturers and determined that 66 were large manufacturers, manufacturers that were foreign owned and operated, or did not sell fixtures covered by this rulemaking. DOE then attempted to contact the remaining 68 companies that were potential small business manufacturers. Though many companies were unresponsive, DOE was able to determine that approximately 54 meet the SBA's definition of a small business and likely manufacture fixtures covered by this rulemaking.

NEMA stated that small manufacturers may be significantly burdened by energy conservation standards because they have limited resources at their disposal to redesign products. (NEMA, No. 34 at p. 16) DOE agrees that there is potential for small manufacturers to be disproportionately burdened by regulations and outlines its conclusions on the potential impacts of standards on small businesses in the sections that follow.

b. Manufacturer Participation

Before issuing this NOPR, DOE attempted to contact the small business manufacturers of metal halide ballasts and metal halide lamp fixtures it had identified. One small ballast manufacturer and two small fixture manufacturers consented to being interviewed. DOE also obtained information about small business impacts while interviewing large manufacturers.

c. Metal Halide Ballast and Fixture Industry Structure

Ballasts. Five major ballast manufacturers with limited domestic production supply the vast majority of the metal halide ballast market. None of the five major manufacturers is a small business. The remaining market share is held by a few smaller domestic companies, only one of which has significant market share. Nearly all metal halide ballast production occurs abroad.

Fixtures. The majority of the metal halide lamp fixture market is supplied by six major manufacturers with sizeable domestic production. None of these major manufacturers is a small business. The remaining market share is held by several smaller domestic and foreign manufacturers. Most of the small domestic manufacturers produce fixtures in the U.S. Although none of the small businesses holds a significant market share individually, collectively these small businesses account for a third of the market. See chapter 3 of the NOPR TSD for further details on the metal halide ballast and metal halide lamp fixture markets.

d. Comparison Between Large and Small Entities

Ballasts. The five large ballast manufacturers typically offer a much wider range of designs of metal halide ballasts than small manufacturers do. Ballasts can vary by start method, input voltage, wattage, and design. Often large ballast manufacturers will offer several different ballast options for each lamp wattage. Small manufacturers generally specialize in manufacturing only a handful of different ballast types and do not have the volume to support as wide a range of products as large manufacturers do. Three of the five small ballast manufacturers specialize in high-efficiency electronic ballasts and do not offer any magnetic ballasts. Some small ballast manufacturers offer a wide variety of lighting products, but others focus exclusively on metal halide ballasts.

Fixtures. The six large fixture manufacturers typically serve large-scale commercial lighting markets, while small fixture manufacturers tend to operate in niche lighting markets such as architectural and designer lighting. Small fixture manufacturers also frequently fill custom orders that are much smaller in volume than large fixture manufacturers' typical orders are. Because small manufacturers typically offer specialized products and cater to individual customers' needs, they can command higher markups than most large manufacturers. Like large ballast manufacturers, large fixture manufacturers offer a wider range of metal halide lamp fixtures than small fixture manufacturers. A small fixture manufacturer may offer fewer than 50 models, while a large manufacturer may typically offer several hundred models. Almost all small fixture manufacturers offer a variety of lighting products in addition to those covered by this rulemaking, such as fluorescent, incandescent, and LED fixtures.

2. Description and Estimate of Compliance Requirements

Ballasts. Because three of the five small metal halide ballast manufacturers offer only electronic ballasts that already meet the standards at TSL 3, the level proposed in today's notice, DOE does not expect any product or capital conversion costs for these small ballast manufacturers. The fourth small ballast manufacturer offers a wide range of magnetic and electronic ballasts, so DOE does not expect this manufacturer's conversion costs to differ significantly from those of the large manufacturers. The fifth small ballast manufacturer currently offers a large variety of lighting products, but only two models of metal halide ballasts. Because it would likely invest in other parts of its business, this manufacturer stated to DOE that this rulemaking is unlikely to significantly affect it.

Fixtures. As stated above, DOE identified approximately 54 small metal halide lamp fixture businesses affected by this rulemaking. Based on interviews with two of these manufacturers and examinations of product offerings on company Web sites, DOE believes that approximately one-fourth of these small businesses will not face any conversion

costs because they offer very few metal halide lamp fixture models and would, therefore, focus on more substantial areas of their business. Of the remaining small businesses DOE identified, nearly two-thirds primarily serve the architectural or specialty lighting markets. Because these products command higher prices and margins compared to the typical products offered by a large manufacturer, DOE believes that these small fixture manufacturers will be able to pass on any necessary conversion costs to their customers without significantly impacting their businesses.

The remaining small fixture manufacturers (roughly 14 in number) could be differentially impacted by today's proposed standards. These manufacturers operate partially in industrial and commoditized markets in which it may be more difficult to pass on any disproportionate costs to their customers. The impacts could be relatively greater for a typical small manufacturer because of the far lower production volumes and the relatively fixed nature of the R&D and capital resources required per fixture family.

Based on interviews, however, DOE anticipates that small manufacturers would take steps to mitigate the costs required to meet new and amended energy conservation standards. At TSL 3, DOE believes that under the proposed standards, small fixture businesses would likely selectively upgrade existing product lines to offer products that are in high demand or offer strategic advantage. Small manufacturers could then spread out further investments over a longer time period by not upgrading all product lines prior to the compliance date.

Additionally, DOE does not expect that small fixture manufacturers would be burdened by compliance requirements. As discussed in section IV.A, the standards proposed in this NOPR provide simplifying amendments to the current testing and reporting procedures. One of DOE's goals in this rulemaking was to have minimal, if any, increase in testing and reporting burden on manufacturers. DOE is only mandating testing at a single input voltage for metal halide lamp fixtures. Other options considered would have increased testing to either two or four input voltages per fixture. Because DOE selected the least burdensome input voltage option, DOE concludes that regulations in this NOPR would not have an adverse impact on the testing burden of small manufacturers.

The existing test procedures already dictate that testing for certification requires a sample of at least four fixtures for compliance. DOE is not proposing to change this minimum sample size, and as such, does not find an increased testing burden on small manufacturers.

As discussed in section IV.A, DOE is amending the test procedures to mandate the equipment with which high-frequency electronic ballasts are to be tested, since existing test procedures prescribe test instrumentation only for magnetic and low-frequency electronic ballasts. DOE proposes that equipment be permitted for testing the output frequency of the ballast. Once it is determined that a fixture's output frequency is greater than or equal to 1000 Hz, the frequency at which DOE proposes to define high-frequency electronic ballasts, the test procedures would require equipment to consist of (1) a power analyzer that conforms to ANSI C82.6–2005 with a maximum of 100 pF capacitance to ground and frequency response between 40 Hz and 1 MHz, (2) a current probe compliant with ANSI C82.6–2005 that is galvanically isolated and has a frequency response between 40 Hz and 20 MHz, and (3) a lamp current measurement device where its full transducer ratio is set in the power analyzer to match the current probe to the analyzer. DOE finds that these test requirements do not affect small manufacturers, noting that the equipment described above is the same equipment that is already required for the testing of fluorescent lamp ballasts. Because many lighting companies that manufacture or sell metal halide ballasts also manufacture or sell fluorescent lamp ballasts, this proposed change to the test procedures should not affect manufacturers' testing burden or costs. In addition, DOE believes that the equipment specified for high-frequency electronic ballast testing is representative of typical high-quality equipment currently used by manufacturers in the business of designing and selling these ballasts.

DOE seeks comment on the potential impacts of new and amended standards on the small metal halide ballast and metal halide lamp fixture manufacturers.

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 considered today.

4. Significant Alternatives to the Proposed Rule

The discussion above analyzes impacts on small businesses that would result from the other TSLs DOE considered. Though TSLs lower than the proposed TSLs are expected to reduce the impacts on small entities, DOE is required by EPCA to establish standards that achieve the maximum improvement in energy efficiency that are technically feasible and economically justified, and result in significant conservation of energy. Thus, DOE rejected the lower TSLs.

In addition to the other TSLs being considered, the NOPR TSD includes a regulatory impact analysis in chapter 18. For metal halide lamp fixtures, this report discusses the following policy alternatives: (1) No standard, (2) customer rebates, (3) customer tax credits, (4) manufacturer tax credits, and (5) early replacement. DOE does not intend to consider these alternatives further because they are either not feasible to implement, or not expected to result in energy savings as large as those that would be achieved by the standard levels under consideration.

DOE continues to seek input from businesses that would be affected by this rulemaking and will consider comments received in the development of any final rule.

C. Review Under the Paperwork Reduction Act

Manufacturers of metal halide lamp fixtures must certify to DOE that their equipment complies with any applicable energy conservation standard. In certifying compliance, manufacturers must test their equipment according to the DOE test procedures for metal halide lamp fixtures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered customer products and commercial equipment, including metal halide lamp fixtures. 76 FR 12422 (March 7, 2011). The collection-of-information requirement for certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless

that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (NEPA) of 1969, DOE has determined that the proposed rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 and otherwise meets the requirements for application of a CX. See 10 CFR part 1021, appendix. B, B5.1(b); 1021.410(b) and appendix B, B(1)–(5). The proposed rule fits within the category of actions because it is a rulemaking that establishes energy conservation standards for consumer products or industrial 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. CX determination for this proposed rule is available at *http://cxnepa.energy.gov.*

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 E.O. 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 E.O. also requires agencies to have an accountable process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. 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 E.O. 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 E.O. 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 E.O.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 E.O. 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 E.O. 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)) UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of state, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *www.gc.energy.gov.*

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 capital expenditures by metal halide lamp fixture 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 metal halide lamp fixtures, 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 with the economic analysis requirements that apply under section 325(o) of EPCA and E.O. 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, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost-effective and least-burdensome alternative that achieves the objectives of the proposed rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6295(d), (f), and (o), 6313(e), and 6316(a), today's proposed rule would establish energy conservation standards for metal halide lamp fixtures 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 NOPR 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 E.O. 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 E.O. 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 energy conservation standards for metal halide lamp fixtures, 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 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report'' dated February 2007 has been disseminated and is available at the following Web site: *www1.eere.energy.gov/buildings/appliance_standards/peer_review.html.*

VIII. Public Participation

A. Attendance at the Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this notice. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov*. As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site at: *www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/49.* Participants are responsible for ensuring that 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 notice. 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. Email submissions are preferred. 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. The appropriateness of continuing the exemption of regulated-lag ballasts;

2. The exclusion of dedicated 480 V electronic ballasts in the scope of this rulemaking;

3. The inclusion of ballasts that are rated only for used with 150 W lamps, use in wet locations, and operation in ambient air temperature higher than 50 °C in the scope of this rulemaking;

4. The expansion of coverage of this rulemaking to include metal halide lamp fixtures that operate lamps rated greater than or equal to 50 W and less than or equal to 150 W, and fixtures that operate lamps rated greater than 500 W and less than or equal to 2000 W;

5. The decision that fixtures above 1000 W are available for general lighting applications and are thus covered by this rulemaking;

6. The appropriateness of setting efficiency standards for metal halide lamp fixtures based on ballast efficiency;

7. The appropriateness of the proposed amendments to the testing procedure, especially the specification of input voltage, high-frequency test instrumentation, and rounding requirements;

8. The appropriateness of DOE testing metal halide lamp fixtures at a single input voltage, based on the lamp wattage operated by the ballast;

9. The appropriateness of placing indoor and outdoor fixtures into separate equipment classes;

10. How to best combine the HID lamp and MHLF energy conservation standards;

11. The technological feasibility of the max tech levels selected, specifically data on the potential change in efficiency, the design options employed, and the associated change in cost;

12. Any technological barriers to an improvement in efficiency above the max tech efficiency levels for all or certain types of ballasts;

13. The appropriateness of separate equipment classes for ballasts tested at 480 V (in accordance with the test procedures);

14. The appropriateness of not dividing equipment classes by electronic configuration or circuit type;

15. The suitability of defining equipment class by the rated lamp wattage ranges ≥50 W to ≤100 W, >100 W to ≤150 W, ≥150 W to ≤250 W, >250 W to ≤500 W, and >500 W to ≤2000 W, specially the inclusion of 150 W fixtures previously exempted by EISA 2007 in the >100 W and ≤150 W range, and 150 W fixtures subject to EISA 2007 standards in the ≥150 W to ≤250 W range;

16. The appropriateness of the equipment classes proposed in this NOPR;

17. The assumption that there will be no lessening of utility or performance such that the physical size, including footprint, stack height, and weight, would be adversely affected for the magnetic ballast efficiencies associated with efficiency levels based on modeled ballasts;

18. The appropriateness of the design options selected by the screening analysis presented in this NOPR;

19. The possibility of setting a standard that requires a high-frequency ballast;

20. The issue of operating a lamp at wattages greater or less than its rating and its effect on ballast efficiency or lamp efficacy;

21. The analysis method of applying a 5.5 percent increase when calculating the representative input power of magnetic ballasts to account for the increase in wattage over a ballast's lifetime;

22. The addition of the electronic 70 W baseline ballast;

23. The possibility of high-frequency electronic ballasts requiring additional thermal and transient protection relative to low-frequency electronic ballasts and, if so, the technical reasons for this difference and whether ballast or fixture redesigns can overcome these barriers;

24. The appropriateness of the efficiency levels proposed in this NOPR and whether or not an adjustment is needed for sources of variation not currently captured by the methodology;

25. The proposal to apply a scaling factor of 0.6 percent to the efficiency levels for quad-volt ballasts to determine the appropriate values for 480 V ballasts;

26. The determination to include a design standard that would prohibit the sale of probe-start ballasts in newly sold fixtures, the proposed methods of analyzing these levels, and the potential for any lessening of the utility or the performance through the prohibition of the sale of probe-start ballasts in newly sold fixtures;

27. The applicability and appropriateness of the adder to MPC of electronic ballasts for 120 V auxiliary power functionality and the adders to the MPC of fixtures with electronic ballasts for thermal management and transient protection;

28. The appropriateness of the derived MSPs presented in this NOPR;

29. Methods to improve DOE's energy use analysis, as well as any data supporting alternate operating hour estimates or assumptions regarding fixture dimming;

30. The impact and feasibility of a compliance date of January 1, 2015;

31. The assumptions and methodology for estimating annual operating hours, which were based on data from the 2010 U.S. Lighting Market Characterization, and assumed to be 3,615 hours per year in the commercial sector, 6,113 hours per year in the industrial sector, and 4,493 hours per year for the outdoor stationary sector;

32. Methods to improve DOE's fixture price projections beyond the assumption of constant real prices, as well as any data supporting alternate methods;

33. The reasonableness of assuming a zero percent rebound effect (the tendency for customers to increase MHLF usage in response to life-cycle cost savings associated with more efficient ballasts used in new fixtures);

34. Whether the shipment scenarios under various policy scenarios are reasonable and likely to occur;

35. The impediments that prevent users of metal halide lamp fixtures from switching to LED lighting to garner further energy savings;

36. The expected impact of new and revised standards on the rate at which MHLF customers transition to non-MHLF technology;

37. The methodology applied to determine the product and capital conversion costs;

38. The degree to which the manufacturers' ability to recoup investment, combined with the opportunity cost of investment, would encourage manufacturers to exit the metal halide lamp fixture market;

39. The appropriateness of proposed trial standard levels;

40. The presence of features or attributes of the more energy efficient ballasts used in new fixtures that manufacturers would produce to meet the standards in this proposed rule that might affect the welfare, positively or negatively, of customers who purchase metal halide lamp fixtures;

41. The possibility that the more widespread use of electronic ballasts would involve any performance or reliability effects for either 70-watt or 150-watt fixtures, and how any such effects should be weighed in the choice of standards for these two wattage categories for the final rule;

42. The appropriateness of choosing TSL 3 energy conservation standards; and

43. The potential impacts of new and amended standards on the small metal halide ballast and metal halide lamp fixture manufacturers.

IX. 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, Reporting and recordkeeping requirements.

Issued in Washington, DC, on August 13, 2013.

David T. Danielson,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend part 431 of Chapter II, subchapter D 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 431.322 is amended by adding in alphabetical order definitions for ''general lighting application,'' ''high-frequency electronic metal halide ballast,'' and ''nonpulse-start electronic ballast,'' to read as follows:

§ 431.322 Definitions concerning metal halide ballasts and fixtures.

* * * * *

General lighting application means lighting that provides an interior or exterior area with overall illumination.

High-frequency electronic metal halide ballast means an electronic ballast that operates a lamp at an output frequency of 1000 Hz or greater.

* * * * *

Nonpulse-start electronic ballast means an electronic ballast with a starting method other than pulse-start.

* * * * *

■ 3. Section 431.324 is amended by:

■ a. Revising paragraphs (b)(1)(i), (b)(3) and (c)(1); and

■ b. Adding paragraphs (b)(1)(iii), and (b)(1)(iv).

The additions and revisions read as follows:

§ 431.324 Uniform test method for the measurement of energy efficiency and standby mode energy consumption of metal halide ballasts.

* * * * *

(b) * * *

(1) * * *

(i) *Test Conditions.* The power supply, ballast test conditions (with the exception of input voltage), lamp position, lamp stabilization, and test instrumentation except as specified in paragraph (b)(1)(iii) of this section shall all conform to the requirements specified in section 4.0, ''General Conditions for Electrical Performance Tests,'' of ANSI C82.6 (incorporated by reference; see § 431.323). Ambient temperatures for the testing period shall be maintained at 25 °C ± 5 °C. Airflow in the room for the testing period shall be ≤0.5 meters/second. The ballast shall be operated until equilibrium. Lamps used in the test shall conform to the general requirements in section 4.4.1 of ANSI C82.6 and be seasoned for a minimum of 100 hours prior to use in ballast tests. Basic lamp stabilization shall conform to the general requirements in section 4.4.2 of ANSI C82.6, and stabilization shall be reached when the lamp's electrical characteristics vary by no more than 3-percent in three consecutive 10- to 15-minute intervals measured after the minimum burning time of 30 minutes. After the stabilization process has begun, the lamp shall not be moved or repositioned until after the testing is complete. In order to avoid heating up the test ballast during lamp stabilization, which could cause resistance changes and result in unrepeatable data, it is necessary to warm up the lamp on a standby ballast. This standby ballast should be a commercial ballast of a type similar to the test ballast in order to be able to switch a stabilized lamp to the test ballast without extinguishing the lamp. Fast-acting or make-before-break switches are recommended to prevent the lamps from extinguishing during switchover.

* * * * *

(iii) *Instrumentation for High-Frequency Electronic Metal Halide Ballasts.* If the output frequency of the ballast (frequency of power supplied to the lamp) is greater than 1000 Hz, the testing instrumentation shall conform to the following paragraphs (b)(1)(iii)(A), (b)(1)(iii)(B), and (b)(1)(iii)(C) of this section. Instrumentation for determination of the output frequency shall be compliant with section 4.0 of ANSI C82.6 (incorporated by reference; see § 431.323).

(A) *Power Analyzer.* In addition to the specifications in ANSI C82.6, the power analyzer shall have a maximum 100 pF capacitance to ground and frequency response between 40 Hz and 1 MHz.

(B) *Current Probe.* In addition to the specifications in ANSI C82.6, the current probe shall be galvanically isolated and have frequency response between 40 Hz and 20 MHz.

(C) *Lamp Current.* For the lamp current measurement, the full transducer ratio shall be set in the power analyzer to match the current probe to the power analyzer.

Full Transducer Ratio =

$$\frac{I_{in}}{V_{out}} \times \frac{R_{in}}{R_{in} + R_s}$$

Where:

I_{in} is current through the current transducer

V_{out} is the voltage out of the transducer

R_{in} is the power analyzer impedance

R_s is the current probe output impedance.

(iv) *Input Voltage for Tests.* For ballasts designed to operate lamps rated less than 150 W that have 120 V as an available input voltage, testing shall be performed at 120 V. For ballasts designed to operate lamps rated less than 150 W that do not have 120 V as an available voltage, testing shall be performed at the highest available input voltage. For ballasts designed to operate lamps rated greater than or equal to 150 W that have 277 V as an available input voltage, testing shall be conducted at 277 V. For ballasts designed to operate lamps rated greater than or equal to 150 W that do not have 277 V as an available input voltage, testing shall be conducted at the highest available input voltage.

* * * * *

(3) *Efficiency Calculation.* The measured lamp output power shall be divided by the ballast input power to determine the percent efficiency of the ballast under test to the nearest tenth of a percent.

(i) A fractional number at or above the midpoint between two consecutive decimal places shall be rounded up to the higher of the two decimal places; or

(ii) A fractional number below the midpoint between two consecutive decimal places shall be rounded down to the lower of the two decimal places.

(c) * * *

(1) *Test Conditions.* (i) The power supply, ballast test conditions with the exception of input voltage, and test instrumentation with the exception of high-frequency electronic ballasts shall all conform to the requirements specified in section 4.0, ''General Conditions for Electrical Performance Tests,'' of the ANSI C82.6 (incorporated by reference; see § 431.323). Ambient temperatures for the testing period shall be maintained at 25 °C ± 5 °C. Send a signal to the ballast instructing it to have zero light output using the appropriate ballast communication protocol or system for the ballast being tested.

(ii) *Input Voltage for Tests.* For ballasts less than 150 W that have 120 V as an available input voltage, ballasts are to be tested at 120 V. For ballasts less than 150 W that do not have 120 V as an available voltage, ballasts are to be tested at the highest available input voltage. For ballasts greater than or equal to 150 W and less than or equal to 2000 W that have 277 V as an available input voltage, ballasts are to be tested at 277 V. For ballasts greater than or equal to 150 W and less than or equal to 2000 W that do not have 277 V as an available input voltage, ballasts are to be tested at the highest available input voltage.

(iii) *Instrumentation for High-Frequency Electronic Metal Halide Ballasts.* If the output frequency of the ballast (frequency of power supplied to the lamp) is greater than 1000 Hz, the testing instrumentation shall conform to paragraphs (b)(1)(iii)(A), (b)(1)(iii)(B), and (b)(1)(iii)(C) of this section. Instrumentation for determination of the output frequency shall be compliant with section 4.0 of ANSI C82.6 (incorporated by reference; see § 431.323).

(A) *Power Analyzer.* In addition to the specifications in ANSI C82.6, the power analyzer shall have a maximum 100 pF capacitance to ground and frequency response between 40 Hz and 1 MHz.

(B) *Current Probe.* In addition to the specifications in ANSI C82.6, the current probe shall be galvanically isolated and have frequency response between 40 Hz and 20 MHz.

(C) *Lamp Current.* For the lamp current measurement, the full transducer ratio shall be set in the power analyzer to match the current probe to the power analyzer.

Full Transducer Ratio =

$$\frac{I_{in}}{V_{out}} \times \frac{R_{in}}{R_{in} + R_s}$$

Where:

I_{in} is current through the current transducer

V_{out} is the voltage out of the transducer

R_{in} is the power analyzer impedance

R_s is the current probe output impedance.

* * * * *

■ 4. Section 431.326 is amended by adding paragraphs (c), (d), and (e) to read as follows:

§ 431.326 Energy conservation standards and their effective dates.

* * * * *

(c) Except when the requirements of paragraph (a) of this section are more stringent (i.e., require a larger minimum efficiency value) or as provided by paragraph (e) of this section, each metal halide lamp fixture manufactured on or after January 1, 2015 shall contain a metal halide ballast with an efficiency not less than the value determined from the appropriate equation in the following table:

Rated lamp wattage	Tested input voltage ‡‡	Minimum standard equation %
≥50 W and ≤100 W	Tested at 480 V	99.4/(1 + 2.5 * P ∧ (−0.55)) ††
≥50 W and ≤100 W	All others	100/(1 + 2.5 * P ∧ (−0.55)).
>100 W and <150 †. W	Tested at 480 V	99.4/(1 + 0.36 * P ∧ (−0.30)).
>100 W and <150 † W	All others	100/(1 + 0.36 * P ∧ (−0.30)).
≥150 ‡ W and ≤250 W	Tested at 480 V	For ≥150 W and ≤200 W: 88.0. For >200 W and ≤250 W: 6.0 * 10 ∧ (−2) * P + 76.0.
≥150 ‡ W and ≤250 W	All others	For ≥150 W and ≤200 W: 88.0. For >200 W and ≤250 W: 7.0 * 10 ∧ (−2) * P + 74.0.
>250 W and ≤500 W	Tested at 480 V	91.0.
>250 W and ≤500 W	All others	91.5.
>500 W and ≤2000 W	Tested at 480 V	For >500 W to <1000 W: 0.994 * (3.2 * 10 ∧ (−3) * P + 89.9). For ≥1000 W to ≤2000 W: 92.5.
>500 W and ≤2000 W	All others	For >500 W to <1000 W: 3.2 * 10 ∧ (−3) * P + 89.9. For ≥1000 W to ≤2000 W: 93.1.

† Includes 150 W fixtures specified in paragraph (b)(3) of this section, which are fixtures rated only for 150 watt lamps; rated for use in wet locations, as specified by the National Electrical Code 2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2001.

‡ Excludes 150 W fixtures specified in paragraph (b)(3) of this section, which are fixtures rated only for 150 watt lamps; rated for use in wet locations, as specified by the National Electrical Code 2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2001.

†† P is defined as the rated wattage of the lamp the fixture is designed to operate.

‡‡ Tested input voltage is specified in 10 CFR 431.324.

(d) Except as provided in paragraph (e) of this section, metal halide lamp fixtures manufactured on or after January 1, 2015 that operate lamps with rated wattage >500 W to ≤2000 W shall not contain a probe-start metal halide ballast.

(e) The standards described in paragraphs (c) and (d) of this section do not apply to—

(1) Metal halide lamp fixtures with regulated-lag ballasts; and

(2) Metal halide lamp fixtures that use electronic ballasts that operate at 480 volts.

[FR Doc. 2013–20006 Filed 8–19–13; 8:45 am]

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Part VI

Federal Communications Commission

47 CFR Parts 2 and 27
Commercial Operations in the 1695–1710 MHz, 1755–1780 MHz, and 2155–2180 MHz Bands; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 27

[GN Docket No. 13–185; FCC 13–102; WT Docket Nos. 07–195, 04–356, 07–16, and 07–30; FCC 13–102]

Commercial Operations in the 1695–1710 MHz, 1755–1780 MHz, and 2155–2180 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, we propose rules for spectrum in the 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz, and 2155–2180 MHz bands that would make available significantly more commercial spectrum for Advanced Wireless Services. The additional spectrum for mobile use will help ensure that the speed, capacity, and ubiquity of the nation's wireless networks keeps pace with the skyrocketing demand for mobile service. Consistent with the Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act) and sound spectrum policy, our goal remains to clear and allocate spectrum in these bands for exclusive commercial use to the maximum extent feasible. Where clearing is not possible, this *Notice of Proposed Rulemaking* explores novel approaches to spectrum sharing between commercial and Federal operators. This is another step in implementing the Congressional directive in the Spectrum Act to allocate for commercial use and grant new initial licenses for flexible use in certain bands.

DATES: Submit comments on or before September 18, 2013. Submit reply comments on or before October 16, 2013. Written comments on the proposed information collection requirements, subject to the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, should be submitted on or before October 21, 2013.

ADDRESSES: A copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via email to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167. You may submit comments, identified by FCC 13–102, or by GN Docket No. 13–185, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *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.
- *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

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: John Spencer of the Broadband Division, Wireless Telecommunications Bureau, at (202) 418–BITS, or Michael Ha, Office of Engineering and Technology, (202) 418–2099. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at (202) 418–0214, or via email at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking and Order on Reconsideration,* FCC 13–102, adopted and released on July 23, 2013. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, facsimile (202) 488–5563, or via email at *fcc@bcpiweb.com.* The complete text is also available on the Commission's Web site at *http://hraunfoss.fcc.gov/edocs_public/attachment/FCC-13-102A1doc.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365, or via email to *bmillin@fcc.gov.*

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 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 (1998). All filings should reference the docket number in this proceeding, GN Docket No. 13–185 or by FCC 13–102.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://apps.fcc.gov/ecfs//.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one active 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.

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 Street 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).

• Document *FCC 13–102* contains proposed information collection requirements subject to the PRA. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection requirements contained in this document. PRA comments should be submitted to Judith B. Herman at (202) 418–0214, or via email at *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via email to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

• To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

Initial Paperwork Reduction Act Analysis

This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

OMB Control Number: 3060–1030.

Title: Service Rules for Advanced Wireless Services (AWS) in the 1.7 GHz and 2.1 GHz Bands.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local, or tribal government.

Number of Respondents: 1050 respondents; 2,000 responses.

Estimated Time per Response: 1.6 hours (average).

Frequency of Response: Annual, semi-annual, one time, and on occasion reporting requirements; and third party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 40,000 hours.

Total Annual Cost: $1,004,000.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission is submitting this information collection to the Office of Management and Budget as a revision of a currently approved information collection 3060–1030. The Commission is changing its third-party disclosure requirement as proposed in §§ 27.1134(e) and (f) (Protection of Federal operations in the 1755–1780 MHz band*).* These proposed new or modified information collection requirements will be used by the Commission staff to ensure that the Federal Government communications systems operating in the 1755–1780 MHz band be protected, comply with default out-of-band emissions limits, and that out-of-band emissions limits may be modified by the private contractual agreement of licensees of AWS–3 operating authority and Federal government entities operating in the 1755–1780 MHz band. A licensee of AWS-operating authority who is a party to such an agreement must maintain a copy of the agreement in its station files and disclose it, upon request, to prospective AWS–3 assignees, transferees, or spectrum lessees, to Federal operators, and to the Commission.

I. Introduction and Summary

1. We propose rules for spectrum in the 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz, and 2155–2180 MHz bands that would make available significantly more commercial spectrum for Advanced Wireless Services (AWS). We will refer to these four bands collectively as ''AWS–3.'' The additional spectrum for mobile use will help ensure that the speed, capacity, and ubiquity of the nation's wireless networks keeps pace with the skyrocketing demand for mobile service. Consistent with the Spectrum Act and sound spectrum policy, our goal remains to clear and allocate spectrum in these bands for exclusive commercial use to the maximum extent feasible. Where clearing is not possible, this *Notice of Proposed Rulemaking* explores novel approaches to spectrum sharing between commercial and Federal operators. Today's action is another step in implementing the Congressional directive in Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156 (2012) (Spectrum Act) to allocate for commercial use and grant new initial licenses for flexible use in certain bands.

2. We propose to license the 2155–2180 MHz band for downlink/base station operations and to license the 2020–2025 MHz band for uplink/mobile operations. Both of these bands are currently allocated for non-Federal, commercial use and are in the Commission's inventory of bands available for licensing. We propose to license the 1755–1780 MHz band for uplink/mobile operations on a shared basis with Federal incumbents, if clearing is not feasible. We note that the record of the instant proceeding will be informed by recommendations of the National Telecommunications and Information Administration (NTIA), which has tasked the Commerce Spectrum Management Advisory Committee (CSMAC) with studying the potential for Federal/non-Federal spectrum sharing. NTIA anticipates receiving final reports from CSMAC working groups shortly. If NTIA endorses these reports, we will add them to the record and anticipate that commenters will discuss NTIA's forthcoming recommendations in comments, reply comments, or *ex parte* presentations, as appropriate, depending on the timing. We also propose to allocate and license the 1695–1710 MHz band for uplink/mobile operations on a shared basis with Federal incumbents within specified Protection Zones recommended by NTIA, if clearing is not feasible. Commercial operation outside of these Protection Zones would not require coordination with Federal incumbents.

3. For all of the AWS–3 spectrum within the scope of this NPRM, *i.e.,* spectrum for which we seek comment regarding service rules for non-Federal use, we propose to assign licenses by competitive bidding, offering five megahertz blocks that can be aggregated using Economic Areas (EAs) as the area for geographic licensing. We also seek comment on whether, and if so how, to pair any of the AWS–3 spectrum.

II. Background

Demand for Mobile Spectrum

4. Wireless broadband represents a critical component of economic growth, job creation, and global competitiveness because consumers are increasingly using wireless broadband services to assist them in their everyday lives.

Demand for wireless broadband services and the network capacity associated with those services is surging, resulting in a growing demand for spectrum to support these services. Similarly, the number and type of devices being used by consumers to access content over wireless broadband networks has proliferated. For example, the total number of mobile wireless connections now exceeds the total U.S. population. As of the second quarter of 2012, 55 percent of U.S. mobile subscribers owned smartphones, compared to 41 percent in July 2011. Ownership of tablets, which were first introduced in the market in January 2010, nationwide, is also increasing. Pew Internet research surveys, as of June 2013, show that 34 percent of American adults own a tablet computer, up from 18 percent in September 2010. Tablets generated on average approximately 2.4 times the amount of mobile traffic as the average smartphone in 2012. By 2017, just four years from now, Internet Protocol (IP) traffic from wireless and mobile devices will likely exceed traffic from wired devices, according to some analyses. One forecast projects that wired devices will account for 45 percent of IP traffic, while Wi-Fi and mobile devices will account 55 percent of IP traffic. Global mobile data traffic is anticipated to grow thirteen-fold between 2012 and 2017. All of these trends are resulting in more demand for network capacity and for capital to invest in the infrastructure, technology, and spectrum to support this capacity. The demand for increased wireless spectrum, moreover, is expected to continue increasing. In response, the Commission continues to work to make available additional licensed and unlicensed spectrum to meet this growing demand.

National Broadband Plan and Presidential Memoranda

5. Both Congress and the President have recognized the importance of wireless broadband to the national interest. In 2009, Congress directed the Commission to develop a National Broadband Plan to ensure that every American has access to broadband capability. The National Broadband Plan, released in 2010, recommended that the Commission make 500 megahertz of spectrum newly available for broadband use within the next 10 years, of which 300 megahertz of spectrum between 225 MHz and 3.7 GHz should be made newly available for mobile use within five years. The National Broadband Plan recognized that to achieve this goal some of this spectrum would come from spectrum allocated for Federal use. It recommended that NTIA, in consultation with the Commission, conduct an analysis, of the possibility of reallocating a portion of the 1755–1850 MHz band, which is adjacent to the AWS–1 uplink/mobile band at 1710–1755 MHz and currently allocated for Federal use, to pair with the 2155–2175 MHz band, which is currently allocated for services that support commercial use.

6. On June 28, 2010, the President released a memorandum entitled ''Unleashing the Wireless Broadband Revolution.'' The 2010 Presidential Memorandum stated that ''America's future competitiveness and global technology leadership depend, in part, upon the availability of additional spectrum.'' The memorandum stressed that there are few technological developments that hold as much potential to enhance America's economic competitiveness, create jobs, and improve the quality of our lives as wireless high-speed access to the Internet. Expanded wireless broadband access will trigger the creation of innovative new businesses, provide cost-effective connections in rural areas, increase productivity, improve public safety, and allow for the development of mobile telemedicine, telework, distance learning, and other new applications that will transform American's lives. The memorandum also stated that spectrum and the new technologies it enables are essential to the Federal Government, which relies on spectrum for important activities, such as emergency communications, national security, law enforcement, aviation, maritime, space communications, and numerous other Federal functions. It further stated that spectrum is also critical for many state, local, and tribal government functions. The 2010 Presidential Memorandum directed NTIA to collaborate with the Commission to ''make available a total of 500 megahertz of Federal and non-Federal spectrum over the next ten years, suitable for both mobile and fixed wireless broadband use.''

7. On June 14, 2013, the President released another memorandum, ''Expanding America's Leadership in Wireless Innovation'' stating that although existing efforts will almost double the amount of spectrum available for wireless broadband, we must make available even more spectrum and create new avenues for wireless innovation. The 2013 Memorandum further stated that where technically and economically feasible, spectrum sharing can and should be used to enhance efficiency among all users and to expedite commercial access to additional spectrum bands, subject to adequate interference protection for Federal users, especially users with national security, law enforcement, and safety-of-life responsibilities.

NTIA Fast Track and 1755–1850 MHz Assessment Reports

8. In response to the 2010 Presidential Memorandum, NTIA undertook a ''fast-track'' review of several bands that could be reallocated to mobile use, including the 1675–1710 MHz band and the 1755–1780 MHz band, and proposed exploring Federal/non-Federal sharing of the 1755–1850 MHz band. NTIA recommended that the 1695–1710 portion of the 1675–1710 MHz band be made available for non-Federal wireless broadband systems, subject to geographic sharing requirements based on ''Exclusion Zones'' around specified Federal meteorological earth station sites. NTIA deferred making recommendations concerning the 1755–1780 MHz band, however, because it could not complete its evaluation of the 1755–1780 MHz band by the October 2010 ''fast track'' deadline. NTIA then invited Federal agencies with operations in the larger 1755–1850 MHz band to assess the feasibility of relocating from the 1755–1850 MHz band within ten years and to determine whether their respective systems could transition out of the 1755–1780 MHz band within five years, the conditions under which relocation could be accomplished, and the costs associated with the corresponding relocation.

9. Based on the assessments from these Federal agencies, NTIA concluded in March 2012, in the *NTIA 1755–1850 MHz Assessment Report,* that while it would be possible to repurpose all 95 megahertz of the 1755–1850 MHz band, a number of significant challenges would have to be met. These included the high cost and long timeline of repurposing 95 megahertz of spectrum, estimated at approximately $18 billion over 10 years, assuming relocation of most existing Federal users, not including costs to relocate incumbent non-Federal users in the Federal agencies' preferred destination bands. In light of the critical challenges related to the estimated timelines, costs, and complexities of completely clearing Federal users currently in the 1755–1850 MHz band, NTIA proposed a new path forward for consideration ''that relies on a combination of relocating Federal users and sharing spectrum between Federal agencies and commercial users while ensuring no loss to critical capabilities.'' Additionally, NTIA states that a review of the agency evaluations indicates it is

feasible to make the 1755–1780 MHz band available for commercial broadband wireless in five years—subject to exclusion zones and new allocations for Federal use of other spectrum bands, including 2025–2110 MHz and 5091–5250 MHz. NTIA did not evaluate the possibility for exclusive non-Federal use of the 1755–1780 MHz band in the *NTIA 1755–1850 MHz Assessment Report.*

Section 6401 of the Spectrum Act

10. In February 2012, Congress enacted Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (the Spectrum Act). The Spectrum Act includes several provisions designed to make more spectrum available for commercial use. The Spectrum Act established, among other things, deadlines applicable to both the Secretary of Commerce and the Commission to identify, reallocate, auction, and license, under flexible use service rules, spectrum for commercial use. Specifically, the Spectrum Act requires the allocation of spectrum in the following bands for services that support commercial use:

- 25 megahertz at 2155–2180 MHz;
- an additional contiguous 15 megahertz to be identified by the Commission;
- 15 megahertz between 1675–1710 MHz, to be identified by NTIA by February 22, 2013;
- up to 10 megahertz at 1915–1920 MHz and 1995–2000 MHz, if the Commission finds no harmful interference into the neighboring Personal Communications Service (PCS) band.

The Spectrum Act states that the Commission shall grant new initial licenses for all of these bands by February 2015. In June 2013 the FCC adopted service rules for certain bands listed above (1915–1920 and 1995–2000 MHz) in a separate FCC proceeding.

11. The Spectrum Act also amended the Commercial Spectrum Enhancement Act (CSEA). In 2004, the CSEA created the Spectrum Relocation Fund (SRF) to streamline the process by which Federal incumbents can recover the costs associated with relocating their spectrum-dependent systems from spectrum bands authorized to be licensed under the Commission's competitive bidding authority. The Spectrum Act extended the CSEA cost reimbursement mechanism for Federal incumbents to include sharing as well as relocation costs, and to facilitate Federal incumbents sharing of spectrum with commercial users by expanding the types of expenditures that can be funded or reimbursed from the SRF. These changes now permit agencies to receive funds associated with planning for Commission auctions and relocations, spectrum sharing, the use of alternative technologies, the replacement of existing government-owned equipment with state-of-the-art systems, and the research, engineering studies, and economic analyses conducted in connection with spectrum sharing arrangements, including coordination with auction winners. The Spectrum Act also created a new category of allowable pre-auction costs that may, in certain circumstances, be funded before the start of a Commission auction of licenses for applicable eligible frequencies. The Spectrum Act expresses Congress' priority for relocation over sharing, stating: ''In evaluating a band of frequencies for possible reallocation for exclusive non-Federal use or shared use, the NTIA shall give priority to options involving reallocation of the band for exclusive non-Federal use and shall choose options involving shared use only when it determines, in consultation with the Director of the Office of Management and Budget, that relocation of a Federal entity from the band is not feasible because of technical or cost constraints.''

12. The conclusion of any auction of eligible frequencies reallocated from Federal use to non-Federal use or from Federal use to shared use, however, is contingent on the cash proceeds attributable to such spectrum reaching 110 percent of the total estimated relocation or sharing costs provided to the Commission by NTIA. Once the relocation and sharing costs of the Federal incumbents are covered, the remainder of the proceeds attributable to eligible Federal spectrum, as well as the proceeds attributable to the 2155–2180 MHz non-Federal band, must be deposited in the Public Safety Trust Fund and then used to fund the Nationwide Public Safety Broadband Network to be established by the First Responder Network Authority (FirstNet).

FCC CSEA Notification Letter and NTIA Response

13. The CSEA also requires the Commission to notify NTIA at least 18 months before the start of an auction of eligible frequencies and for NTIA to notify the Commission of estimated relocation and sharing costs, and timelines for such relocation or sharing, at least 6 months before the start of the auction. Accordingly, on March 20, 2013, the Commission notified NTIA that it ''plans to commence the auction of licenses in the 1695–1710 MHz band and the 1755–1780 MHz band as early as September 2014'' in order to satisfy the Spectrum Act licensing deadline of February 2015. On April 19, 2013, NTIA responded with several requests to the Commission. In particular, NTIA notes that the Department of Defense (DoD) has identified the 2025–2110 MHz band as the preferred option to relocate most of its operations in the 1755–1850 MHz band and that the National Aeronautics and Space Administration (NASA) and DoD identified the 5150–5250 MHz band as a comparable destination band for its aeronautical mobile telemetry systems.

Commerce Spectrum Management Advisory Committee and Related Efforts

14. In May 2012, NTIA established five joint government/industry working groups within its Commerce Spectrum Management Advisory Committee (CSMAC) to facilitate the implementation of services that support commercial wireless broadband in the 1695–1710 MHz and 1755–1850 MHz bands. Working Group 1 was charged with addressing sharing issues related to the 1675–1710 MHz band, while Working Groups 2–5 were charged with addressing sharing issues related to Federal operations in the 1755–1850 MHz band. A critical decision for each working group, according to NTIA, was to determine whether incoming non-Federal licensees would be able to share use of the spectrum with particular incumbent Federal systems. If a working group were to find that sharing is feasible, NTIA directed the group to explain the proposed manner of sharing in a way that could potentially be incorporated into service rules.

15. *1695–1710 MHz.* Working Group 1 (WG1) (Meteorological-Satellite) completed its final report in February 2013 and the full CSMAC adopted it on February 21, 2013. The *WG1 Final Report* recommends that the Commission adopt a framework for reallocating the 1695–1710 MHz band for commercial use with ''Protection Zones,'' rather than the ''Exclusion Zones'' originally contemplated in the *NTIA Fast Track Report.* Under this framework, commercial operations could be freely deployed outside of the ''Protection Zones.'' Operations inside the ''Protection Zones,'' however, would require prior Federal coordination. In February 2013, as required by the Spectrum Act, NTIA issued the *NTIA 1695–1710 MHz Identification Report,* in which it reaffirmed its recommendation that the Commission reallocate the 1695–1710 MHz segment of the 1675–1710 MHz band for wireless broadband use on a shared basis. On

April 19, 2013, NTIA recommended that the Commission use the *WG1 Final Report* recommendations in drafting proposed rules to implement shared use of the 1695–1710 MHz band.

16. *1755–1850 MHz.* NTIA established CSMAC Working Groups 2–5, comprised of representatives and experts from industry and Federal agencies, to facilitate information sharing among the interested stakeholders. In May 2012, NTIA asked each CSMAC working group to focus on the following tasks:

- Working Group 2 (WG2) (Law Enforcement Surveillance, Explosive Ordnance Disposal (EOD), and other short distant links)—the correlation of agency city-by-city transition plans with industry implementation priorities, and prioritizing vacating the 1755–1780 MHz sub-band;
- Working Group 3 (WG3) (Satellite Control and Electronic Warfare)—the definition and specification (including any interference acceptance rules) of zones around satellite sites, and coordination path rules for electronic warfare development and training;
- Working Group 4 (WG4) (Tactical Radio and Fixed Microwave)—the definition and specification (including any interference acceptance rules) of zones around Department of Defense sites that require access, and relocation process of fixed microwave links starting from 1755–1780 MHz; and
- Working Group 5 (WG5) (Airborne Operations (Air Combat Training System, Unmanned Aerial Vehicles, Precision-Guided Munitions, Aeronautical Telemetry))—the determination of protection requirements for Federal operations and understanding of the periodic nature of airborne operations and the impact to commercial wireless systems from government airborne operations.

17. Of the four working groups concentrating on the 1755–1850 MHz band, only WG2 has issued a final report, which the full CSMAC adopted on February 21, 2013. The *WG2 Final Report* found that Federal incumbents with video surveillance systems plan to transition operations from the 1755–1780 MHz band within five years, once funding and comparable spectrum is available. WG2 also developed two lists of areas for agencies with transitioning video surveillance systems to consider based on priorities established by the wireless industry. The first list addresses the 1755–1780 MHz band, while the second list addresses the 1780–1850 MHz band. On April 19, 2013, NTIA endorsed the recommendations contained in the *WG2 Final Report.*

18. In addition to the work of the CSMAC working groups, commercial wireless carriers are working with the Department of Defense (DoD) to monitor and gather information about several systems identified in NTIA's *1755–1850 MHz Assessment Report* that appear to be the most difficult, costly, or time consuming to relocate. The carriers also requested special temporary experimental authority from the Commission to conduct tests in the 1755–1780 MHz and 2155–2180 MHz bands for commercial mobile broadband services, and to examine technical co-existence with a limited number of incumbent Federal operations, in a defined number of geographic locations that may remain in the band indefinitely, consistent with the CSMAC working groups' efforts. On August 14, 2012, the Commission announced that it had granted the first authorization of testing in the 1755–1780 MHz band.

19. We are advancing proposals in today's NPRM in tandem with NTIA's work to ensure that the statutory deadline under Section 6401 of the Spectrum Act can be met, and in light of the importance of making needed spectrum available as soon as practicable. Today's proposals are subject to revision in light of the recommendations we receive from NTIA after its evaluation of the output of these working groups. We intend to incorporate NTIA's forthcoming recommendations into the record of this proceeding and anticipate that commenters will discuss NTIA's recommendations in comments, reply comments, or *ex parte* presentations, as appropriate, depending on the timing.

Additional Recent Developments

1. Developments Regarding the 2095–2110 MHz Band

20. *CTIA's Request to Auction 2095–2110 MHz.* As discussed above, the Spectrum Act requires the Commission to identify 15 megahertz of contiguous spectrum for commercial use. On March 13, 2013, CTIA—The Wireless Association (CTIA) urged the Commission to designate spectrum currently used for Broadcast Auxiliary Service (BAS) at 2095–2110 MHz as the fifteen megahertz of contiguous spectrum required to be identified by the Commission under the Spectrum Act. CTIA argues that the 2095–2110 MHz band is ideal for this purpose because it is a contiguous band with propagation characteristics ideally suited to mobile broadband and adjacent to current mobile broadband spectrum. These characteristics make it suitable for modern mobile broadband technologies, such as the Long-Term Evolution (LTE) standard. CTIA states that the 2095–2110 MHz band can be paired with the 1695–1710 MHz band that NTIA identified for reallocation under the Spectrum Act and is likely to generate significant revenues through a competitive bidding process. CTIA acknowledges that BAS currently uses the 2095–2110 MHz band and that, in addition to hosting BAS, the larger 2025–2110 MHz band is also home to the Federal space operation service, the earth exploration-satellite service, and the space research service. CTIA notes that the Commission requires coordination between Federal and non-Federal users of the 2095–2110 MHz band and that terrestrial transmitters used for BAS not be high-density systems. CTIA avers that issues between Federal and non-Federal users can be addressed by band clearing, sharing, and rule changes.

21. *Federal and non-Federal Opposition to Commercial Wireless in 2095–2110 MHz.* On July 22, 2013, NTIA transmitted to the Commission a Feasibility Assessment for accommodation of mobile broadband Long Term Evolution (LTE) systems in the 2025–2110 MHz band prepared by NASA and recently submitted by the United States to I International Telecommunications Union—Radio Telecommunications Sector Joint Task Group 4–5–6–7. NTIA states that, recognizing the interest in the potential for use of the band for wireless broadband, NASA performed a compatibility study examining the potential for commercial broadband systems employing LTE technology on a shared basis with forward link transmissions from NASA geostationary Tracking and Data Relay Satellite System (TDRSS) satellites to some typical satellite users, which are in Low Earth Orbit. NTIA states that the results of the study show that high-density terrestrial base stations or user equipment operating co-frequency in the 2025–2110 MHz band will exceed established protection criteria for the TDRSS spaceborne receivers by an average of 16.4dB to 40.7 dB and that analysis of sharing with satellite systems of other administrations will likely show similar results. As requested by NTIA, we are adding this assessment to the record of this proceeding and seeking comment on it. The Society of Broadcast Engineers (SBE) has also expressed opposition. SBE states that allowing commercial use of 2095–2110 MHz, as CTIA suggests, would delete two of seven shared channels used heavily for BAS, LTTS, and CARS.

According to SBE, ''there is simply not enough residual spectrum available between 2025 MHz and 2095 MHz to permit [Electronic News Gathering] to continue.'' SBE opines that other sources of fifteen megahertz of contiguous spectrum should be studied such as portions of the 2360–2390 MHz band.

2. Developments Regarding 1755 MHz and Related Bands

22. *Industry Roadmap.* Recently, T-Mobile filed a wireless industry proposal (Industry Roadmap) for making the 1755–1780 MHz band available for commercial use in time to auction the band at the same time as the 2155–2180 MHz band, which the Spectrum Act requires to be auctioned and licensed by February 2015. The Industry Roadmap assesses Federal operations in the 1.7 GHz band and proposes a combination of sharing, relocation, and channel prioritization for the majority of Federal operations in the 1755–1850 MHz band to provide industry early access to the 1755–1780 MHz portion of the band. The Industry Roadmap also acknowledges that additional study is necessary.

23. *DoD Alternative Proposal.* On July 22, 2013, NTIA transmitted to the Commission correspondence to NTIA from the Chief Information Officer of the DoD that outlines a proposal for making 1755–1780 MHz available for auction and licensing in the near term, while protecting critical DoD capabilities and preserving the necessary flexibility to address the long-term status of the 1780–1850 MHz portion of the band. Among other things, DoD proposes to share the 2025–2110 MHz band, proposes not to seek access to the 5150–5250 MHz band for telemetry, and estimates the cost of implementing its proposal at $ 3.5 billion.

III. Discussion

Overview

24. First, we briefly describe spectrum bands that we could include in the group of AWS–3 bands and, where applicable, proposals or questions on which we are seeking comment. Next, we seek comment on configuration issues such as downlink/uplink designations, pairing, block size, and service areas for AWS–3. Because of the parallel CSMAC process, there are a number of different options for proceeding in a manner consistent with the Spectrum Act. For purposes of this notice, we have described the bands and configurations in a modular way. Commenters may put forward specific options that involve all or a subset of the bands described below, and may contemplate paired or unpaired bands. Because non-Federal use of the 1695–1710 MHz and 1755–1780 MHz bands is proposed on a shared basis with Federal users if clearing is not feasible, we also consider recommendations and issues related to Federal Band Reallocation, Sharing, and Coordination that aim to maximize commercial use of these bands.

25. For the 1695–1710 MHz band, we seek comment on NTIA's recommendations in the *WG1 Final Report,* which reflects the significant progress that was made ''to refine interference analysis and develop a deeper understanding of the issues and options available for maximizing access to the spectrum for commercial services while protecting incumbent Federal operations in the 1695–1710 MHz and the adjacent 1675–1695 MHz bands.'' We propose to adopt the sharing framework described in the *WG1 Final Report* including the recommended Protection Zones within which all non-Federal use must be coordinated successfully with Federal incumbents prior to operation. We also propose to adopt the coordination methodology of the *WG1 Final Report,* including the recommendations to consider certain refinements to the methodology. Additionally, we seek comment on coordination procedures.

26. For the 1755–1780 MHz band, we anticipate the possibility of a ''hybrid'' recommendation, in which some operations would be relocated, some would share the band with commercial licensees, and some would not share the band (in certain geographic protection zones or exclusion zones). In light of that possibility, and assuming that NTIA may endorse the CSMAC recommendations, we seek comment on adopting Protection Zones, Exclusion Zones, and other sharing measures or alternatives. Finally, we seek comment on technical, licensing, and operational rules as well as regulatory issues.

27. Our proposals regarding the 1695–1710 MHz and 1755–1780 MHz bands incorporate the significant study and analysis conducted through the CSMAC's multi-stakeholder process. We reiterate the priority in the Spectrum Act for relocation over sharing, and our goal remains to clear and allocate spectrum for exclusive commercial use. In general, we seek comment on the potential for clearing (both in the short and long term) for each band and the extent to which the sharing approaches described in the CSMAC reports maximize commercial use of the spectrum. We encourage commenters to suggest alternative approaches for maximizing the commercial use of these bands, to the extent technically and economically feasible.

28. In general, our discussion proceeds as follows. We first describe these proposed bands, configurations, sharing arrangements, and licensing and service rules. We then propose specific changes to our Table of Frequency Allocations for them, where necessary to implement the requirements of section 6401 of the Spectrum Act. We seek comment on various considerations in the course of this discussion.

Proposed Bands for AWS–3 Service Rules

29. We begin our discussion by considering the various bands that might be subject to AWS–3 service rules and other bands that have been implicated by related discussions in CSMAC, through letters to the Commission, and other public fora.

30. *2155–2180 MHz.* The 2155–2180 MHz band is already allocated for exclusive non-Federal fixed and mobile use with a longstanding designation for emerging technologies such as AWS. The band is immediately above the AWS–1 downlink band (2110–2155 MHz) and immediately below the AWS–4 downlink band (2180–2200 MHz). We are proposing downlink/base station use of 2155–2180 MHz under rules similar to the AWS–1 and AWS–4 rules. We tentatively find that having additional spectrum that is adjacent to that used for like services will promote efficiency in broadband deployment. As T-Mobile observed in an earlier proceeding, ''the creation of an additional AWS allocation immediately adjacent to the current AWS–1 allocation will allow for more immediate equipment development and deployment.'' We do not propose to modify the allocation for this band, but in paragraph 174 below, we do propose several changes to related footnotes in the Table of Frequency Allocations.

31. *1695–1710 MHz.* NTIA identified 1695–1710 MHz for services that support commercial use in accordance with the Spectrum Act's mandate to identify new commercial spectrum for auction. The 1695–1710 MHz band is immediately below the AWS–1 uplink band at 1710–1755 MHz. The lower part of the band (1675–1700 MHz) is allocated to the meteorological aids service, restricted to radiosonde operation, and to the meteorological-satellite service, restricted to space-to-Earth operation, on a primary basis for Federal and non-Federal use. The upper part of the band (1700–1710 MHz) is allocated to the meteorological-satellite service, restricted to space-to-Earth

operation, on a primary basis for Federal and non-Federal use. The 1700–1710 MHz band is also allocated to the fixed service on a primary basis for Federal use and on a secondary basis for non-Federal use. We discuss possible changes to these allocations in paragraphs 171–172 below.

32. *1755–1780 MHz.* Internationally, the 1755–1850 MHz band, which is part of the larger 1710–1930 MHz band, is allocated on a primary basis to the fixed and mobile services for all three International Telecommunication Union (ITU) regions. Domestically, the 1755–1850 MHz band is currently allocated to the fixed and mobile services on a primary basis for Federal use and assigned to a wide range of military and other government uses. NTIA reports that the Federal government uses the entire 1755–1850 MHz band across the nation and that the majority of Federal services that operate in the 1755–1780 MHz band also operate in the larger 1755–1850 MHz band. In total, NTIA reports that over 20 agencies use more than 3100 individual frequency assignments in the band, many of which cover multiple systems and operating areas and that there are few bands to consider for repurposing and few comparable bands to which Federal agencies can relocate their operations. Specifically, the Federal government uses the 1755–1850 MHz band for the following services: (1) Conventional fixed point-to-point microwave communications systems; (2) military tactical radio relay systems; (3) air combat training systems; (4) precision guided munitions; (5) high-resolution video data links, and other law enforcement video surveillance applications; (6) tracking, telemetry, and command for Federal Government space systems; (7) data links for short-range unmanned aerial vehicles; (8) land mobile robotic video functions (*e.g.,* explosive ordnance and hazardous material investigations and disposals); (9) control links for various power, land, water, and electric power management systems; and (10) aeronautical mobile telemetry.

33. From a non-Federal, commercial perspective, the 1755–1780 MHz band holds potential as an extension to existing AWS spectrum. The band has several characteristics that make it especially appealing for commercial wireless use. First, it is located adjacent to the AWS–1 uplink/mobile band at 1710–1755 MHz and thus, offers the benefits of contiguous bands. Second, it is regionally and internationally harmonized for mobile broadband, raising the potential for commercial operators to benefit from economies of scale achieved by equipment manufacturers developing equipment for a global market. Third, it could be paired with the 2155–2180 MHz band to symmetrically extend the AWS–1 band. The National Broadband Plan favored pairing the 1755–1780 MHz band with the 2155–2180 MHz band for similar reasons.''

34. We propose uplink mobile use of 1755–1780 MHz under technical rules similar to AWS–1 uplinks in the adjacent 1710–1755 MHz band, subject to Federal requirements including coordination with incumbent Federal users, that emerge from the CSMAC process, if transmitted by NTIA. As mentioned above, however, CSMAC working groups 3–5 have not yet issued final reports for NTIA's consideration. We will consider CSMAC's recommendations, if NTIA accepts them, to inform the service rules for the 1755–1780 MHz band, including terms of sharing and required protections to the extent that relocation and clearing is not feasible. We intend to incorporate NTIA's forthcoming recommendations into the record of this proceeding and anticipate that commenters will discuss NTIA's recommendations in comments, reply comments, or written *ex partes,* as appropriate, depending on the timing. We discuss these issues in greater detail below in paragraphs 73–77. Allocation issues are discussed in para. 175.

35. *2020–2025 MHz.* The 2020–2025 MHz band is already allocated for the non-Federal fixed and mobile services and is part of the 35 megahertz (1990–2025 MHz) that the Commission repurposed in 2000 from BAS to emerging technologies such as Personal Communications Services (PCS), AWS, and Mobile Satellite Service (MSS). This repurposing was possible because BAS converted nationwide from seven analog channels (each 17–18 megahertz wide) to seven digital channels (each 12 megahertz wide). In 2004, the Commission proposed to license 2020–2025 MHz for uplink/mobile use paired with 2175–2180 MHz. The Commission did not adopt this proposal and, in 2008 it proposed instead to combine 2175–2180 MHz and 2155–2175 MHz, to make a larger unpaired block at 2155–2180 MHz. The Commission did not make a further proposal for the 2020–2025 MHz band immediately above the AWS–4 uplink band (2000–2020 MHz). Today, we propose uplink/mobile use of 2020–2025 MHz under rules similar to the AWS–4 rules. We do not propose to modify the allocation for this band but, as described in paragraph 173 below, we propose changes to several related footnotes in the Table of Frequency Allocations.

Additional Bands, Including the Requirement To Identify 15 MHz of Contiguous Spectrum for Commercial Use

36. As discussed above, the Spectrum Act requires the Commission to identify an additional 15 megahertz of contiguous spectrum for commercial use. We seek comment on an appropriate candidate for that choice, including, for example, the 1755–1780 MHz band identified above. As an alternative, we also seek general comment on the allocation of other frequencies in order to meet or surpass this requirement of the Spectrum Act, and more specific comment on those listed below. Parties that advocate licensing any of the spectrum below or any alternative spectrum for wireless broadband should describe in detail the technical, operational, and licensing rules that we should apply. For example, could the service rules that we are proposing for 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz, or 2155–2180 MHz, be applied? If so, would modifications be necessary to address issues related to specifically identified bands? Issues related to the need for changes to the Table of Allocations are treated separately in paragraphs 171–179 below.

37. *1780–1850 MHz.* The 1780–1850 MHz band, which is part of the larger 1755–1850 MHz band, is allocated to the fixed and mobile services on a primary basis for Federal use and assigned to a wide-range of military and other government uses. As noted above, NTIA reports that the Federal government uses the entire 1755–1850 MHz band across the nation and that the majority of Federal services that operate in the 1755–1780 MHz band also operate in the larger 1755–1850 MHz band. Although the commercial wireless industry appears primarily interested in the 1755–1780 MHz portion of the 1755–1850 MHz band to pair with the 2155–2180 MHz band, NTIA has been studying the entire 1755–1850 MHz band and industry has not entirely dismissed the possibility of seeking access to this spectrum in the long term. NTIA reports that it appreciates the Commission's ''recognition of the potential need to address rules to accommodate the phased relocation of the entire 95 megahertz of the 1755–1850 MHz band.''

38. Because of the commercial industry's focus on the 1755–1780 MHz band, NTIA makes several requests of the Commission. First, NTIA requests consideration of the potential for a phased transition to facilitate commercial access to the 1755–1780

MHz band in a shorter timeframe while preserving longer-term repurposing and transition opportunities for the entire 1755–1850 MHz band. Second, NTIA requests that if a Commission auction of the 1755–1780 MHz band results in the relocation of or sharing with Federal systems that currently have access to the entire 1755–1850 MHz band, agency transition plans for the lower 25 megahertz account for those systems, even if the Commission holds multiple auctions over time. Third, NTIA requests that, if necessary, the Commission assist NTIA in identifying and reallocating replacement spectrum to accommodate displaced Federal operations unless these agencies can maintain comparable capability of systems via sharing or utilizing alternative technology. We invite comment on the NTIA plan for ultimately making the entire 1755–1850 MHz band available for wireless broadband based on a phased transition. How could this spectrum be used in ways that would significantly answer the need for additional wireless spectrum? Should different portions of the band be made available with different service rules, including, for example, technical rules, and sharing/coordination provisions?

39. *2095–2110 MHz.* As discussed above, CTIA recommends that the Commission consider identifying 2095–2110 MHz as the additional 15 megahertz for reallocation under this statutory provision. We invite comment on CTIA's recommendation. We note that footnote 5.391 to the Table of Frequency Allocations states administrations shall not introduce high-density mobile systems into this band. Parties that advocate licensing 2095–2110 for wireless broadband should explain how such use can be reconciled with the footnote 5.391, including the underlying need to protect U.S. and foreign space systems, and describe in detail the technical, operational, and licensing rules that we should apply. Commenters should also describe potential effects on incumbent BAS users and Federal users, particularly given that this proposal would appear to conflict with use of two of the seven BAS channels available in the 2025–2110 MHz band. Additionally, as described above, NASA appears to strongly oppose sharing this band with commercial cellular operations. The Society of Broadcast Engineers (SBE) also opposes CTIA's proposal. We also observe that Federal agencies have identified the 2025–2110 MHz band as a potential relocation band for various Federal operations. We seek comment on these considerations.

40. *Other Frequencies.* We invite commenters to propose any other band that would meet the Spectrum Act's requirement for the Commission to identify 15 contiguous megahertz of spectrum. We encourage commenters to identify specific bands, to explain what the band is currently used for, and how it might be allocated and transitioned for commercial use under flexible use service rules for operations such as wireless broadband service.

Band-Use Configurations

41. *Base vs. Mobile Transmissions.* As discussed further below, we propose to allow the use of each AWS–3 band in a manner that is compatible with the use of adjacent bands. Doing so reduces the risk of harmful interference to co-channel or adjacent band operations or the need for highly restrictive technical limits that would leave some AWS–3 spectrum underutilized. We believe our band-use proposals maximize the potential usability of these bands. We seek comment on our proposals and invite commenters to propose alternatives.

42. *Base Transmit.* In 2008, the Commission proposed to allow base and mobile operations in the 2155–2180 MHz band to support Time Division Duplex (TDD) operations. To protect base operations in the adjacent AWS–1 band from harmful interference due to mobile operations in the AWS–3 band, strict power and out-of-band-emission (OOBE) limits were placed on AWS–3 mobiles. These measures included a slightly lower than normal mobile power limit and a mobile OOBE limit below 2155 MHz of 60 + 10 log10(P) dB. Recently, in the AWS–4 proceeding, the Commission addressed a similar base/mobile adjacency scenario that was unavoidable because AWS–4 spectrum (2000–2020 MHz), which is next to the H Block downlink band (1995–2000 MHz), was already the Mobile Satellite Service (MSS) uplink band (and thus could only be used for AWS–4 mobiles). The Commission concluded that certain assumptions underlying the 60 + 10 log10(P) dB proposal are outdated: to protect contemporary AWS uses, the Commission found that a 70 + 10 log10(P) dB OOBE limit is necessary along with significant power reductions in the first five megahertz of the uplink/mobile band that significantly limit mobile operations to provide adequate isolation between adjacent mobile and base station operations.

43. Unlike AWS–4, here we have the option to avoid designating uplink next to downlink, which in turn avoids the need for guard bands or significant technical limits that mitigate interference between uplink and downlink. As we recently concluded in connection with AWS–4, having mobiles (or base and mobile TDD transmissions) requires significant power reductions and OOBE limits to prevent harmful interference to adjacent bands. Allowing mobile transmit operations would appear to leave significant portions of the 2155–2180 MHz band underutilized. Moreover, in addition to interference with adjacent AWS–1 and AWS–4 base station transmissions, allowing mobiles in the 2155–2180 MHz band appears to create the potential for harmful mobile-to-mobile interference among AWS–3 licensees with dissimilar operations in adjacent blocks or service areas. Accordingly, we propose to allow base and fixed (downlink), but not mobile, operations in the 2155–2180 MHz band. Such operations are compatible with similar downlink operations in the adjacent AWS–1 band (2110–2155 MHz) and AWS–4 band (2180–2200 MHz). By designating downlink next to downlink, we avoid having to impose guard bands or significant technical limits between adjacent services, thereby increasing the amount of usable spectrum. We seek comment on this proposal. We invite commenters who disagree with this proposal to submit test data and specific technical analyses in support of the OOBE, power, and other technical limits they recommend. Commenters should discuss and quantify the costs and benefits of this proposal and any proposed alternative approaches.

44. *Mobile Transmit.* We propose to allow mobile transmit operations (but to prohibit high-power fixed and base station operations) in the 1695–1710 MHz, 1755–1780 MHz, and 2020–2025 MHz bands. Again, we intend to reduce the risk of harmful interference to adjacent band operations or the need for highly restrictive technical limits that could leave some AWS–3 spectrum underutilized. Each of these bands is adjacent, on one or both sides, to AWS uplink/mobile bands. The 1695–1710 MHz and 1755–1780 MHz bands are adjacent to the AWS–1 uplink/mobile band (1710–1755 MHz) and the 2020–2025 MHz band is adjacent to the AWS–4/MSS uplink/mobile band (2000–2020 MHz). Authorizing high-power base stations in these AWS–3 bands would appear to raise the potential for base-to-base interference to the adjacent band AWS–1 and AWS–4 services. Possibly, base-to-base interference could be controlled by measures such as power limits, OOBE limits, siting restrictions,

and coordination, but these measures would appear to be burdensome and might result in a less robust use of these AWS–3 bands.

45. Another potential impediment to high-power use of two of these bands—1695–1710 MHz and 1755–1780 MHz—arises because AWS–3 use might be shared with Federal services. NTIA's recommendations for sharing 1695–1710 MHz are predicated on the use of low-power AWS–3 mobiles, as is CSMAC's ongoing analysis of potential sharing of the 1755–1850 MHz band. AWS–3 base stations in these Federal bands have not been analyzed, to date, and proposing such operations herein would appear to result in additional delay, costs, and the possibility of NTIA concluding that Federal/non-Federal sharing is impossible, or feasible only under severe restrictions on high-power AWS–3 use of these two bands.

46. For these reasons, we propose to permit only low-power, mobile-to-base transmissions in the 1695–1710 MHz, 1755–1780 MHz, and 2020–2025 MHz bands. We seek comment on this proposal. We invite commenters who disagree with this proposal to submit test data and specific technical analyses in support of the OOBE or other technical limits they recommend. Commenters should discuss and quantify the costs and benefits of this proposal and any proposed alternative approaches.

47. *Spectrum Block Sizes.* In determining the spectrum block sizes for the AWS–3 bands, we seek to maximize utility and allow for efficient use of these bands. We believe that a minimum bandwidth of five megahertz is required to accommodate the fullest range of wireless services. Five-megahertz blocks can be used for new technologies and can be used for some data services, including broadband Internet access. The Commission has also found that five-megahertz blocks would provide entry opportunities for small and rural service providers, and can be aggregated to provide greater capacity where needed. We therefore propose to license the AWS–3 spectrum in five-megahertz blocks, and seek comment on this proposal. Commenters should discuss and quantify the costs and benefits of this proposal and any proposed alternatives.

48. *Spectrum Block Configuration.* We have generally licensed other bands that support mobile broadband services on a paired basis, matching specific downlink and uplink bands. We recognize that the new AWS bands proposed in this *NPRM* could be configured in any number of pairings or even auctioned on an unpaired basis. We therefore seek comment on a range of options. Should we pair any of the AWS–3 band segments discussed in this *NPRM,* and if so how should they be paired? Or should we not specify pairing? Are there likely to be competitive effects of our choice that we should consider? If we adopt the unpaired approach, are any administrative measures necessary to keep track of how spectrum blocks are being used? Additionally, if the unpaired spectrum is used to support asymmetrical downlink operations, are there particular bands with which carrier aggregation could most easily be accommodated? Are there bands with which carrier aggregation of AWS–3 spectrum is not advisable due to potential intermodulation or other interference? In any event, we seek comment on requiring uplink/mobiles in the 1695–1710 MHz and 1755–1780 MHz bands to transmit only when controlled by an associated base station whose location can be coordinated with relevant Federal users should they be required to implement Protection Zones described in paragraphs 58–59. For example, the Protection Zones for the 1695–1710 MHz band are premised on the distance between the incumbent Federal operations and non-Federal base station(s) that will enable the AWS–3 uplink/mobile operations. Thus, even though the base station does not transmit in the 1695–1710 MHz band, its location inside a Protection Zone triggers the coordination requirement. We invite comment on what approach to take, and the costs and benefits of particular approaches.

Service Areas

49. *Geographic Area Licensing.* We propose to license all AWS–3 spectrum blocks using a geographic area licensing approach, and we seek comment on this proposal. A geographic licensing approach appears well suited for the types of fixed and mobile services that would likely be deployed in these bands. Additionally, geographic licensing appears consistent with the licensing approach adopted for other bands that support mobile broadband services. Moreover, adopting a geographic areas licensing approach would seem to allow the Commission to assign new initial licenses in these bands through a system of competitive bidding in accordance with the Spectrum Act. We seek comment on this approach, including the costs and benefits of adopting a geographic area licensing scheme. In the event that a party does not support using geographic licensing for a given band, it should explain its position, describe what type of licensing scheme it supports and identify the costs and benefits associated with its alternative licensing proposal. Commenters should also address how an alternative licensing approach would be consistent with the statutory requirement to assign licenses in these bands through a system of competitive bidding and the statutory objectives that the Commission is required to promote in establishing methodologies for competitive bidding.

50. *Service Area Size.* If we use a geographic area approach for licensing these bands, we must determine the appropriate size(s) of service areas on which licenses should be based. We seek to adopt a service area for all bands that meets several statutory goals. These include facilitating access to spectrum by both small and large providers, providing for the efficient use of the spectrum, encouraging deployment of wireless broadband services to consumers, especially those in rural areas and tribal lands, and promoting investment in and rapid deployment of new technologies and services consistent with our obligations under section 309(j) of the Communications Act.

51. Of the various geographic areas we might adopt here, Economic Areas (EAs) represent a natural market unit for local or regional service areas. The Bureau of Economic Analysis defines an EA as ''one or more economic nodes—metropolitan areas or similar areas that serve as centers of economic activity—and the surrounding counties that are economically related to the nodes.'' EAs nest within and may be aggregated up to larger license areas, such as Major Economic Areas (MEAs) and Regional Economic Area Groupings (REAGs) for operators seeking larger service areas. EAs also represent a close match to the geographic licensing approach used for the AWS–1 and AWS–4 bands. Given their spectral proximity, the AWS–1 and AWS–4 bands appear to be the most likely candidates for *ad hoc* operational consolidation with AWS–3 spectrum, in those cases where such consolidation may occur. Using a compatible geographic licensing approach may therefore result in more efficient opportunities for available spectrum to be put to use where needed.

52. We therefore propose to license the AWS–3 bands on an EA basis (176 EAs) and seek comment on this proposal and any alternatives. We ask commenters to discuss and quantify the economic, technical, and other public interest considerations of licensing on an EA or other basis. We also seek comment on whether there are costs and benefits to adopting our proposed EA

licensing approach for bands shared with Federal users. For example, to what extent do the Protection Zones of incumbent Federal operations extend across EA boundaries and, if they do, is this a relevant factor to consider in adopting EA licensing? We seek comment on alternative geographic area sizes that could be used as the basis for licensing spectrum in these bands. Although we propose to separately license the Gulf of Mexico separately consistent with AWS–1, AWS–4, and H Block, all of which license the Gulf as a separate EA license, we also invite comment on whether to include the Gulf of Mexico as part of larger service areas, as the Commission did for the Upper 700 MHz band. Commenters who advocate a separate service area or areas to cover the Gulf of Mexico should discuss what boundaries should be used, and whether special interference protection criteria or performance requirements are necessary due to the unique radio propagation characteristics and antenna siting challenges that exist for Gulf licensees.

Federal/non-Federal Sharing and Coordination

53. Several of the bands included in this *Notice of Proposed Rulemaking* are presently allocated for Federal use and are used by various Federal agencies to carry out their missions. Therefore, enabling commercial access to these bands, if clearing is not practicable, may require some combination of reallocation, relocation, sharing, and/or coordination. We seek comment on the most appropriate solutions for particular bands, including those specifically identified below, that maximize commercial access to these bands. These solutions may include clearing and reallocating, or where not feasible, facilitating shared access to the bands. As noted above, NTIA intends for its CSMAC process to generate actionable recommendations regarding non-Federal access to these bands. We intend to incorporate NTIA's forthcoming recommendations into the record of this proceeding and anticipate that commenters will discuss NTIA's recommendations, including corresponding rules and procedures the Commission should adopt to effectuate them, in comments, reply comments, or written *ex partes,* as appropriate, depending on the timing.

54. *1695–1710 MHz—Federal/non-Federal Sharing Framework.* As noted above, in accordance with the Spectrum Act's mandate that NTIA identify 15 megahertz of spectrum for reallocation from Federal to non-Federal use, NTIA identified the 1695–1710 MHz band and recommended that the Commission reallocate it for commercial use. In making this recommendation, NTIA cited conclusions in the *NTIA Fast Track Report,* as well as recommendations then being drafted by CSMAC Working Group 1 (WG1), that this band segment could be reallocated for commercial use subject to the sharing framework described further below. On April 19, 2013, NTIA recommended that the Commission use the *WG1 Final Report* recommendations in drafting proposed rules to implement shared use of the 1695–1710 MHz band. Accordingly, we propose that shared Federal and non-Federal use of the 1695–1710 MHz band follow the sharing framework recommended by NTIA. This approach allows for exclusive commercial operations outside predetermined Protection Zones without any Federal coordination, and for commercial operations inside the Protection Zones after coordination to protect incumbent Federal operations. We seek comment generally on the extent to which the proposed framework appropriately follows Congress' prioritization of relocation over sharing, except where technically or financially prohibitive. We seek comment on more specific aspects of these recommendations below, as well as on any other sharing and coordination issues or alternative approaches that are outside the scope of CSMAC's analyses and recommendations.

55. The *WG1 Final Report* sets out a framework for sharing the band that protects both the polar-orbiting satellites (POES) that operate in the 1695–1710 MHz band as well as the geostationary satellite earth stations that operate predominately in the adjacent 1675–1695 MHz band, but which overlap slightly with the 1695–1710 MHz band. Additionally, WG1 established interference protection criteria defining the allowed Interference Power Spectral Density (IPSD) levels, tailored to each receiver's RF characteristics. WG1 also refined the interference analysis methodology previously used for the *NTIA Fast Track Report* to more realistically model the operation of commercial LTE networks and draw the parameters of the Protection Zones. The methodology used to derive the Protection Zones is provided in Appendix 7 of the *WG1 Final Report,* but more work is needed to create all of the methods and procedures necessary for the coordination process. As explained in the *WG1 Final Report:*

> Details of the coordination framework are outline[d] in [*WG1 Final Report*] Appendix 1. To create this coordination process, NTIA and FCC, in conjunction with the affected federal agencies, need to establish: (1) A nationally-approved interference prediction model, associated input parameters, and distribution of aggregate IPSD limit among commercial licensees; (2) coordination procedures, including an automated process, to the extent possible, to assess if the proposed commercial network will meet the IPSD limits, to facilitate coordination allowing commercial licensee operations within the Protection Areas; and (3) procedures for implementing on-going real-time monitoring to ensure IPSD limits are not being exceeded and that commercial operations can be adjusted immediately if they are. The framework stipulates that the criteria and procedures for coordination and operation within the Protection Zones, as well as enforcement mechanisms, must still be clearly defined and subsequently codified in the FCC rules and the NTIA manual, as appropriate.

56. The Commission has implemented a number of different coordination approaches in other services with the aim of efficiently and expeditiously balancing access to spectrum against the need to prevent harmful interference. For example, in the non-voice, non-geostationary mobile-satellite service, prospective earth station licensees must coordinate with Federal government users prior to operating. Similarly, our part 101 rules for the Fixed Microwave Services set forth detailed frequency coordination procedures and interference protection criteria. As discussed in greater detail below, our part 27 rules for the Advanced Wireless Services outline a coordination process that permits both grandfathered Federal and non-Federal users to operate in the AWS–1 band. In general, our coordination rules take as foundational that all parties subject to coordination will work in good faith to accurately assess the potential for interference. We aim to provide flexibility to the parties involved to conduct the interference analysis in an agreed-upon manner with an eye towards continually improving accuracy.

57. Based on the Commission's experience with coordination, we tentatively agree with NTIA's sharing framework recommendation, which is premised on coordination (assuming sharing is necessary because relocation is not possible). In seeking comment on how to further develop and implement NTIA's recommended sharing framework, we recognize, as did NTIA's recommendation, that some criteria, procedures and mechanisms would be codified in the Commission's rules, while others would be codified in the NTIA manual. We also note that some matters may be appropriately addressed as part of the FCC–NTIA coordination

process and/or in jointly released documents.

58. *Protection Zones for Incumbent Federal Operations.* The framework for Federal and non-Federal shared operations in the band is predicated on defined Protection Zones where commercial operations must meet strict coordination standards so as to protect incumbent co-channel Federal polar orbiting satellites and adjacent Federal geo-stationary operations in the 1675–1695 MHz band. NTIA's earlier Fast Track report had identified the 1695–1710 MHz band for reallocation subject to 18 Exclusion Zones that covered larger geographic areas where non-Federal operations would be prohibited, thereby limiting commercial operations in the band. WG1 conducted further analyses, and refined the technical parameters for conducting interference analyses, including LTE system parameters, propagation models, and Federal systems parameters to more accurately depict real world operation of LTE networks and their interaction with the incumbent systems. WG1's analysis also assumed that 1695–1710 MHz would be a mobile uplink band. Overall, the analysis resulted in a significant reduction in the anticipated distance at which an LTE system would potentially cause harmful interference to a Federal earth station receiver. Additionally, given the wide range of measures that can be taken to further mitigate the potential interference, WG1 recommended the use of Protection Zones (coordination areas) rather than Exclusion Zones. The WG1 effort focused on the 18 sites identified in the *NTIA Fast Track Report* and some locations the *NTIA Fast Track Report* considered as single locations but included multiple antennas that are widely spaced. With the reductions in the separation distances in the *NTIA Fast Track Report,* the *WG1 Final Report* notes that it may be necessary to list each of these antennas separately to ensure adequate protection. Additionally, Government participants in WG1 identified additional sites that they believe warrant protection and stated that they intend to raise the issue with NTIA. The agencies identified an additional 22 sites operating in and adjacent to the 1695–1710 MHz band. On June 18, 2013, WG1 reported to the CSMAC that it completed its analysis to compute protection distances for the new sites and consolidated sites with overlapping zones, reducing the number of new sites to nine for a total of 27 sites that require protection. Although the full CSMAC and NTIA have not yet approved the revised list, our proposal assumes that CSMAC and NTIA will approve/endorse a final list of Protection Zones substantially as recommended by Working Group 1 but interested parties should be aware that neither assumption can be guaranteed, in which case the final list of Protection Zones could differ from our proposal.

59. As previously stated, reflecting WG1's latest analysis, we are proposing to allow uplink/mobile and low power fixed operations in this band when enabled by a base station(s) that is (1) not located within a Protection Zone, or (2) located within a Protection Zone and successfully coordinated with Federal incumbents. These Protection Zones that we proposed to adopt provide maximum protection distances. We seek comment on this proposal.

60. *Coordination Interference Analysis; Potential Refinements.* As noted above, to create this coordination process for Federal Earth Stations, NTIA and the FCC in conjunction with the affected Federal agencies, need to establish a nationally-approved interference prediction model, associated input parameters, and distribution of aggregate IPSD limits among commercial licensees. WG1 established interference protection criteria (defined as IPSD limits), setting permitted power spectral density levels at the inputs to the protected meteorological satellite receivers. WG1 adopted an interference-based approach to coordination, requiring that the commercial operator not be allowed to operate within the defined Protection Zones unless an engineering analysis demonstrated that the proposed operations would not cause interference in excess of the prescribed power spectral density limits. The Protection Zones themselves were developed based on an interference analysis of a theoretical grid-based network of base stations, according to the methodology documented in the report. NTIA recognized that some of the initial technical parameters and techniques that WG1 developed were conservative, but adequate for providing a first order estimation of potential interference sufficient for triggering coordination. Potential refinements include interference protection criteria, application thereof where multiple operators may coexist with a single Federal receiver, refinement of the propagation model, and use of clutter and terrain. We therefore seek general comment on the interference analysis described in the *WG1 Final Report,* including potential clarifications or solutions to unresolved issues identified in the report. We also seek comment on potential refinements to this methodology.

61. WG1 placed particular emphasis on the interference prediction model to be used for the analysis as a critical area in need of improvement. There was considerable discussion on the appropriate propagation model to incorporate in the analysis. The central issues raised in determining the appropriate propagation model were how to account for clutter losses and time variability of interference, and predicting the impact of the length of the transmission paths. With respect to the proper propagation modeling to be used, the *WG1 Final Report* noted that ''differences in propagation models and application of terrain and clutter losses has a dramatic impact on results and can vary results by as much as 40 dB.'' Incorporation of appropriate improvements in the methodology and the accuracy of the technical parameters used could free up substantial proportions of the Protection Zones for commercial operations. Ultimately, the propagation model used to determine the distances for the Protection Zones was the point-to-point Irregular Terrain Model (ITM). WG1 was unable to agree upon the incorporation of clutter losses in the ITM model and concluded that ''the analysis results would be accurate enough for the intended purpose of recommending Protection Zones.'' Is the ITM model, configured as described in the *WG1 Final Report,* sufficient for the purposes of coordination? How should clutter be addressed? What other propagation models, as defined by standards bodies or other organizations, are appropriate for use in coordination? Can measurement data be used in place of predictions for particular sites or situations? Are there other commercial software products that would be more suitable to conduct the interference analyses required? A number of concerns about the propagation model are noted in the discussion in Appendix 7, particularly concerns from the Federal users about long term fading effects and atmospheric ducting which may under predict interference in some of the models proposed by industry. We seek comment on these issues and encourage proponents of any particular propagation model(s) to specifically address any concerns previously raised by Federal or non-Federal users, as applicable.

62. WG1 adopted interference protection criteria based on an interference-to-noise ratio (I/N) of −10 dB. In its report, WG1 identified that further consideration was needed regarding the application of the criteria. The interference protection criterion

WG1 developed for its analysis is fairly well-defined in the report. Specifically, the total power level of acceptable interference to government receivers was limited to 10 dB below the protected receiver's effective system noise floor as measured at the receiver IF stage. The *WG1 Final Report* specifically raised the question of whether a 10 dB I/N target would be sufficient in the presence of multiple commercial operators. One case where this may occur is when a protected receiver is located near the geographic boundary between two commercial operators where the interference could aggregate from multiple service providers. Should the interference levels provided in Table 4 of Appendix 7 of the *WG1 Final Report* be adopted as the required protection criteria for a single commercial operator? That is, a request for coordination would not be rejected as long as the predicted aggregate interference from that operator fell below the levels in Table 4. Alternatively, should an I/N of −10 dB be applied to the total interference from all operators whose base stations lie within the protection zone? If so, how should the interference be apportioned among multiple operators? We seek comment on the appropriate interference criteria. We also seek comment on how to apply these interference criteria in the case of multiple operators.

63. The *WG1 Final Report* recommended that coordination within the Protection Zones address both in-band and adjacent band interference issues but did not clearly identify requirements for the protection of adjacent operations. We believe that clarifying this recommendation would be helpful to both Federal and non-Federal operators. For example, should protection distances or interference criteria be different for adjacent channel operations versus co-channel operations? The only mention of adjacent channel operations refers to the GOES satellite earth stations. It is clear, that not only must the POES systems operating in the 1695–1710 MHz band be protected, but also the GOES systems operating primarily in the 1675–1695 MHz band. While WG1 categorized the GOES system as an adjacent band operation, some of the operations are actually co-channel. The emission of GOES systems overlaps into the 1695–1710 MHz band by 250 kilohertz. The methodology used in the interference analysis accounts for both the selectivity of the satellite receivers and the out-of-band emission levels of the mobiles operating outside of the earth station's operating band. Thus, there are existing mechanisms in the methodology that can address adjacent channel concerns. There is a question as to whether purely adjacent channel operations could exist. For example, are there cases where GOES and POES receivers are not co-located or all POES carriers are not in use at a particular site and thus may not be co-channel to a particular commercial operator using one of the three 5 megahertz blocks proposed under the band plan? Are further refinements to the methodology needed to account for adjacent channel scenarios? We propose that all commercial operators within the specified protection distance of a protected receiver, whether they are co-channel or adjacent channel (operating within the 1695–1710 MHz band) coordinate with the Federal users in the band. Should this proceeding be used to establish Protection Zones and guidelines for adjacent channel operations as well?

64. One example of an expected change to the methodology is the commercial system base station configuration. In developing the interference calculation methodology for coordination, WG1 performed a basic analysis using a network of base stations placed along a uniform grid. However, it is expected that any coordination will use the actual site locations for planned base station deployments. This raises the question of whether other modifications of the methodology may be needed to provide a more realistic assessment of the interference calculation. With the goal of facilitating a fair and equitable coordination process, should the Commission jointly establish with NTIA minimum requirements for the interference analysis and/or a set of best practices for conducting the engineering analysis? If so, what requirements are needed? Are there additions or improvements to these parameters that should be considered? Are there any other technical requirements or techniques that should be set in this proceeding? Are there established models and methodologies in existing standards or regulatory bodies that could be adopted? Commenters are asked to discuss the pros and cons of the recommended methodology, and provide detailed arguments on any improvements that can be made to the recommended analysis.

65. *Coordination Procedures.* We seek comment on what coordination procedures would best effectuate the recommendations of the *WG1 Final Report.* As noted above, the Commission has employed a variety of coordination models in different wireless and satellite services. We seek comment on whether any existing coordination models—or elements of those coordination models—may be applicable to the 1695–1710 MHz band. To the extent that existing models do not or only partially apply, we seek comment on other approaches that address the unique circumstances surrounding Federal/non-Federal sharing in this band. We especially seek comment on any and all issues related to coordination that are expressly mentioned in the *WG1 Final Report.*

66. *Process Initiation.* We ask commenters to propose methods by which a licensee can initiate the coordination process. Should we provide any guidance on coordination timelines? Should we set a specific time frame by which licensees are required to initiate the coordination process, *i.e.,* how much advance notice should a licensee provide prior to commencing operations? Should there be time limits established on various phases of the coordination process itself? If a licensee intends to alter operating plans after reaching a coordination agreement, should it have to fully re-coordinate with the applicable Federal agencies? How should the Commission coordinate with NTIA in facilitating an effective coordination procedure, consistent with our respective roles under the Spectrum Act?

67. *AWS–1 Precedent.* In particular, we seek comment on whether the coordination procedures established for non-Federal licensees to gain early access to adjacent AWS–1 uplink band (1710–1755 MHz) could serve as a model for coordination in the 1695–1710 MHz band. In AWS–1, recognizing the importance of protecting the Federal operations while opening up the spectrum to newly licensed commercial users, the Commission worked closely with NTIA to craft a coordination procedure before the full band transition was completed. Prior to operating, the AWS–1 licensee was required to contact the appropriate Federal agency to get information necessary to perform an interference analysis. The AWS–1 licensee would first perform the interference analysis and then send it to the appropriate designated agency contact for review. At the end of 60 days, if the Federal agency raised no objection, the AWS–1 licensee was permitted to commence operations. NTIA required Federal agencies to cooperate with AWS–1 licensees and provide, within 30 days of a request from an AWS–1 licensee wishing to operate within a coordination zone, site-specific technical information that

would allow the licensee to complete the interference analysis. NTIA also required agencies that disapprove of an interference analysis submitted by an AWS–1 licensee to provide the licensee with a detailed rationale for its disapproval. Finally, Federal agencies were required to work in good faith to identify the source of the harmful interference and work with AWS–1 licensees to eliminate or mitigate the interference. Would a similar procedure work here? If so, what exact procedures and timelines would be appropriate? What is the best way to ensure balanced treatment of Federal and non-Federal users' interests? Commenters are asked to provide the reasoning for their suggestions, and to discuss our authority to implement these suggestions, where applicable.

68. *Appeals.* We seek comment on whether we should adopt an appeals process for licensees whose coordination proposals are rejected by the government agency or the final decision maker in the coordination process. If so, who should adjudicate the appeals and what should be the criteria for reversal?

69. *Interference Power Spectral Density (IPSD) Limits.* To facilitate coordination, the *WG1 Final Report* also recommended, to the extent possible, an automated process with the ability to assess if proposed commercial networks will meet predetermined IPSD limits. We seek comment on the extent to which such a process is possible and, if so, how best to implement this recommendation. Are there automated processes already in place that we could adapt to this situation? How much of the coordination process can be automated? What are the challenges associated with such an approach and are they surmountable? Would the benefits of implementation exceed the associated costs? The *WG1 Final Report* also recommended establishment of a testing program that would ''demonstrate the viability and effectiveness of proposed protection and mitigation methods before commercial licensees may begin operations within a Protection Zone.'' We seek comment on establishing such a program. What would it entail? Are there existing testing programs that can serve as a model?

70. *Enforcement.* The *WG1 Final Report* states that clear enforcement procedures must be established in order to protect Federal operations within the Protection Zones. We seek comment on ways to deter and terminate commercial operations from causing harmful interference to Federal operations through violations of the rules or of a coordination agreement. How should commercial operators be notified to cease operations in such a situation? What can or should be done in the event that there is a dispute between the parties as to the actual source of interference? Do our existing enforcement procedures provide adequate remedies or do the special circumstances of this band require additional enforcement mechanisms? What remedies, above and beyond notice to stop operations, are appropriate in such circumstances? Would fines and/or loss of license be appropriate in this case? Commenters are encouraged to propose adequate enforcement mechanisms that will ensure that incumbent Federal operations do not suffer harmful interference.

71. The *WG1 Final Report* notes that real-time monitoring of IPSD limits with automated adjustments would be ideal in order to ensure that the established interference limits are not being exceeded. Ideally, this real-time monitoring could quickly detect violations and facilitate immediate adjustments to commercial operations so as to prevent harmful interference to Federal operations. However, a real-time monitoring system would not necessarily determine the source of the problem. We seek comment on whether establishing a real-time monitoring mechanism is possible and feasible. If so, commenters are invited to describe how this can be accomplished.

72. *Relocating Federal government receive locations in the 1695–1710 MHz band.* Some of the Protection Zones set forth in Table 1 above are located in highly populated urban areas where there is a continuously rising demand for commercial broadband services. NTIA did not have the opportunity to study the possibility of relocating Federal receive sites in the band. Accordingly, and in response to an industry suggestion, NTIA recommends that before auction, the feasibility and cost impact of relocating Federal operations in the 1695–1710 MHz band be explored for the top 100 markets, with the goal of creating an environment where there would be less restricted commercial use of the band within the Protection Zones. If any studies consistent with this recommendation are conducted, we intend to incorporate them into the record of this proceeding. Further, NTIA has identified some challenges that a Federal receiver relocation study should address. These include ensuring that:

(1) A receive site is located in a suitable area to capture necessary data, (2) the location is in a rural enough area to minimize the size of or need for Protection Zones in high population areas, (3) reliable power is available, (4) adequate and redundant backhaul facilities can be established to ensure highly reliable reception of data, (5) any delay in receiving raw satellite data introduced by a remote receiver is minimal and does not negatively impact the government mission, and (6) any suitable site is able to meet applicable environmental statutory regulatory requirements to build-out such a facility.

We seek comment on how to address these challenges, again, within the restricted time frame. Commenters should also address, if possible, anticipated relocation/installation costs and timelines for relocation. We also ask commenters to address whether, if we proceed to formulate regulations and conduct an initial auction based on the recommended Protection Zones, it still would be appropriate and feasible to conduct the relocation study thereafter, or whether there would be no benefits to such a study subsequent to an initial auction of 1695–1710 MHz with the associated Protection Zones.

73. *1755–1780 MHz.* NTIA established CSMAC Working Groups 2–5 to analyze ways to facilitate commercial operations in the 1755–1780 MHz band. To date, NTIA has endorsed the recommendations of Working Group 2 (Federal law enforcement surveillance systems, explosive ordnance disposal systems, and other short distant links). We anticipate that Working Groups 3–5 will, in the coming months, present their recommendations to NTIA, which will, in turn, make recommendations addressing the remaining Federal systems in the band to the Commission. We seek comment on appropriate relocation or sharing arrangements for these systems if relocation is not feasible. As noted above, we intend to incorporate NTIA's forthcoming recommendations into the record of this proceeding and anticipate that commenters will discuss NTIA's recommendations in comments, reply comments, or *ex parte* presentations, as appropriate, depending on the timing.

74. As mentioned above, NTIA endorses the recommendations of WG2 that Federal law enforcement surveillance systems, explosive ordnance disposal systems, and other short distant links can be relocated out of the band within five years, once funding and comparable spectrum are available. NTIA also endorses Working Group 2's recommendations ranking Economic Areas to be transitioned according to industry implementation priorities. NTIA notes that while industry would prefer Federal relocation based on the ranking of

economic areas (EAs) on the suggested list, the agencies will need to establish their timelines for clearing based on their operational requirements and that, in some cases, operational needs may require clearing larger geographic areas. Accordingly, NTIA clarifies that the prioritized list of EAs will serve as an input for consideration as the agencies develop their transition plans. Furthermore, due to the agencies' challenges in planning and implementing the transition of these systems without impacting operational requirements, NTIA states that prospective bidders should understand that agencies may not be able to vary significantly from the timelines in their published transition plans, unless the Office of Management and Budget (OMB) approves accelerated implementation payments.

75. In the event that clearing is not feasible, we must prepare for the possibility that CSMAC may present a ''hybrid'' recommendation, in which some operations would be relocated, some would share the band with commercial licensees, and some (in geographic exclusion zones) would not share the band. If so, and if the NTIA endorses the CSMAC recommendations, we could adopt Protection Zones, Exclusion Zones, and other sharing measures to clearly define the potential for Federal and commercial operations to share the 1755–1780 MHz band (spectrally, geographically, temporally, dynamically, or any combination of these). We seek comment on what sharing measures would appropriately maximize commercial access to the spectrum. We intend to incorporate NTIA's forthcoming recommendations into the record of this proceeding and anticipate that commenters will discuss NTIA's recommendations in comments, reply comments, or *ex parte presentations,* as appropriate, depending on the timing. We also expect that commenters will discuss the CSMAC's specific recommendations as well as various implementation details, including on the coordination processes required for shared use of the band.

76. Anticipating the possibility that CSMAC and NTIA are unable to recommend clearly defined sharing parameters, we also seek comment on whether to issue ''overlay'' licenses that would permit new licensees to gain access to the 1755–1780 MHz band only if they are able to reach coordination agreements with affected Federal users, *i.e.,* ''operator-to-operator'' coordination. Under this alternative, we would adopt rules to license the 1755–1780 MHz band on a non-harmful interference basis to, and subject to accepting harmful interference from, Federal incumbents that are not relocating or, if they are relocating, until they are relocated under an approved plan. We seek comment on this proposal.

77. Finally, as another alternative, we seek comment on the possibility that the 1755–1780 MHz band remain for exclusive Federal use and how that would affect the band configurations described in paragraphs 41–46 and our Spectrum Act obligation to identify an additional 15 megahertz of contiguous spectrum to allocate and auction for commercial use.

78. *Industry Roadmap.* As noted above, T-Mobile recently filed a wireless industry proposal (Industry Roadmap) for making the 1755–1780 MHz band available for commercial use in time to auction the band at the same time as the 2155–2180 MHz band, which the Spectrum Act requires to be auctioned and licensed by February 2015. The Industry Roadmap assesses Federal operations in the 1.7 GHz band and proposes a combination of sharing, relocation, and channel prioritization for the majority of Federal operations in the 1755–1850 MHz band to provide industry early access to the 1755–1780 MHz portion of the band. The Industry Roadmap also acknowledges that additional study is necessary. We add this filing to the record of this proceeding and seek comment on the Industry Roadmap.

79. *DoD Alternative Proposal.* Also, as noted above, on July 22, 2013, NTIA transmitted to the Commission correspondence to NTIA from the Chief Information Officer of the DoD that outlines a proposal for making 1755–1780 MHz available for auction and licensing in the near term, while protecting critical DoD capabilities and preserving the necessary flexibility to address the long-term status of the 1780–1850 MHz portion of the band. NTIA states that it only recently received this proposal and is not in a position to endorse it at this time. According to DoD, under its proposal:

1. DoD retains access to the 1780–1850 MHz band.

2. DoD is provided shared access to 2025–2110 MHz band, removing the need to relocate broadcasters.

3. DoD is not provided access to 5150–5250 MHz for telemetry, leaving the band available for Wi-Fi consideration.

4. DoD will modify selected systems to operate at both 1780- 1850 MHz & 2025–2110 MHz. These include Small Unmanned Aerial Systems, Tactical Targeting Network. Technology, Tactical Radio Relay, and High Resolution Video systems.

5. DoD will modify selected systems to operate in other existing Federal bands as. identified: Precision Guided Munitions to 1435–1525 MHz, Point-to-Point Microwave. Links to 7125–8500 MHz, and DoD Video Surveillance/ Robotics to 4400–4940 MHz.

6. DoD systems will share spectrum with commercial users in the 1755–1780 MHz band as follows: Satellite Operations (SA TOPS), Electronic Warfare (EW), Air Combat Training System (ACTS) (where required), and Joint Tactical Radio System (JTRS) at 6 sites.

7. DoD will compress remaining operations into 1780–1850 MHz.

8. Estimate of DoD costs is* $3.5B for 25 MHz.

In the interest of obtaining input from all interested stakeholders on this proposal, as NTIA has requested, we are adding this correspondence to the record of this proceeding and seeking public comment on it as part of the AWS–3 rulemaking.

Increased Federal Access to Spectrum Through Sharing

80. The 2013 Presidential Memorandum strongly encourages the FCC, in collaboration with NTIA, where appropriate, to enable innovative and flexible commercial uses of spectrum, including broadband, to be deployed as rapidly as possible. The 2013 Presidential Memorandum also encourages a number of steps including identifying spectrum allocated for non-Federal uses that can be made available for Federal agencies, on a shared or exclusive basis.

81. *Federal Use of AWS–3 Spectrum including 2155–2180.* Shared use of spectrum bands by Federal and non-Federal users could facilitate the increased use of ''commercial-off-the-shelf'' (COTS) communication technologies to support important government missions, including military uses. By allowing government users to tap into global scale economies of the commercial market, the use of COTS devices, networks, and components could potentially help improve the performance and cost of certain government communications systems, where appropriate. Moreover, the use of such technologies might also increase electromagnetic compatibility with commercial uses, thereby facilitating greater shared use of spectrum. Accordingly, we seek comment on whether Federal users should be able to access the AWS–3 band(s), including spectrum not presently allocated for Federal use (*e.g.,*

2155–2180 MHz), on Federal lands or properties that are generally unserved by commercial wireless networks. We seek comment on the benefits and drawbacks of this proposal. We would expect that such locations might include, for example, military training ranges in otherwise unpopulated areas and that Federal use of the band would be on terms and conditions consistent with the commercial service rules we establish in this proceeding and in future proceedings. We seek comment on specific locations where such access would be appropriate or inappropriate, as well as comment on a regulatory framework that would enable such use in a manner consistent with the Communications Act and the ongoing commercial use of these bands. We seek specific comment on any amendments to Section 2.103 of our rules or any other rules that might be appropriate for Federal use of such bands.

82. *Increased Federal access to 2025–2110 MHz and 5150–5250 MHz bands.* As noted above, NTIA indicates that in certain Federal relocation scenarios, DoD and other Federal incumbents in the 1755–1850 MHz band would need access to other bands specifically, that certain aeronautical systems could relocate to the 2025–2110 MHz and 5150–5250 MHz bands. NTIA subsequently transmitted a more recent proposal from DoD that implicates the 2025–2110 MHz band but not the 5150–5250 MHz band. We seek comment on these and any alternative relocation concepts, including the viability of repacking incumbents into the 1780–1850 MHz band, recognizing that most commenters will not have access to information about Federal system characteristics or mission requirements. Nonetheless, we seek comment on the potential benefits and costs of implementing such a relocation, particularly with respect to existing and potential future uses of those bands. In paragraph 176 below we seek comment on any changes to the Table of Frequency Allocations that would be necessary.

Technical Rules

83. Our rules for the AWS–3 bands must take account of the potential for permissible operations to cause harmful interference to operations in other service areas, blocks or bands. In the proposed band plan, AWS–3 spectrum would be licensed in five-megahertz blocks using EA licenses. Interference must therefore be considered between adjacent AWS–3 blocks, *e.g.,* between 2155–2160 MHz and 2160–2165 MHz, as well as between AWS–3 operations in the 2155–2180 MHz band and services in the adjacent AWS–1 and AWS–4 bands. Similarly, AWS–3 mobiles could interfere with proximate Federal or non-Federal operations in the same or nearby bands.

84. Two predominant types of adjacent channel interference can occur. The first is caused by out-of-band emissions (OOBE) that fall directly within the passband of an adjacent-band receiver. Such emissions cannot be ''filtered out,'' and can only be mitigated by: (1) Providing sufficient physical separation between the transmitter and receiver; and/or (2) suppressing OOBE at the source (*i.e.,* the transmitter). The second type of interference is caused by ''receiver overload.'' Receiver overload interference occurs when a strong signal from an adjacent band transmission falls just outside the passband of a receiver, where the front-end filter of the receiver can provide only limited attenuation of the unwanted signal. There are three ways to minimize receiver overload interference: (1) Improve the receiver performance including filtering; (2) limit the power of the transmitter; and (3) provide physical separation between the transmitter and receiver.

85. We seek comment on possible technical and operational rules to protect these various services from harmful interference. Where possible, we propose to adopt for AWS–3 the same technical requirements as apply to AWS–1, where our experience indicates that the requirements have facilitated good service while minimizing undesirable interference, and to AWS–4. We are especially interested in whether specific AWS–3 spectrum considerations may warrant different requirements. We also ask commenters to address any specific technical rules that would be required for specific AWS–3 bands that they propose, other than the ones identified in this notice.

1. OOBE Limits

86. Section 27.53(h) of our rules requires that out-of-band emissions from transmissions in the AWS–1 bands be attenuated below the transmitter power (P) by a factor of not less than 43 + 10 $\log_{10}$ (P) dB outside of the licensee's frequency block. The same rule also specifies the measurement procedure required to determine compliance with this OOBE standard. We seek comment on extending the scope of § 27.53(h) to apply to AWS–3 as well, except as discussed otherwise below.

87. *Interference between Adjacent Block AWS–3 Licensees.* We anticipate that the characteristics of the future AWS–3 band systems will be essentially identical to those of AWS–1. For this reason, we believe that the normal OOBE limit of 43 + 10 $\log_{10}$ (P) dB outside of the licensee's frequency block is appropriate to protect AWS–3 services operating in adjacent spectrum blocks. We seek comment on this conclusion. Commenters should discuss and quantify the costs and benefits of this and any proposed alternative approaches.

88. *Interference with Services in Other Bands—Uplink Stations Operating in 1695–1710, 1755–1780 and 2020–2025 MHz. Interference with operations below 1695 MHz:* The 1695–1710 MHz AWS–3 uplink band is adjacent to satellite downlink spectrum at 1675–1695 MHz, which is allocated for Federal and non-Federal satellite use. The rules for the AWS–1 uplink band at 1710–1755 MHz include an OOBE attenuation limit of our standard 43 + 10 $\log_{10}$ (P) dB in order to protect satellite downlink spectrum currently below 1710 MHz. We believe that the services used in these adjacent AWS bands will be similar, and that the repurposing of 1695–1710 MHz essentially just shifts the boundary between AWS uplink and satellite downlink services down from 1710 to 1695 MHz. We therefore propose to apply the same standard OOBE limit of 43 + 10 $\log_{10}$ (P) dB to future AWS–3 operations at 1695–1710 MHz with respect to spectrum below 1695 MHz. We seek comment on this proposal. Commenters should discuss and quantify the costs and benefits of this proposal and any proposed alternative approaches.

89. *Interference with operations above 1710 MHz.* The 1695–1710 MHz AWS–3 uplink band is adjacent to AWS–1 uplink spectrum at 1710–1755 MHz. Because we anticipate that the services used in the adjacent AWS–3 and AWS–1 uplink bands will be similar, we propose that the appropriate OOBE limit for the AWS–3 uplink band at 1695–1710 MHz is 43 + 10 $\log_{10}$ (P) dB. We seek comment on this proposal. Commenters should discuss and quantify the costs and benefits of this and any proposed alternative approaches.

90. *Interference with operations below 1755 MHz.* The 1755–1780 MHz AWS–3 uplink band is also adjacent to AWS–1 uplink spectrum at 1710 -1755 MHz. Because we anticipate that the services used in the adjacent AWS–3 and AWS–1 uplink bands will be similar, we again propose that the appropriate OOBE limit for the AWS–3 uplink band at 1755–1780 MHz is 43 + 10 $\log_{10}$ (P) dB. We seek comment on this proposal. Commenters should discuss and quantify the costs and benefits of this proposal and any proposed alternative approaches.

91. *Interference with operations above 1780 MHz.* The 1755–1780 MHz AWS–3 uplink band is adjacent to Federal operations at 1780–1850 MHz. We propose the standard OOBE limit of 43 + 10 $\log_{10}$ (P) dB to address this adjacency, the same limit as the AWS–1 rules now provide for protecting Federal spectrum above 1755 MHz. Like the situation described in paragraph 88 above, where the boundary between AWS use and adjacent spectrum moves, but there is no significant change in the uses on either side of the boundary, we believe it is appropriate to maintain the existing OOBE limit at the new boundary. We seek comment on this proposal. Commenters should discuss and quantify the costs and benefits of this proposal and any alternative approaches.

92. *Interference with operations below 2020 MHz.* The 2020–2025 MHz AWS–3 uplink band is adjacent to AWS–4/MSS uplink spectrum at 2000–2020 MHz. The rules applicable to AWS–4 mobile stations operating in the 2000–2020 MHz band include a general OOBE attenuation of 43 + 10 $\log_{10}$ (P) dB between the AWS–4 A and B blocks and above 2020 MHz. We anticipate the services in the adjacent AWS–3 and AWS–4 bands will be similar in use. Accordingly we propose that the OOBE limits on operations in the 2020–2025 MHz band mirror those of AWS–4, *i.e.,* 43 + 10 $\log_{10}$ (P) dB below 2020 MHz. We seek comment on this proposal. Commenters should discuss and quantify the costs and benefits of this and any proposed alternative approaches.

93. *Interference with operations above 2025 MHz.* The 2020–2025 MHz AWS–3 uplink band is adjacent to the 2025–2110 MHz band, which includes BAS and Cable Television Relay Service (CARS) operations, as well as certain Federal government operations. As noted above, for AWS–4 uplinks at 2000–2020 MHz, the Commission recently adopted the 43 + 10 $\log_{10}$ (P) standard above 2020 MHz. Prior to AWS–4, the same OOBE limit was applicable to 2000–2020 MHz MSS/ATC uplinks above 2020 MHz. We also note that in the AWS–4 proceeding, the Engineers for the Integrity of Broadcast Auxiliary Services Spectrum (''EIBASS'') stated that it did not object to a 43 + 10 $\log_{10}$ (P) dB OOBE attenuation factor above 2025 MHz from low power, mobile type devices. Accordingly, we propose to apply the standard 43 + 10 $\log_{10}$ (P) OOBE limit above 2025 MHz and seek comment on this proposal. Commenters should discuss and quantify the costs and benefits of this and any proposed alternative approaches, and whether the closer proximity of the 2020–2025 MHz band warrants any additional protection.

94. *Interference with Services in Other Bands—Base Stations Operating in 2155–2180 MHz. Interference with operations below 2155 MHz and above 2180 MHz:* The 2155–2180 MHz AWS–3 downlink band is adjacent to the AWS–1 downlink spectrum at 2110–2155 MHz and to the AWS–4/MSS downlink spectrum at 2180–2200 MHz. Because we anticipate that operations in 2155–2180 MHz and in the adjacent downlink bands will be similar, we believe the standard attenuation factor of 43 + 10 $\log_{10}$ (P) dB will be sufficient to protect AWS–1 and AWS–4/MSS receivers operating in the bands adjacent to AWS–3. We seek comment on this proposal. Commenters should discuss and quantify the costs and benefits of this and any proposed alternative approaches.

95. *Measurement of OOBE.* To fully define an emissions limit, the Commission's rules generally specify how to measure the power of the emissions, such as the measurement bandwidth. For AWS–1 and AWS–4, the measurement bandwidth used to determine compliance with this limit for fixed, mobile, and base stations is generally one megahertz, with some modification within the first megahertz. We believe that it is reasonable to apply this same procedure to all transmissions in the AWS–3 bands. We seek comment on this proposal. Commenters should discuss and quantify the costs and benefits of this proposal and any proposed alternative approaches.

96. *Antenna Height Restrictions.* We propose, as discussed below, that the flexible antenna height rules that apply to AWS–1 should generally also apply to AWS–3. Additionally, because we do not propose to authorize fixed operation in the 1695–1710 MHz and 1755–1780 MHz bands, we do not expect any special antenna height restrictions are needed for those bands.

97. *Base stations.* Specific antenna height restrictions for AWS–1 base stations are not set forth in Part 27 of our rules. However, all part 27 services are subject to § 27.56, which bans antenna heights that would be a hazard to air navigation. Furthermore, the limitations of field strength at the geographical boundary of the license discussed below also effectively limit antenna heights. We similarly propose that no unique antenna height limits are needed for AWS–3 facilities; rather, we believe that the general height restrictions are sufficient. We seek comment on this proposal, including the costs and benefits of the proposal and any alternatives.

98. *Fixed stations.* Section 27.50(d)(4) specifies a height restriction of 10 meters for fixed stations operating in AWS–1 spectrum, and was deemed necessary to protect Federal operations in the 1710–1755 MHz and adjacent Federal bands. The height restriction was not applied to the AWS–4 band. Here, the 1695–1710 and 1755–1780 MHz bands are adjacent to the AWS–1 band and the Federal operations that necessitated a height limitation for AWS–1 fixed stations, whereas the 2020–2025 MHz band is not. Moreover, in defining the Protection Zones, CSMAC's assumptions did not include commercial fixed uplinks. We therefore propose not to authorize fixed stations in the 1695–1710 MHz and 1755–1780 MHz bands; thus no height limit is necessary. We believe no such limit is necessary for fixed stations in the 2020–2025 MHz band, and we propose to apply the same rules that govern low-power fixed stations in the adjacent AWS–4 band. We seek comment on this proposal. Commenters should address the costs and benefits of this proposal and of any proposed alternatives.

99. *Power Limits.* As discussed below, we generally propose to apply existing AWS–1 power limits to the AWS–3 downlink and 2020–2025 MHz uplink bands, which CSMAC did not analyze. For AWS–3 uplink bands with NTIA recommended Protection Zones, within which commercial use must be coordinated successfully with Federal users prior to operation, CSMAC made technical assumptions about commercial operations that are set forth in Appendix 3 of the *WG1 Final Report.* Specifically, CSMAC assumed baseline LTE uplink characteristics. We are not proposing technical rules to require AWS–3 licensees to comply with any particular industry standard such as LTE. Nonetheless, we believe some technical rules must accommodate CSMAC's assumptions, or the Protection Zones might have to be redrawn.

100. *Base Stations.* The current AWS–1 and AWS–4 rules limit base station power in non-rural areas to 1640 watts EIRP for emission bandwidths less than one megahertz and to 1640 watts per MHz EIRP for emission bandwidths greater than one megahertz, and double these limits (3280 watts EIRP or 3280 watts/MHz) in rural areas. The same limits apply to broadband PCS stations, and in our experience have provided good service while avoiding harmful interference. Further, the higher power limit for rural areas may promote the Commission's goals of furthering rural deployment of broadband services.

Therefore, we propose that § 27.50(d)(1)–(2), which set the power limits for AWS–1 and AWS–4 base stations, should also apply to AWS–3 base stations operating in the 2155–2180 MHz band. We seek comment on this proposal, including the costs and benefits of the proposal and any alternatives.

101. The current AWS–1 rules also require that base stations with transmit power greater than the non-rural limits described above (1640 Watts EIRP or 1640 watts/MHz EIRP) be coordinated with licensees in adjacent AWS blocks and Broadband Radio Service (BRS) licensees in the 2150–2160 MHz band authorized within 120 kilometers (75 miles), and with satellite entities operating in the 2025–2110 MHz band. The AWS–4 rules require similar coordination between adjacent AWS–4 blocks within 120 kilometers, but do not require coordination with BRS or with satellite operators in the 2025–2110 MHz band because these bands are not adjacent to the AWS–4 uplink band. As AWS–3 base station operations will be co-channel with BRS and directly adjacent to the AWS–1 and AWS–4 downlink bands, but situated at least 45 MHz away from the 2025–2110 MHz satellite band, consistent with the rationale in the Commission's decision in the *AWS–4 Service Rules R&O,* we do not see a need to carry all of these requirements over to AWS–3. We propose that AWS–3 base stations with transmit power above 1640 watts EIRP and 1640 watts/MHz EIRP be required to coordinate with the following licensees authorized to operate within 120 kilometers (75 miles) of the base or fixed station operating in this band: all BRS licensees authorized in the 2155–2160 MHz band and all AWS licensees authorized to operate on adjacent frequency blocks in the AWS–3 band, the 2110–2155 MHz band or the 2180–2200 MHz band. Because of the spectral separation between the 2155–2180 MHz band and the 2025–2110 MHz satellite band, however, we do not propose to require coordination with these operators. We seek comment on this proposal, including the costs and benefits of the proposal and any alternatives.

102. *Mobile and Portable (handheld) Stations.* The part 27 AWS rules specify a power limit of 1 watt EIRP for the AWS–1 uplink band, and 2 watts EIRP for the AWS–4 uplink band. The lower AWS–1 power limit was intended to simplify coordination with Government operations that would remain in the 1710–1755 MHz band, a situation that the AWS–4 band did not present. The three AWS–3 uplink bands present the same distinction: the 1695–1710 MHz and 1755–1780 MHz bands both contain Government operations, while the 2020–2025 MHz band does not. In other respects, we anticipate that the services in the AWS–3 bands will be similar to those in the AWS–1 and AWS–4 bands. The existence or not of Government operations, however, dictates different power limits. In particular, as described above, the Protection Zones that trigger coordination are based in part on CSMAC's assumption that typical commercial user equipment will be LTE devices. We further note that the LTE standard sets a maximum transmitter power output (TPO) of 23 dBm. CSMAC's analysis indicates that such devices will have an actual EIRP varying between −40 dBm and 20 dBm EIRP, due to power control and typical antenna gains/losses, and that it used these EIRP assumptions for the purpose of defining the Protection Zones. As stated above, in accordance with the Spectrum Act, the Commission intends to adopt flexible-use service rules for the AWS–3 band supporting terrestrial wireless service and we are not proposing to mandate the use of any industry standard. We note that similar commercial mobile services such as PCS, AWS–1 and the 700 MHz band deploy handsets using a variety of technologies, including CDMA and UMTS, as well as LTE, whose devices most commonly operate at a maximum EIRP of 23 dBm (200 mW) regardless of higher FCC power limits.

103. Nonetheless, because the Protection Zones are based on typical LTE devices operating at a maximum EIRP of 20 dBm, we propose an EIRP power limit of 20 dBm (100 mW) for mobiles and portables (handhelds) operating in the 1695–1710 MHz and 1755–1780 MHz bands. The Commission's rules will govern all devices nationwide, rather than typical devices operating near the 27 Protection Zones. Therefore, we seek comment on whether an EIRP limit of 23 dBm would necessitate enlarging the Protection Zones, and if so, whether the benefits this higher power limit would outweigh the increased burden of having to coordinate more commercial operations with Federal incumbents. For mobiles and portables (handhelds) operating in the 2020–2025 MHz band, we propose a maximum of 2 watts EIRP. Regarding the latter proposal, we believe there is virtually no risk of overloading BAS receivers in the adjacent 2025–2110 MHz band given the likely separation distances, AWS–3 mobile nominal transmit powers, steerable BAS antennas, and path losses. We further propose that mobile and portable stations operating in these bands must employ a means for limiting power to the minimum necessary for successful communications. We seek comment on these proposals, including the costs and benefits of the proposals and any alternatives.

104. *Co-Channel Interference between AWS–3 Systems.* If we ultimately decide to license the AWS–3 bands on the basis of geographic service areas that are less than nationwide, we will have to ensure that such licensees do not cause interference to co-channel systems operating along common geographic borders. The current rules for AWS–1 and AWS–4 address the possibility of harmful co-channel interference between geographically adjacent licenses by setting a field strength limit from base stations of 47 dBμV/m at the edge of the license area. Due to the similarities between AWS–1, AWS–4, and AWS–3 spectrum use, we propose to amend § 27.55(a)(1) to include the 2155–2180 MHz band.

105. In recent filings in the H Block and Incentive Auctions proceedings, commenters have suggested that the boundary limit be adjusted to accommodate varying channel bandwidths. In the H Block proceeding, Sprint requested that the Commission modify the boundary limit to set a reference measurement bandwidth of 1 MHz, with the aim of limiting boundary power density to the equivalent of that first applied to PCS systems in 1993. At that time, operators were deploying mostly Digital AMPS, PCS1900 and CDMA technologies, which had channel bandwidths of 30 kHz, 200 kHz and 1.25 MHz, respectively. Sprint claims that because today's LTE transmissions operate on much wider bandwidths up to 20 MHz, a 47 dBμV/m limit measured over the full channel bandwidth will effectively result in a comparatively lower power level. Sprint proposed to adjust the field strength limit from 47 dBμV/m to 62 dBμV/m per MHz. Verizon has made a similar claim in the Incentive Auctions proceeding, but proposed a field strength limit of 50 dBμV/m per MHz. Sprint further suggested that the boundary limits with Canada and Mexico should similarly be based on power density levels.

106. We tentatively agree with Sprint that, in concept, a boundary limit that adjusts for large differences in channel bandwidths may be appropriate. The specific limit of 62 dBμV/m per MHz proposed by Sprint may not be the optimal solution. Sprint derives the value for the field strength based on a comparison against a 30 kHz Digital AMPS signal. Other technologies may

provide a more appropriate reference upon which to base the value for the field strength. Also, there are other metrics that may be used to limit the signal at the boundary, such as power flux density. We observe that the Commission has already adopted a bandwidth-independent approach when setting boundary limits with Canada and Mexico. For example, certain international limits are expressed as a power flux density (*i.e.,* dBW/m²/MHz), a measure of power, whereas field strength is a measurement of voltage.

107. We seek comment on what the appropriate boundary limit should be. Should the limit be based on a field strength, a power flux density, or some other metric? What would the appropriate level be? We encourage all interested parties to explore this issue in this proceeding to develop a full record of the technical concerns and ramifications of such an approach. Please provide detailed technical analysis to support any proposed limit.

108. Finally, we propose that adjacent affected area licensees may voluntarily agree upon higher field strength boundary levels. This concept is already codified in the field strength rules for both PCS and AWS services, as Sprint acknowledges. Accordingly, to maintain consistency with the PCS and other AWS bands, we propose to permit adjacent area licensees to agree to a higher field strength limit.

109. *Co-Channel Interference to BRS Channels 1 and 2.* The AWS–1 rules include provisions that protect BRS Channel 1 (2150–2156 MHz) and Channel 2 (2156–2160/62 MHz). Because these BRS channels will be co-channel to licenses in the AWS–3 downlink band at 2155–2180 MHz, we propose that the same AWS–1 provisions in §§ 27.1132 and 27.1255 be applied to future AWS–3 licensees operating in the 2155–2180 MHz band. We seek comment on this proposal. Commenters should address the costs and benefits of this proposal and any proposed alternatives.

110. *Canadian and Mexican Coordination.* Section 27.57(c) of our rules indicates that AWS–1 and AWS–4 operations are subject to international agreements with Mexico and Canada. We propose to apply the same limitation to the AWS–3 band. Until such time as any adjusted agreements between the United States, Mexico, and/or Canada can be agreed to, operations must not cause harmful interference across the border, consistent with the terms of the agreements currently in force. We note that further modification (of the proposed or final rules) might be necessary in order to comply with any future agreements with Canada and Mexico regarding the use of these bands. We seek comment on this issue, including the costs and benefits of alternative approaches to this issue.

111. *Other Technical Issues. General Part 27 rules:* There are several additional technical rules applicable to all part 27 services, including §§ 27.51 Equipment authorization, 27.52 RF safety, 27.54 Frequency stability, 27.56 Antennas structures; air navigation safety, and 27.63 Disturbance of AM broadcast station antenna patterns. As AWS–3 will be a part 27 service, we propose that all of these general part 27 rules should apply to all AWS–3 licensees, including licensees who acquire their licenses through partitioning or disaggregation (to the extent the rules permit such aggregation). We seek comment on this approach, including its costs and benefits.

112. *Receiver Performance.* We invite comment on any potential for receiver overload interference between AWS–3 operations and non-AWS operations below 1695 MHz, above 1780 MHz, above 2025 MHz, and above 2180 MHz. If such a risk exists, we request that parties provide whatever information may be available about the characteristics of the receivers operating or likely in the future to operate in these frequencies, potential solutions to overload interference, and an assessment of the impact this might have on deployment of AWS–3 service. We also invite comment on any other receiver issues that should be considered in this proceeding that could affect the potential for harmful interference to adjacent channel receivers and usability of the AWS–3 spectrum.

Licensing and Operating Rules; Regulatory Issues

113. We are proposing licensing and operating rules that will provide AWS–3 licensees with the flexibility to provide any fixed or mobile service that is consistent with the allocations for this spectrum. Specifically, we are seeking comment on the appropriate license term, criteria for renewal, and other licensing and operating rules pertaining to the AWS–3 band. In addition, we seek comment on the potential impact of all of our proposals on competition. In addressing these issues, commenters should discuss the costs and benefits associated with these proposals and any alternative that commenters propose.

114. *Assignment of Licenses.* The Spectrum Act states that the Commission shall grant new initial licenses for the 1695–1710 MHz and 2155–2180 MHz bands, and 15 additional megahertz of contiguous spectrum to be identified by the Commission, through a system of competitive bidding pursuant to section 309(j) of the Communications Act. Additionally, for all AWS–3 bands, including 1755–1780 MHz and 2020–2025 MHz, we propose to license on a geographic area basis, which will permit the acceptance of mutually exclusive applications. As such, we propose to resolve all AWS–3 applications and assign licenses through competitive bidding consistent with our statutory mandate. We seek comment in paragraphs 148–158 below on our proposals regarding the competitive bidding rules that would apply to license assignments in these bands.

115. *Flexible Use.* Consistent with the Spectrum Act's mandate to license under flexible use service rules, we propose service rules that permit a licensee to employ the spectrum for any non-Federal use permitted by the United States Table of Frequency Allocations, subject to the Commission's part 27 flexible use and other applicable rules (including service rules to avoid harmful interference). Part 27 licensees must also comply with other Commission rules of general applicability. Thus, we propose that the spectrum may be used for any fixed or mobile service that is consistent with the allocations for the band. If commenters think any restrictions are warranted, they should describe why such restrictions are needed, quantify the costs and benefits of any such restrictions, and describe how such restrictions would comport with the statutory mandates of section 6401 of the Spectrum Act.

116. *Regulatory Framework:* Consistent with the proposed flexible use of the AWS–3 band, we also propose licensing the spectrum under the flexible regulatory framework of part 27 of our rules. Unlike other rule parts applicable to specific services, part 27 does not prescribe a comprehensive set of licensing and operating rules for the spectrum to which it applies. Rather, for each frequency band under its umbrella, part 27 defines permissible uses and any limitations thereon, and specifies basic licensing requirements. We believe that our part 27 rules are consistent with the Spectrum Act's requirement for ''flexible-use service rules.'' We seek comment on our proposal to license the AWS–3 band under part 27 service and licensing rules, and any associated costs or benefits of doing so.

117. *Regulatory Status:* We propose to apply the regulatory status provisions of § 27.10 of the Commission's rules to

licensees in the AWS–3 band. The Commission's current mobile service license application requires an applicant for mobile services to identify the regulatory status of the service(s) it intends to provide because service offerings may bear on eligibility and other statutory and regulatory requirements. Under part 27, the Commission permits applicants who may wish to provide both common carrier and non-common carrier services (or to switch between them) under a single license to request status as both a common carrier and a non-common carrier. Thus, a part 27 applicant is not required to choose between providing common carrier and non-common carrier services. We propose to adopt this same approach here. Licensees in the AWS–3 band would be able to provide all allowable services anywhere within their licensed area at any time, consistent with their regulatory status. We note that to the extent a licensee provides a Commercial Mobile Radio Service, such service would be subject to the provisions of Part 20 of the Commission's rules. We believe that this approach is likely to achieve efficiencies in the licensing and administrative process, and provide flexibility to the marketplace. We seek comment on the appropriate licensing approach and ask that commenters discuss the costs and benefits of their proposed licensing approach.

118. We further propose that applicants and licensees in the AWS–3 band be required to indicate a regulatory status for any services they choose to provide. Apart from this designation of regulatory status, we do not propose to require applicants to describe the services they seek to provide. We caution potential applicants that an election to provide service on a common carrier basis typically requires that the elements of common carriage be present; otherwise the applicant must choose non-common carrier status. If potential applicants are unsure of the nature of their services and their classification as common carrier services, they may submit a petition with their applications, or at any time, requesting clarification and including service descriptions for that purpose. We propose to apply this framework to AWS–3 licensees and seek comment on this proposal, including the costs and benefits of this proposal.

119. We also propose that if a licensee were to change the service or services it offers such that it would be inconsistent with its regulatory status, the licensee must notify the Commission. A change in a licensee's regulatory status would not require prior Commission authorization, provided the licensee was in compliance with the foreign ownership requirements of section 310(b) of the Communications Act that would apply as a result of the change, consistent with the Commission's rules for AWS–1 and AWS–4 spectrum. Consistent with our part 27 rules, we propose to require licensees to file the notification within 30 days of a change made without the need for prior Commission approval, except that a different time period may apply where the change results in the discontinuance, reduction, or impairment of the existing service. We seek comment on this proposal, including the costs and benefits.

120. *Foreign Ownership Reporting.* We propose to apply the provisions of section 27.12 of the Commission's rules to applicants for licenses in the AWS–3 band. Section 27.12 implements section 310 of the Communications Act, including foreign ownership and citizenship requirements that restrict the issuance of licenses to certain applicants. An applicant requesting authorization to provide services in this band other than broadcast, common carrier, aeronautical en route, and aeronautical fixed services would be subject to the restrictions in section 310(a), but not to the additional restrictions in section 310(b). An applicant requesting authorization for broadcast, common carrier, aeronautical en route, or aeronautical fixed services would be subject to both sections 310(a) and 310(b). We do not believe that applicants for this band should be subject to different obligations in reporting their foreign ownership based on the type of service authorization requested in the application. Consequently, we propose to require all applicants to provide the same foreign ownership information, which covers both sections 310(a) and 310(b), regardless of which service they propose to provide in the band. We note, however, that we would be unlikely to deny a license to an applicant requesting to provide exclusively services that are not subject to section 310(b), solely because its foreign ownership would disqualify it from receiving a license if the applicant had applied for authority to provide such services. However, if any such licensee later desires to provide any services that are subject to the restrictions in section 310(b) we would require the licensee to apply to the Commission for an amended license, and we would consider issues related to foreign ownership at that time. We request comment on this proposal, including any costs and benefits.

121. *Eligibility.* For the AWS–3 band, we propose to adopt an open eligibility standard and seek comment on this approach. In particular, we seek comment on whether adopting an open eligibility standard for the licensing of the AWS–3 band would encourage efforts to develop new technologies, products, and services, while helping to ensure efficient use of this spectrum. We note that an open eligibility approach would not affect citizenship, character, or other generally applicable qualifications that may apply under our rules. Additionally, section 6004 of the Spectrum Act restricts participation in auctions required under the Spectrum Act, which will include most of the AWS–3 band, by ''person[s] who [have] been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant.'' In the *Incentive Auctions NPRM* and in the *H Block NPRM,* the Commission sought comment on whether section 6004 permits or requires the Commission to restrict eligibility of persons acquiring licenses on the secondary market, whether and to what extent such a restriction is consistent with other provisions of the Communications Act, and what procedures and rules, if any, should apply to persons acquiring licenses on the secondary market. Recently, in the *H Block R&O,* the Commission adopted an eligibility rule providing that ''[a] person described in 47 U.S.C. 1404(c) is ineligible to hold a license that is required by 47 U.S.C. Chapter 13 (Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, 125 Stat. 156 (2012)) to be assigned by a system of competitive bidding under Section 309(j) of the Communications Act, 47 U.S.C. 309(j).'' We note that this revised eligibility restriction will govern most of the AWS–3 spectrum.

122. *Mobile Spectrum Holding Policies.* We seek comment generally on whether and how to address any mobile spectrum holdings issues involving AWS–3 spectrum in order to meet our statutory requirements and our goals for the AWS–3 band. Section 309(j)(3)(B) of the Communications Act provides that, in designing systems of competitive bidding, the Commission shall ''promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses.'' More recently, section 6404 of the Spectrum Act recognizes the Commission's authority ''to adopt and

enforce rules of general applicability, including rules concerning spectrum aggregation that promote competition.'' In September, 2012, we initiated a proceeding to revisit the mobile spectrum holdings policies that apply to both transactions and auctions, including which spectrum bands are relevant to our competitive analysis. The Commission also has sought comment on some mobile spectrum holdings issues with respect to particular spectrum bands in service rulemakings.

123. We seek comment on whether the acquisition of each of the various bands identified in this proceeding for potential AWS–3 spectrum should be subject to the same general mobile spectrum holding policies applicable to frequency bands that the Commission has found to be suitable and available for mobile telephony/broadband services. Alternatively, depending on the specific service rules and requirements that will apply to AWS–3 spectrum, should we distinguish AWS–3 spectrum for purposes of evaluating mobile spectrum holdings? Commenters should discuss and quantify any costs and benefits associated with any proposals on the applicability of spectrum holdings policies to AWS–3 spectrum.

2. License Term, Performance Requirements, Renewal Criteria, Permanent Discontinuance of Operations

124. *License Term:* We propose to establish a 10-year term for licenses for the AWS–3 band. The Communications Act does not specify a term limit for AWS band licenses. The Commission has adopted 10-year license terms for most wireless radio services licenses. To maintain this consistency among wireless services, in the *H Block R&O* and the *AWS–4 Service Rules R&O,* the Commission adopted 10-year license terms. We continue to believe that a 10-year license term is appropriate, and consequently propose, a 10-year license term for the AWS–3 spectrum. We seek comment on this proposal, including any costs and benefits of the proposal. In addition, we invite commenters to submit alternate proposals for the appropriate license term, which should similarly include a discussion on the costs and benefits.

125. Under our license term proposal, if a license in these bands is partitioned or disaggregated, any partitionee or disaggregatee would be authorized to hold its license for the remainder of the partitioner's or disaggregator's original license term. This approach is similar to the partitioning provisions the Commission adopted for BRS, for broadband PCS, for the 700 MHz band, and for AWS–1 licenses at 1710–1755 MHz and 2110–2155 MHz, and AWS–4. We emphasize that nothing in our proposal is intended to enable a licensee, by partitioning or disaggregating the license, to confer greater rights than it was awarded under the terms of its license grant. Similarly, nothing in our proposal is intended to enable any partitionee or disaggregatee to obtain rights in excess of those previously possessed by the underlying licensee. We seek comment on these proposals, including the cost and benefits thereof.

126. *Performance Requirements:* The Commission establishes performance requirements to promote the efficient deployment of wireless services, including to rural areas, and to ensure that spectrum is used. Over the years, the Commission has applied different performance and construction requirements to different spectrum bands based on considerations relevant to those bands. For example, within four (4) years, an AWS–4 licensee must provide reliable terrestrial signal coverage and offer terrestrial service to at least forty (40) percent of its total AWS–4 population. Within seven (7) years, an AWS–4 licensee must provide reliable terrestrial signal coverage and offer terrestrial service to at least seventy (70) percent of the population in each of its license areas. Similarly, for licensees operating in the 2.3 GHz Wireless Communications Services (WCS) band, the Commission adopted performance requirements that included population-based construction requirements (40 percent of the license area's population within four (4) years and 75 percent within six-and-a-half (6.5) years) and reporting requirements. More recently, in the *H Block R&O,* the Commission required licensees within four (4) years to provide reliable signal coverage and offer service to at least forty (40) percent of the population in each of its license areas and within ten (10) years, provide reliable signal coverage and offer service to at least seventy-five (75) percent of the population in each of its license areas.

127. We continue to believe that performance requirements play a critical role in ensuring that licensed spectrum does not lie fallow, and now propose to establish the following performance requirements. We seek comment on the following buildout requirements for the AWS–3 band:

- AWS–3 Interim Buildout Requirement: Within four (4) years, an AWS–3 licensee shall provide reliable signal coverage and offer service to at least forty (40) percent of the population in each of its license areas.
- AWS–3 Final Buildout Requirement: By the end of the license term, *i.e.,* within ten (10) years, an AWS–3 licensee shall provide reliable signal coverage and offer service to at least seventy-five (75) percent of the population in each of its license areas.

128. We propose these performance requirements in an effort to foster deployment expeditiously in the AWS–3 band for the provision of wireless, terrestrial broadband service, and to enable the Commission to take appropriate corrective action should such deployment fail to occur. Specifically, the interim benchmark at four years would ensure that a licensee begins deploying facilities quickly, thereby evidencing meaningful utilization of the spectrum. At the same time, by proposing a relatively low population threshold in the interim benchmark, we acknowledge that large-scale network deployment may ramp up over time as equipment becomes available and a customer base is established. In addition, by proposing a final buildout requirement timeline of ten years, we believe we allow a reasonable amount of time for any AWS–3 licensee to attain nationwide scale.

129. We seek comment on these proposed buildout requirements. We encourage comment on whether our proposals represent the appropriate balance between requirements that are too low as to not result in meaningful buildout and those that would be so high as to be unattainable. We also seek comment on whether other benchmarks represent more appropriate requirements. In particular, are there appropriate performance benchmarks for any AWS–3 uplink spectrum paired with downlink spectrum in a band other than AWS–3? In this event, should the performance requirements applicable to that downlink band apply? How should we account for the areas where Federal use limits or prohibits AWS–3 use? We also seek comment on alternative methodologies for measuring population coverage requirements in the Gulf of Mexico. Commenters should discuss and quantify how any supported buildout requirements will affect investment and innovation as well as discuss and quantify other costs and benefits associated with the proposal.

130. *Penalties for Failure to Meet Construction Requirements.* Along with construction benchmarks, we seek to adopt meaningful and enforceable consequences, or penalties, for failing to meet the benchmarks. Building on what we have learned from other bands and

considering the unique characteristics of the AWS–3 band, we propose and seek comment, including on the costs and benefits, of the following penalties in the event an AWS–3 licensee fails to satisfy its buildout requirements:

- In the event an AWS–3 licensee fails to meet the AWS–3 Interim Buildout Requirement in its license area, the term of the license shall be reduced by two years.
- In the event an AWS–3 licensee fails to meet the AWS–3 Final Buildout Requirement in its license area, the AWS–3 licensee for each license area in which it fails to meet the buildout requirement shall terminate automatically without Commission action.

131. We further propose that, in the event a licensee's authority to operate terminates, the licensee's spectrum rights would become available for reassignment pursuant to the competitive bidding provisions of section 309(j). Further, consistent with the Commission's rules for other spectrum bands, including AWS–1 and the BRS, we propose that any AWS–3 licensee who forfeits its license for failure to meet its performance requirements would be precluded from regaining the license.

132. *Compliance Procedures.* Consistent with § 1.946(d) of the Commission's rules, we propose to require AWS–3 licensees to demonstrate compliance with the performance requirements by filing a construction notification within 15 days of the relevant milestone certifying that they have met the applicable performance benchmark. Further, we propose that each construction notification include electronic coverage maps and supporting documentation, which must be truthful and accurate and must not omit material information that is necessary for the Commission to determine compliance with its performance requirements.

133. Electronic coverage maps must accurately depict the boundaries of each license area in the licensee's service territory. If a licensee does not provide reliable signal coverage to an entire license area, we propose that its map must accurately depict the boundaries of the area or areas within each license area not being served. Further, we propose that each licensee also must file supporting documentation certifying the type of service it is providing for each licensed area within its service territory and the type of technology used to provide such service. Supporting documentation must include the assumptions used to create the coverage maps, including the propagation model and the signal strength necessary to provide reliable service with the licensee's technology.

134. *Renewal Criteria:* Pursuant to section 308(b) of the Communications Act, the Commission may require renewal applicants to ''set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station'' as well as ''such other information as it may require.'' We propose to adopt AWS–3 license renewal requirements consistent with those adopted in the *700 MHz First Report and Order,* the *AWS–4 Report and Order,* and the *H Block R&O.* We emphasize that, as the Commission made clear in these proceedings, a licensee's performance showing and its renewal showing are two distinct showings. A performance showing provides a snapshot in time of the level of a licensee's service, while a renewal showing provides information regarding the level and types of service provided over the entire license term. As the Commission has emphasized, a licensee that meets the applicable performance requirements might nevertheless fail to meet the renewal requirements.

135. We propose that applicants for renewal of AWS–3 licenses file a ''renewal showing,'' in which they demonstrate that they have been and are continuing to provide service to the public (or, if consistent with the licensee's regulatory status, it is using the spectrum for private, internal communication), and substantially complying with the Communications Act and the Commission's rules and policies. We propose to apply to AWS–3 the same renewal showing requirement recently adopted for the H Block. Specifically, we adopt the following renewal criteria requirements. We require the renewal showing to include a detailed description of the renewal applicant's provision of service during the entire license period and discuss: (1) The level and quality of service provided by the applicant (including the population served, the area served, the number of subscribers, the services offered); (2) the date service commenced, whether service was ever interrupted, and the duration of any interruption or outage; (3) the extent to which service is provided to rural areas; (4) the extent to which service is provided to qualifying Tribal land as defined in § 1.2110(e)(3)(i) of the Commission's rules; and (5) any other factors associated with the level of service to the public.

136. As explained above, today we are proposing that AWS–3 licensees meet four and ten-year performance obligations. We seek comment on whether the public interest would be served by awarding AWS–3 licensees renewal expectancies where they have (1) maintained at least the level of service required at the four year performance benchmark over the next six years while increasing service levels towards compliance with the end-of-term benchmark, (2) met the final (ten year) benchmark, and (3) otherwise complied with the Communications Act and the Commission's rules and policies during their license term. We also seek comment on whether AWS–3 licensees should obtain a renewal expectancy at the end of subsequent license terms, if they continue to provide at least the level of service required at the ten year performance benchmark through the end of any subsequent license terms. Commenters should discuss and quantify the costs and benefits of this approach.

137. Finally, consistent with the *AWS–4 Report and Order,* the *700 MHz First Report and Order* and the *H Block R&O,* we propose to prohibit the filing of mutually exclusive renewal applications, and that if a license is not renewed, the associated spectrum would be returned to the Commission and subsequently made available for assignment. We seek comment on these proposals, including on the associated costs and benefits.

138. *Permanent Discontinuance of Operations:* We also request comment on the Commission's rules governing the permanent discontinuance of operations, which are intended to afford licensees operational flexibility to use their spectrum efficiently while ensuring that spectrum does not lie idle for extended periods. Under § 1.955(a)(3) of the Commission's rules, an authorization will automatically terminate, without specific Commission action, if service is ''permanently discontinued.'' For the AWS–3 band, for providers that identify their regulatory status as common carrier or non-common carrier, we propose to define ''permanently discontinued'' as a period of 180 consecutive days during which the licensee does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to, the provider in an EA (or smaller service area in the case of a partitioned EA license). This approach is consistent with the definition that the Commission has adopted for the H Block and the AWS–4 band. We propose a different approach, however, for licensees that use their licenses for private, internal communications, because such licensees generally do not provide

service to unaffiliated subscribers. For such private, internal communications, we propose to define ''permanent discontinuance'' as a period of 180 consecutive days during which the licensee does not operate. Licensees would not be subject to this requirement until the date of the first performance requirement benchmark, which is proposed as four years from the date of license grant, so they will have adequate time to construct their network. In addition, consistent with § 1.955(a)(3) of the Commission's rules, we propose that, if an AWS–3 licensee permanently discontinues service, the licensee must notify the Commission of the discontinuance within 10 days by filing FCC Form 601 and requesting license cancellation. An authorization will automatically terminate without specific Commission action if service is permanently discontinued even if a licensee fails to file the required form. We seek comment on these proposals, including the associated costs and benefits.

3. Secondary Markets

139. *Partitioning and Disaggregation:* The Commission's part 27 rules generally allow for geographic partitioning and spectrum disaggregation. Geographic partitioning refers to the assignment of geographic portions of a license to another licensee along geopolitical or other boundaries. Spectrum disaggregation refers to the assignment of discrete amounts of spectrum under the license to another entity. Disaggregation allows for multiple transmitters in the same geographic area operated by different companies on adjacent frequencies in the same band. As the Commission noted when first establishing partitioning and disaggregation rules, allowing such flexibility could facilitate the efficient use of spectrum by enabling licensees to make offerings directly responsive to market demands for particular types of services, increasing competition by allowing market entry by new entrants, and expediting provision of services that might not otherwise be provided in the near term.

140. We propose to permit partitioning and disaggregation by licensees in the AWS–3 band. To ensure that the public interest would be served if partitioning or disaggregation is allowed, we propose requiring each AWS–3 licensee that is a party to a partitioning, disaggregation, or combination of both to independently meet the applicable performance and renewal requirements. We believe this approach would facilitate efficient spectrum use, while enabling service providers to configure geographic area licenses and spectrum blocks to meet their operational needs. We seek comment on these proposals. Commenters should discuss and quantify the costs and benefits of these proposals with respect to competition, innovation, and investment.

141. We also seek comment on whether the Commission should adopt additional or different mechanisms to encourage partitioning and/or disaggregation of AWS–3 spectrum and the extent to which such policies ultimately may promote more service, especially in rural areas. Commenters should discuss and quantify the costs and benefits of promoting more service using mechanisms to encourage partitioning and disaggregation of AWS–3 spectrum, including the effects of the proposal.

142. *Spectrum Leasing:* In 2003, in order to promote more efficient use of terrestrial wireless spectrum through secondary market transactions, while also eliminating regulatory uncertainty, the Commission adopted a comprehensive set of policies and rules to govern spectrum leasing arrangements between terrestrial licensees and spectrum lessees. These policies and rules enable terrestrially based Wireless Radio Service licensees holding ''exclusive use'' spectrum rights to lease some or all of the spectrum usage rights associated with their licenses to third party spectrum lessees, which then are permitted to provide wireless services consistent with the underlying license authorization. Through these actions, the Commission sought to promote more efficient, innovative, and dynamic use of the terrestrial spectrum, expand the scope of available wireless services and devices, enhance economic opportunities for accessing spectrum, and promote competition among terrestrial wireless service providers. In 2004, the Commission built upon this spectrum leasing framework by establishing immediate approval procedures for certain categories of terrestrial spectrum leasing arrangements and extending the spectrum leasing policies to additional Wireless Radio Services.

143. We propose that the spectrum leasing policies and rules established in those proceedings be applied to the AWS–3 in the same manner that those policies apply to other part 27 services. We seek comment on this proposal. Commenters should discuss the effects on competition, innovation and investment, and on extending our secondary spectrum leasing policies and rules to the AWS–3 band.

144. *Other Operating Requirements:* Even though licenses in the AWS–3 band may be issued pursuant to one rule part, licensees in this band may be required to comply with rules contained in other parts of the Commission's rules by virtue of the particular services they provide. For example:

- Applicants and licensees may be subject to the application filing procedures for the Universal Licensing System, set forth in part 1 of our rules.
- Licensees may be required to comply with the practices and procedures listed in part 1 of our rules for license applications, petitions for declaratory ruling under section 310(b), adjudicatory proceedings, *etc.*
- Licensees may be required to comply with the Commission's environmental provisions, including § 1.1307.
- Licensees may be required to comply with the antenna structure provisions of part 17 of our rules.
- To the extent a licensee provides a Commercial Mobile Radio Service (CMRS), we propose that such service would be subject to the provisions of part 20 of the Commission's rules, including 911/E911 and hearing aid-compatibility requirements, along with the provisions in the rule part under which the license was issued. Part 20 applies to all CMRS providers, even though the stations may be licensed under other parts of our rules.
- To the extent a licensee provides interconnected VoIP services, we propose that the licensee would be subject to the E911 service requirements set forth in Part 9 of our rules.

145. The application of general provisions of parts 22, 24, 27, or 101 would include rules related to equal employment opportunity, *etc.*

146. We seek comment on whether these provisions should apply to AWS–3 licensees and, if so, whether we need to modify any of these rules to ensure that AWS–3 licensees are covered under the necessary provisions. We seek comment on applying these rules to the AWS–3 spectrum and specifically on any rules that would be affected by our proposal to apply elements of the framework of these parts, whether separately or in conjunction with other requirements. What are the potential problems that may be associated with the Commission's adoption of any of these potential requirements, and how do they compare to the potential benefits?

147. *Facilitating Access to Spectrum and the Provision of Service to Tribal Lands.* The Commission currently has under consideration various provisions and policies intended to promote greater

use of spectrum over Tribal lands. We propose to extend any rules and policies adopted in that proceeding to any license that may be issued through competitive bidding in this proceeding. We seek comment on this proposal, including any costs and benefits.

148. *Competitive Bidding Procedures.* As discussed above, the Spectrum Act requires the Commission to grant new initial licenses for the use of spectrum in certain specified frequency bands through a system of competitive bidding. We will therefore assign licenses in the 1695–1710 MHz, 1755–1780 MHz, and 2155–2180 MHz bands through competitive bidding. In addition, because we propose to license the 2020–2025 MHz band on a geographic area basis, which procedure will permit the acceptance of mutually exclusive applications, we will also resolve such applications through competitive bidding consistent with our statutory mandate. Accordingly, we seek comment on a number of proposals relating to competitive bidding for licenses for spectrum in these bands. We also note below that we have recently amended our rules to require an additional certification that will be required of applicants in any short-form application to participate in competitive bidding for licenses in certain AWS–3 bands at issue herein.

149. *Application of part 1 Competitive Bidding Rules.* We propose that the Commission would conduct any auction for licenses for spectrum in the 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz, and 2155–2180 MHz bands in conformity with the general competitive bidding rules set forth in part 1, subpart Q, of the Commission's rules, and substantially consistent with the competitive bidding procedures that have been employed in previous auctions. Specifically, we propose to employ the part 1 rules governing competitive bidding design, designated entity preferences, unjust enrichment, application and payment procedures, reporting requirements, and the prohibition on certain communications between auction applicants. Under this proposal, such rules would be subject to any modifications that the Commission may adopt for its part 1 general competitive bidding rules in the future. We also seek comment on whether any of our part 1 rules would be inappropriate or should be modified for an auction of licenses in these frequency bands.

150. *Revision to part 1 Certification Procedures.* Section 6004 of the Spectrum Act prohibits ''a person who has been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant'' from participating in a system of competitive bidding under section 309(j) required to be conducted under Title VI of the Spectrum Act. In the *H Block Report and Order,* the Commission implemented this Spectrum Act mandate by adding a national security certification to the various other certifications that a party must make in any short-form application to participate in competitive bidding as required under our existing rules. Accordingly, an applicant to participate in an auction offering licenses for spectrum in the AWS–3 bands required by the Spectrum Act to be assigned by auction will be required to certify, under penalty of perjury, that it and all of the related individuals and entities required to be disclosed on the short-form application are not persons who have ''been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant.'' For purposes of this certification, ''person'' is defined as an individual, partnership, association, joint-stock company, trust, or corporation, and ''reasons of national security'' is defined to mean matters relating to the national defense and foreign relations of the United States. As with other required certifications, failure to include the required certification by the applicable filing deadline would render the application unacceptable for filing, and the application would be dismissed with prejudice.

151. *Small Business Provisions for Geographic Area Licenses.* In authorizing the Commission to use competitive bidding, Congress mandated that the Commission ''ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.'' In addition, section 309(j)(3)(B) of the Communications Act provides that, in establishing eligibility criteria and bidding methodologies, the Commission shall seek to promote a number of objectives, including ''economic opportunity and competition . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.'' One of the principal means by which the Commission fulfills this mandate is through the award of bidding credits to small businesses.

152. In the *Competitive Bidding Second Memorandum Opinion and Order,* the Commission stated that it would define eligibility requirements for small businesses on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service in establishing the appropriate threshold. Further, in the *Part 1 Third Report and Order,* the Commission, while standardizing many auction rules, determined that it would continue a service-by-service approach to defining small businesses.

153. In the event that the Commission assigns geographic area licenses for spectrum in the 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz, and 2155–2180 MHz bands, we believe that this spectrum would be employed for purposes similar to those for which spectrum in the AWS–1 band is used. We therefore propose to establish the same small business size standards and associated bidding credits for these bands as the Commission adopted for the AWS–1 band. These small business size standards and associated bidding credits were adopted for the AWS–1 band because of the similarities between the AWS–1 service and the broadband PCS service. The Commission also followed this approach when proposing small business size standards and associated bidding credits in the *AWS–2 NPRM* and *H Block NPRM,* and when adopting them in the *AWS–4 Service Rules R&O.* Thus, we propose to define a small business as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a very small business as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. We seek comment on this proposal, including the costs and benefits associated with the proposal.

154. We propose to provide small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent, as set forth in the standardized schedule in part 1 of our rules. We seek comment on the use of these standards and associated bidding credits, with particular focus on the appropriate definitions of small businesses and very small businesses as they may relate to the size of the geographic area to be served and the spectrum allocated to each license. Commenters should discuss and quantify any costs or benefits associated with these standards and associated bidding credits as they relate to the proposed geographic areas.

In discussing these issues, commenters are requested to address and quantify the expected capital requirements for services in these bands and other characteristics of the service. Commenters are also invited to use comparisons with other frequency bands for which the Commission has already established service rules as a basis for their comments and any quantification of costs and benefits regarding the appropriate small business size standards.

155. In establishing the criteria for small business bidding credits, we acknowledge the difficulty in accurately predicting the technology and market conditions that will exist at the time these frequencies are licensed. Thus, our forecasts of types of services that will be offered over these bands may require adjustment depending upon ongoing technological developments and changes in market conditions.

156. We seek comment on whether the small business provisions we propose today are sufficient to promote participation by businesses owned by minorities and women, as well as rural telephone companies. To the extent that commenters propose additional provisions to ensure participation by minority-owned or women-owned businesses, they should address how such provisions should be crafted to meet the relevant standards of judicial review.

157. We also seek comment on whether to use a different approach to bidding credits. To the extent commenters support a different approach to bidding credits than those discussed here, they should support their proposals with relevant information, including costs and benefits of their alternative proposals on the types of system architecture that are likely to be deployed in these bands, the availability of equipment, market conditions, and other factors that may affect the capital requirements of the types of services that may be provided.

158. Finally, we note that under our part 1 rules, a winning bidder for a market will be eligible to receive a bidding credit for serving a qualifying tribal land within that market, provided that it complies with the applicable competitive bidding rules. The Commission currently has under consideration various provisions and policies intended to promote greater use of spectrum over tribal lands. We propose to extend any rules and policies adopted in that proceeding to any licenses in the 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz, and 2155–2180 MHz bands that may be assigned through competitive bidding. We seek comment on this proposal.

159. *Commercial Spectrum Enhancement Act Requirements.* As noted above, the CSEA established the SRF to reimburse Federal agencies operating on certain frequencies that have been reallocated from Federal to non-Federal use for the cost of relocating their operations. The SRF is funded from cash proceeds attributable to ''eligible frequencies'' in an auction involving such frequencies. CSEA requires NTIA to notify the Commission of estimated relocation costs and timelines for relocation from eligible frequencies by eligible Federal entities at least six months in advance of a scheduled auction of eligible frequencies. CSEA further requires that the total cash proceeds from any auction of ''eligible frequencies'' must equal at least 110 percent of estimated relocation costs of eligible Federal entities, and prohibits the Commission from concluding any auction of eligible frequencies that falls short of this revenue requirement. We invite comment on the applicability of the 110 percent requirement in the CSEA to the various relocation and sharing scenarios discussed herein. We also note that the proceeds of spectrum required to be auctioned under section 6401 of the Spectrum Act are to be deposited in the Public Safety Trust Fund established under section 6413 of the Spectrum Act. Commenters may wish to discuss the potential interplay between these Spectrum Act provisions and the CSEA.

160. *Multi-Stage Auction and Licensing Alternatives for 1.7 GHz.* We recognize that the Federal/non-Federal sharing scenarios being considered by CSMAC are very complex and workable rules may prove difficult to implement prior to the licensing deadlines imposed by the Spectrum Act. Therefore, we seek comment on alternative licensing constructs that could facilitate ongoing ''operator-to-operator'' negotiations between licensees in commercial bands (*e.g.,* 2155 MHz) and Federal agencies occupying complementary Federal bands (*e.g.,* 1.7 GHz), should sharing or relocation for exclusive use not be possible.

161. We expect that such approaches would contain a licensing component, which would provide that licensees in the commercial bands are granted an exclusive license for the shared Federal/non-Federal band with all non-Federal operations subject to successful coordination with all Federal operators. They might also contain a mechanism to allow for the conveyance of funds to facilitate commercial access in a manner consistent with applicable laws, including, but not limited to, the CSEA and the Miscellaneous Receipts Act.

162. For example, under this scenario, could the license for the commercial bands be paired with an ''overlay'' license in Federal bands providing that commercial use of such bands would be entirely contingent upon successful coordination with incumbent Federal users? Alternatively, could the commercial licenses grant to the licensee exclusive eligibility status with respect to a future assignment of rights in such Federal bands? Could an auction proceed in two stages, to enable the initial assignment of a ''negotiation right'' and subsequent payments into the Spectrum Relocation Fund to facilitate relocation or upgrades pursuant to the CSEA? For example, the first stage could assign commercial licenses and any concomitant rights to negotiate with incumbent Federal users for the use of Federal spectrum. The second stage would consist of a supplementary round with participation limited to eligible commercial licensees, and a reserve price set based on the 110 percent funding requirement established by the CSEA. What approaches would generate the most certainty, and therefore expected value, in the use of the spectrum?

Non-Federal Relocation and Cost Sharing

163. *2155–2180 MHz.* There are two non-Federal incumbent services still authorized in portions of the 2155–2180 MHz band: There are approximately 250 Fixed Microwave Service (''FS'') licenses in the 2160–2180 MHz band and approximately five BRS licensees in the 2150–2160/62 MHz band. The FS operations in the 2160–2180 MHz band are typically configured to provide two-way microwave communications using paired links in the 2110–2130 MHz band. While few BRS systems remain, in the past BRS systems were deployed via three types of system configurations: high-power video stations, high-power fixed two-way systems, and low-power, cellularized two-way systems. Under the Commission's rules, AWS licensees in these bands must protect incumbent operations or relocate the incumbent licensees to comparable facilities, until the applicable ''sunset date,'' after which the incumbents must cease operating if the AWS licensee intends to operate a station in the relevant area. The Commission's rules also address cost-sharing reimbursement to cover the scenario where relocation of an incumbent system benefits more than one AWS licensee. We propose to extend to the AWS–3 band the current relocation and cost sharing rules for

both the FS in the 2160–2180 MHz band and the BRS in the 2150–2160/62 MHz band. We seek comment on this proposal.

164. *2020–2025 MHz.* The 2020–2025 MHz band is part of the 1990–2025 MHz band that the Commission reallocated from the BAS to emerging technologies (ET) such as PCS, AWS, and MSS. Consistent with the relocation principles first established in the Commission's *Emerging Technologies* proceeding, each new entrant had an independent responsibility to relocate incumbent BAS licensees. In addition, as a general rule, the Commission's traditional cost-sharing principles are applicable to the 1990–2025 MHz band. Sprint, which is the PCS licensee at 1990–1995 MHz, completed the BAS transition for the entire 35 megahertz in 2010. In 2011, Sprint notified the Commission that it entered in a private settlement with DISH to resolve the dispute with MSS licensees with respect to MSS licensees' obligation to reimburse Sprint for their share of the BAS relocation costs. Accordingly, the only remaining cost-sharing obligations in the 1990–2025 MHz band are attributable to the remaining, unassigned ten megahertz of spectrum in the 1990–2025 MHz band: 1995–2000 MHz and 2020–2025 MHz.

165. In the *AWS Allocation Sixth R&O,* the Commission determined that all new entrants to the 1990–2025 MHz band may be required to bear a proportional share of the costs incurred in the BAS clearance on a *pro rata* basis according to the amount of spectrum each licensee is assigned. However, the Commission did not decide specifically how to allocate that share. In the *2004 NPRM,* the Commission sought comment on how the reimbursement rights and obligations of each AWS licensee could be most efficiently and equitably be allocated if the 2020–2025 MHz were licensed on a geographic area basis other than as a nationwide license. To the extent that not all spectrum in the 1990–2025 MHz band would have been licensed, the Commission sought comment on whether to require those entrants who are licensed at that time to bear a *pro rata* share of the relocation costs based on the amount of spectrum they have been assigned relative to the amount of 1990–2025 MHz spectrum that has been licensed. In addition, the Commission also sought comment on whether to impose reimbursement obligations on later arriving new entrants, on the appropriate length of such an obligation, and on the mechanism for applying those obligations. In the *2010 BAS Order* the Commission determined that an AWS entrants' cost-sharing obligation for the 1990–2025 MHz band will be triggered upon the final grant of the long form application for each of its licenses.

166. Consistent with the Commission's intent that all entrants to the 1990–2025 MHz band bear a proportional share of the costs incurred in the BAS clearance on a *pro rata* basis according to the amount of spectrum each entrant is assigned, we propose that 2020–2025 MHz band licensees be responsible for reimbursing Sprint for one-seventh of the BAS relocation costs (*i.e.,* the proportional share of the costs associated with Sprint relocating 5 megahertz of BAS spectrum that will be used by licensees of the 2020–2025 MHz band). We believe it is fair to all parties to require AWS licenses to pay their fair share of BAS relocation costs. We believe it is important to provide auction bidders with reasonable certainty as to the range of the reimbursement obligation associated with each license under various auction outcomes. We also believe it is important for Sprint to be fully reimbursed as soon as possible given that Sprint cleared the spectrum so 2020–2025 MHz band licensees will receive unencumbered spectrum. Accordingly, we propose to require 2020–2025 MHz band licensees to reimburse Sprint based on the gross winning bids of the initial auction of the 2020–2025 MHz band. Specifically, we propose that the reimbursement amount owed (RN) be determined by dividing the gross winning bid (GWB) for a 2020–2025 MHz license (*i.e.,* an individual EA) by the sum of the gross winning bids for all 2020–2025 MHz band licenses won in the initial auction and then multiplying by $94,875,516. In other words, the cost-sharing formula would read as follows:

$$RN = (EA\ GWB \div Sum\ of\ GWBs) \times \$94,875,516$$

Because certain EAs, such as for the Gulf of Mexico, have a relative value that is not directly tied to population, our proposal seeks to allow the market to determine the value of each EA license and the associated amount of the reimbursement obligation. However, parties can comment on alternative cost-sharing formulas, including one based on population as described below. We seek comment on our proposals.

167. This formula would ensure that Sprint receives full reimbursement after the first auction by effectively apportioning the reimbursement costs associated with any unsold 2020–2025 MHz band licenses among the winning bidders of 2020–2025 MHz band licenses in the first auction—with an exception in the event a successful bidder's long-form application is not filed or granted, and a contingency to cover an unlikely scenario. We further propose that winning bidders of 2020–2025 MHz band licenses in the first auction of this spectrum would not have a right to seek reimbursement from other 2020–2025 MHz licensees including for licenses awarded in subsequent auctions. We believe this approach would avoid recordkeeping burdens and potential disputes and that it is appropriate given that—in the event that most licenses are awarded—the reimbursement obligation for an individual license will represent but a fraction of overall reimbursement to Sprint. We seek comment on our proposals including the following contingency: In the unlikely event that licenses covering less than 40 percent of the population of the United States are awarded in the first auction, we propose that winning bidders—in the first auction of this spectrum as well as in subsequent auctions—will be required to timely pay Sprint their *pro rata* share calculated by dividing the population of the individual EA awarded at auction by the total U.S. population and then multiplying by $94,875,516. (The population percentage would be as measured using 2010 Census data or such other data or measurements that the Wireless Telecommunications Bureau proposes and adopts under the notice and comment process for the auction procedures.) This contingent proposal would ensure that Sprint is reimbursed as soon as possible while also protecting winning bidders of 2020–2025 MHz band licenses from bearing an undue burden of the reimbursement obligation due to Sprint. We seek comment on our proposal.

168. Alternatively, we specifically seek comment on the relative costs and benefits of adopting a population based cost-sharing formula as the general rule for the 2020–2025 MHz band. We acknowledge that using a population based approach in all events would offer bidders certainty as to the obligation attached to each license but this approach could also defer Sprint's full reimbursement indefinitely if less than all of the licenses are awarded during the initial auction.

169. We further propose that winning bidders promptly pay Sprint the amount owed, as calculated pursuant to the formula that we adopt, within 30 days of grant of their long form applications for the licenses. For PCS and AWS–1, and AWS–4, cost sharing obligations are triggered when a licensee proposes to operate a base station in an area cleared of incumbents by another licensee. In

this case, rather than Sprint itself benefiting from its band clearing efforts, other entrants in the band will reap the benefits of Sprint's efforts. Accordingly, we find no significant reason to treat Sprint any differently than UTAM, for its clearing of the 1910–1915 MHz band and as recently proposed for UTAM's clearing of the 1915–1920 MHz band. Thus, we propose that Sprint be fully reimbursed by AWS licensees that will benefit from Sprint's clearing of the 2020–2025 MHz band. Moreover, as noted above, given the relative fraction of overall reimbursement to Sprint that will be owed by each winning bidder, we believe that it will not disincentivize parties from filing applications or impose a burden on winning bidders to reimburse Sprint within 30 days of the grant of their long-form applications. We seek comment on the above proposals, including the costs and benefits.

170. Consistent with precedent, we propose a specific date on which the reimbursement obligation adopted above will terminate. In recent instances, the relocation and cost-sharing obligations concurrently sunset ten years after the first ET license is issued in the respective band. In 2003 the Commission established a relocation sunset date for the 1990–2025 MHz band of December 9, 2013 on which the obligation of new entrants to relocate the incumbent BAS operations would end. However, in this instance, we do not believe that the public interest would be served by maintaining December 9, 2013 as the sunset date for terminating the requirement that 2020–2025 MHz licensees collectively reimburse Sprint for one-seventh of the BAS relocation costs. Rather, we propose a sunset date for the cost-sharing obligations of 2020–2025 MHz band licensees to Sprint that is ten years after the first 2020–2025 MHz band license is issued in the band. We find that a number of factors support our proposal. As discussed above, Sprint relocated BAS incumbents from the 2020–2025 MHz band, even though 2020–2025 MHz band licensees and not Sprint itself will reap the benefits of Sprint's relocation of BAS. In addition, the integrated nature of BAS operations required relocations on a market-by-market basis, and such a requirement would have imposed significant costs on individual 2020–2025 MHz band entrants because isolated, link-by-link relocation was infeasible. It therefore served the public interest for Sprint to undertake the relocation on an integrated, nationwide basis. Because 2020–2025 MHz band licenses have yet to be auctioned and because interested applicants will be able to calculate their reimbursement obligation to Sprint in bidding on licenses, we do not believe that our proposal imposes a burden on the winning bidders of 2020–2025 MHz licenses. We believe that the proposed sunset date balances the interests of all parties by encouraging timely payment to Sprint while ensuring that, consistent with precedent, the reimbursement obligation terminates on a specific date for any licenses that have not yet triggered an obligation to pay Sprint. We seek comment on our proposed sunset date, including the costs and benefits.

Allocation Matters

171. *1695–1710 MHz.* To facilitate the Spectrum Act's requirement that the Commission reallocate the 1695–1710 MHz segment of the 1675–1710 MHz band for wireless broadband, we propose to amend the Table of Frequency Allocations by allocating the 1695–1710 MHz band to the fixed and mobile except aeronautical mobile services on a primary basis for non-Federal use. We are excluding aeronautical mobile service from our mobile allocation proposal to better protect earth station reception of frequencies in the 1695–1710 MHz band. Additionally, we propose to adopt a new U.S. footnote (tentatively numbered as US88) to provide for the protection of Federal earth stations in the 1695–1710 MHz band. Because we anticipate that NTIA will endorse the revised list of 27 Protection Zones that WG1 reported to CSMAC on June 18, 2013, we propose to adopt US88, which would codify our agreement with NTIA.

172. We also propose to remove four unused allocations that apply to the 1695–1710 MHz band from the U.S. Table. First, we propose to delete the primary non-Federal meteorological-satellite service (space-to-Earth) allocation from the 1695–1710 MHz band, as we are not aware of any use in this segment of the band. Second, we propose to delete the primary Federal fixed service allocation from the 1700–1710 MHz band and associated footnote G118. Third, we propose to delete the primary meteorological aids (radiosonde) allocation from the 1695–1700 MHz band. Fourth, we propose to restrict the use currently authorized pursuant to international footnote 5.289 by moving its text into a U.S. footnote (tentatively numbered as US289) so that Earth exploration-satellite service applications, other than the meteorological-satellite service, can continue to be used in the 460–470 MHz and 1690–1695 MHz bands (but not the 1695–1710 MHz band) for space-to-Earth transmissions subject to not causing harmful interference. We seek comment on these proposals. Commenters may wish to discuss how any proposed allocation changes reflect Congress' priority for relocation over sharing for enabling commercial access to new spectrum, subject to technical and cost constraints.

173. *2020–2025 MHz.* Although we do not propose to modify the existing allocations in the 2020–2025 MHz band, we propose to remove footnote NG177 from the Allocation Table because Television Broadcast Auxiliary Stations have completed their transition from the 1990–2110 MHz band (120 MHz) to the 2025–2110 MHz band (85 MHz).

174. *2155–2180 MHz.* We propose several modifications that relate to the 2155–2180 MHz band. Specifically, we propose to update and combine footnotes NG153 and NG178, and to tentatively number the resultant footnote as NG41. Specifically, we propose to remove the first two sentences from footnote NG153 (because we are not proposing to add any additional allocations to the 2160–2165 MHz band); to revise the last sentence in footnote NG153 by updating ''Multipoint Distribution Service'' and ''emerging technologies'' to read ''Broadband Radio Service'' and ''Advanced Wireless Services,'' respectively; to highlight that all initial authorizations in the 2160–2180 MHz band applied for after January 16, 1992 were issued on a secondary basis; and to highlight the sunset provisions that apply to Part 101 fixed stations that were authorized on a primary basis. We propose to remove footnotes NG153, NG177, and NG178. The new footnote would be tentatively numbered NG41.

We also propose several non-substantive updates to the Table: (1) expand the cross reference to part 27 of the Commission's rules, which is shown as ''Wireless Communications (27)'' in the 1710–1755 MHz band, by displaying this cross reference in the 1695–1780 MHz band; and (2) revise the 1850–1980 MHz and 1980–2025 MHz bands in the Federal Table (which are not allocated for any Federal use) to read 1850–2000 MHz and 2000–2025 MHz. We also seek comment on any other allocation changes that would be necessary to effectuate any of the proposals contained in this *Notice of Proposed Rulemaking.*

175. *1.7 GHz Band.* In the sections above, we seek comment on possible service rules for non-Federal, mobile use of 1755–1780 MHz on a shared basis with Federal users. Furthermore, NTIA has suggested that commercial use be considered in the full 1755–1850 MHz

band. Our determination of whether such use should be permitted would be based on whether it serves the public interest, convenience, and necessity. We expect that the record in this proceeding will include recommendations from NTIA informed by the CSMAC process. In the event that the record supports a conclusion that non-Federal terrestrial service rules are appropriate for any of the 1.7 GHz band spectrum currently allocated for Federal use, what changes to the Table of Frequency Allocations would be necessary to implement such a conclusion in the 1.7 GHz band? Would different changes be required for different band segments and/or geographical locations? Could different portions of the band be allocated for shared or exclusive use?

176. *Other Bands, including 2025–2110 MHz and 5150–5250 MHz.* Throughout this notice, we seek comment on potential changes to Federal and non-Federal uses in several different bands. For instance, in paragraph 39 above, we seek comment on CTIA's proposal for commercial use of the 2095–2110 MHz band. NTIA notes that the Department of Defense has identified the 2025–2110 MHz band as the preferred option to relocate most of its operations and that the National Aeronautics and Space Administration and DoD have identified the 5150–5250 MHz band as a comparable destination band for their aeronautical mobile telemetry systems). NTIA adds that, ''[i]f it is determined that agencies will need to relocate any of these systems, the FCC and NTIA will need to identify replacement spectrum and take necessary steps to enable comparable capabilities.'' More recently, NTIA transmitted a proposal from DoD that would require increased Federal access to the 2025–2110 MHz band, but not the 5150–5250 MHz band. We therefore seek comment on any changes to the Table of Frequency Allocations that would be necessary to effectuate these and any other band reconfiguration concepts identified in this notice or proposed alternatives. We note that in contrast to non-Federal terrestrial allocations, where the issuance of service rules is typically required prior to the issuance of licenses, the addition of a Federal allocation to a band typically allows the authorization of new Federal assignments without an intermediate step. In other words, once the Federal allocation is in place, NTIA could immediately begin issuing spectrum assignments. Therefore, if the record should demonstrate the public interest in accommodating new Federal systems through allocation changes, we seek comment on whether, and if so how, any new Federal allocations be made contingent on relocation to accommodate new commercial licensees in the 1.7 GHz band.

177. *Statutory Requirements.* In discussing any changes to the Table of Frequency Allocations, we seek specific comment on any special statutory conditions that may apply. Two particular statutory provisions are of special relevance here.

178. First, Congress recognized the potential benefits of flexible spectrum allocations and amended the Communications Act in 1997 to add section 303(y), which grants the Commission the authority to adopt flexible allocations if certain factors are met. We seek comment on how best to read Section 303(y) in light of the subsequent mandate of section 6401 to ''allocate the spectrum described [therein] for commercial use.'' We also seek comment on whether any allocation changes, together with the proposed service rules, proposed or identified in this notice or by commenters would satisfy the four elements of section 303(y) of the Act.

179. Second, section 1062(b) of the National Defense Authorization Act for Fiscal Year 2000 requires that, if ''in order to make available for other use a band of frequencies of which it is a primary user, the Department of Defense is required to surrender use of such band of frequencies, the Department shall not surrender use of such band of frequencies until . . . the [NTIA], in consultation with the [FCC], identifies and makes available to the Department for its primary use, if necessary, an alternative band or bands of frequencies as a replacement for the band to be so surrendered.'' Furthermore, current law requires that ''the Secretary of Commerce, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff jointly certify . . . that such alternative band or bands provides comparable technical characteristics to restore essential military capability that will be lost as a result of the band of frequencies to be so surrendered.'' We seek comment on the extent to which any proposed allocation changes would meet these requirements.

IV. Order on Reconsideration (WT Docket Nos. 07–16 and 07–30)

180. In this *Order on Reconsideration,* we deny three petitions for reconsideration filed by McElroy Electronics Corporation (MEC), NetfreeUS, LLC (NetfreeUS), and Open Range Communications, Inc. (Open Range). All three petitions ask us to reverse the Commission's August 2007 decision that dismissed petitioners' March 2007 applications without prejudice. Those applications, which were filed before Congress passed the Spectrum Act, all sought authority to operate in the 2155–2175 MHz Band, which, as discussed above, is a portion of the 2155–2180 MHz Band that the Spectrum Act directed the Commission to allocate for commercial use and license through a system of competitive bidding subject to flexible-use service rules. We deny the petitions for the reasons set forth below.

181. *Background.* On May 5, 2006, M2Z filed an application to construct and operate a nationwide broadband wireless network in the 2155–2175 MHz band. In addition, M2Z filed a petition for forbearance on September 1, 2006, in which it requested that the Commission forbear from applying any rules, statutes, or policies that would block M2Z's application from being granted, including the competitive bidding provisions of section 309(j) of the Communications Act. On January 31, 2007, the Commission released a public notice stating that M2Z's application was accepted for filing pursuant to the Commission's general statutory authority under section 309 of the Communications Act—''rather than pursuant to an established framework of processing rules.'' However, the Commission stated that its ''action does not imply any judgment or view about the merits of the [M2Z] Application, nor does it preclude a subsequent dismissal of the Application as defective under existing rules or under future rules that the Commission may promulgate by notice and comment rulemaking.'' The Commission also noted that ''additional applications for spectrum in this band may be filed while the M2Z application is pending.''

182. On March 2, 2007, the Commission received several additional applications seeking authorization to use the 2155–2175 MHz Band, including the three petitioners' applications. Some applicants, including MEC, stated that the Commission should assign licenses for this band by competitive bidding. NetfreeUS asked the Commission to assign this spectrum without first conducting a rulemaking proceeding to consider service and licensing rules. In addition to its application, NetfreeUS filed a forbearance petition similar to the one submitted by M2Z.

183. On August 31, 2007, the Commission released the *Applications and Forbearance Petitions Order,* which is the decision that all three petitioners now ask us to reconsider. In that decision, the Commission, among other

things, dismissed without prejudice the applications filed by M2Z and the three petitioners here, and denied the M2Z and NetfreeUS petitions for forbearance. The Commission found that ''the public interest is best served by first seeking public comment on how the band should be used and licensed,'' rather than attempting to act on the applications in an *ad hoc* adjudicatory proceeding, outside the context of an auction and prior to the issuance of applicable rules. One applicant (M2Z) appealed the Commission's decision to the D.C. Circuit, while the three petitioners sought reconsideration before the agency. The D.C. Circuit denied the appeal, and we note that two of the petitioners here (Open Range and NetfreeUS) participated in the appeal as intervenors.

184. We now deny the three Petitions for Reconsideration. The Spectrum Act, which was enacted in February 2012, now expressly states that the Commission shall, among other things, allocate the frequencies between 2155 MHz and 2180 MHz and, through a system of competitive bidding, grant new initial licenses for the use of such spectrum pursuant to flexible-use service rules that the Commission has not yet adopted. To the extent that petitioners sought licenses that would not be subject to these requirements, we deny the petitions as inconsistent with the clear requirements of the Spectrum Act. As noted in our prior order, our dismissal of petitioners' applications was without prejudice, and they are free to file applications in accordance with the rules and procedures that we adopt to govern such required auctions.

185. Quite apart from the mandate of the Spectrum Act, for this portion of the AWS–3 band, the D.C. Circuit's *M2Z* opinion upheld the Commission's decision not to forbear from the relevant rules; it also recognized that licenses are typically processed after the Commission adopts service rules through a rulemaking proceeding. The D.C. Circuit also found that the Commission properly declined the request to license this band outside of the auction context.

186. Petitioners (two of whom, as we noted, were intervenors in that case) have provided no basis why the rationale for that decision with respect to M2Z's application should not apply with equal force to their follow-on applications. To the extent the petitioners are asking us to forbear, as M2Z did, we find that their petitions should be denied for the reasons set forth in the *Applications and Forbearance Petitions Order,* which was upheld by the *M2Z* court. To the extent petitioners maintain that the Commission erred by dismissing their applications on the grounds that such applications preceded our adoption of applicable rules, we reaffirm the Commission's 2007 decision that assignment of this spectrum without first conducting a rulemaking proceeding to consider service and licensing rules would not serve the public interest. That determination has been upheld by the *M2Z* court. The court held that, whether the Commission's ''consider[ation of] the public interest in deciding whether to forgo an auction . . . is characterized as an analysis under section 309 or a section 160 forbearance analysis matters little.'' The court concluded that ''the Commission reasonably performed every statutory duty at issue.'' That analysis applies with equal force to the three applications filed in response to the M2Z application, ''under the same standards,'' and with respect to their similar claims of public interest justification for dispensing with our established auction procedures.

187. We also find misplaced MEC's reliance on the *M2Z Public Notice* as one that ''bound [the Commission] to process the application'' in accordance therewith. That notice expressly stated that our acceptance of M2Z's application, for a service for which we had not yet established service rules, was *not* ''pursuant to an established framework of processing rules.'' Thus, MEC's assertions about the operation of cutoff rules that it asserts would otherwise be applicable here are beside the point. So, therefore, are the prior McElroy decisions. Moreover, those decisions would at most entitle MEC to be treated ''under the same standards'' as M2Z as a competing applicant, the dismissal of whose application has been upheld by the D.C. Circuit. They do not undermine ''the Commission's authority to change license allocation procedures mid-stream,'' even in cases where such action may ''disrupt[ ] expectations and alter[ ] the competitive balance among applicants,'' and they clearly do not prevent the Commission from deferring action on applications accepted for filing until it has first established a ''framework of processing rules'' and ''future rules'' to govern the service. Such applications would then be subject to this regulatory framework for the new service.

V. Procedural Matters

Disposition of Prior Proceedings

188. Before the National Broadband Plan was developed or the Spectrum Act was enacted, the Commission had begun rulemakings on how to license spectrum in the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz, 2155–2175 MHz, and 2175–2180 MHz bands. In 2004, the Commission sought comment on licensing and service rules for the 2020–2025 MHz and 2175–2180 MHz bands. In 2007, the Commission proposed service rules for 20 megahertz of unpaired spectrum at 2155–2175 MHz. After reviewing the comments and reply comments to the *2007 NPRM,* however, the Commission issued a *Further Notice of Proposed Rulemaking* in 2008 to seek additional comment on a range of issues including combining the upper ''J'' band at 2175–2180 MHz with the 2155–2175 MHz band to create a 25 MHz block of unpaired spectrum. As mentioned above, however, since the Commission released the *2008 FNPRM,* the National Broadband Plan was developed, the Spectrum Act was enacted, and wireless broadband technologies and the wireless industry have evolved to such an extent that, in our assessment, the development of a fresh record is warranted. As a result, we will adopt rules for AWS–3 based on the record developed in response to this *Notice of Proposed Rulemaking* (GN Docket No. 13–185). Accordingly, we are terminating the proceedings begun in 2004 and 2007 (WT Docket Nos. 04–356 and 07–195). We note that, in December 2012, the Commission similarly commenced a new proceeding to consider service rules for 1915–1920 MHz and 1995–2000 MHz.

Ex Parte Presentations

189. The proceedings shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying

the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Initial Regulatory Flexibility Analysis

190. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking (NPRM).* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines specified in the NPRM for comments. The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives, of the Proposed Rules

191. Wireless broadband is a key component of economic growth, job creation and global competitiveness because consumers are increasingly using wireless broadband services to assist them in their everyday lives. The explosive growth of wireless broadband services has created increased demand for wireless spectrum, which is expected to continue increasing, despite technological developments, such as LTE, that allow for more efficient spectrum use. Adoption of smartphones increased at a 50 percent annual growth rate in 2011, from 27 percent of U.S. mobile subscribers in December 2010 to nearly 42 percent in December 2011. Further, consumers have rapidly adopted the use of tablets, which were first introduced in January of 2010. By the end of 2012, it was estimated that one in five Americans—almost 70 million people—would use a tablet. Between 2011 and 2017, mobile data traffic generated by tablets is expected to grow at a compound annual growth rate of 100 percent. New mobile applications and services, such as high resolution video communications, are also using more bandwidth. For example, a single smartphone can generate as much traffic as thirty-five basic-feature mobile phones, while tablets connected to 3G and 4G networks use three times more data than smartphones over the cellular network. All of these trends, in combination, are creating an urgent need for more network capacity and, in turn, for suitable spectrum.

192. Today we propose rules for spectrum in the 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz, and 2155–2180 MHz bands that would make available significantly more spectrum for Advanced Wireless Services (AWS). We will refer to these four bands collectively as ''AWS–3.'' The additional spectrum for mobile use will help ensure that the speed, capacity, and ubiquity of the nation's wireless networks keeps pace with the skyrocketing demand for mobile service. This *Notice of Proposed Rulemaking* explores novel approaches to spectrum sharing between commercial and Federal operators. Where possible, we continue to make efforts to identify exclusive-use spectrum bands. In some circumstances, however, spectrum sharing may be the best path forward to expanding flexible spectrum access for innovative commercial uses. Today's action is another step in implementing the Congressional directive in Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act) to allocate for commercial use and grant new initial licenses for flexible use in certain bands by February 2015.

193. We propose to license the 2155–2180 MHz band for downlink/base station operations and to license the 2020–2025 MHz band for uplink/mobile operations. Both of these bands are currently allocated for non-Federal, commercial use and are in the Commission's inventory of bands available for licensing. We propose to allocate and license the 1755–1780 MHz band for uplink/mobile operations on a shared basis with Federal incumbents. We note that the record of the instant proceeding will be informed by recommendations of the National Telecommunications and Information Administration (NTIA), which has tasked the Commerce Spectrum Management Advisory Committee (CSMAC) with studying the potential for Federal/non-Federal spectrum sharing. NTIA anticipates receiving final reports from CSMAC working groups shortly. If NTIA endorses these reports, we will add them to the record and anticipate that commenters will discuss NTIA's forthcoming recommendations in comments, reply comments, or written *ex partes,* as appropriate, depending on the timing. If NTIA does not propose a workable framework for sharing the 1755–1780 MHz band, this proposal may not be feasible in the near term, in which case it may not be possible to adopt rules that allow commercial access to the band. We also propose to allocate and license the 1695–1710 MHz band for uplink/mobile operations on a shared basis with Federal incumbents within specified Protection Zones recommended by NTIA. Commercial operation outside of these Protection Zones would not require coordination with Federal incumbents.

194. For all of the AWS–3 spectrum within the scope of this NPRM, *i.e.,* spectrum for which we seek comment regarding service rules for non-Federal use, we propose to assign licenses by competitive bidding, offering five megahertz blocks that can be aggregated using Economic Areas (EAs) as the area for geographic licensing. We also seek comment on whether, and if so how, to pair any of the AWS–3 spectrum.

195. These service rules would make available additional spectrum for flexible use in accordance with the Spectrum Act. In proposing service rules for the band, which include technical rules to protect against harmful interference, licensing rules to establish geographic license areas and spectrum block sizes, and performance requirements to promote robust buildout, we advance toward enabling rapid and efficient deployment. We do so by proposing service, technical, assignment, and licensing rules for this spectrum under the Commission's part 27 rules, which generally govern flexible use terrestrial wireless service, except where special provisions are necessary to facilitate shared use with co-primary Federal operations.

196. Overall, these proposals are designed to provide for flexible use of this spectrum by allowing licensees to choose their type of service offerings, to encourage innovation and investment in mobile broadband use in this spectrum, and to provide a stable regulatory environment in which broadband deployment would be able to develop through the application of standard terrestrial wireless rules. The market-oriented licensing framework for these bands would ensure that this spectrum

is efficiently utilized and will foster the development of new and innovative technologies and services, as well as encourage the growth and development of broadband services, ultimately leading to greater benefits to consumers.

Legal Basis

197. The proposed action is authorized pursuant to sections 1, 2, 4(i), 201, 301, 302, 303, 307, 308, 309, 310, 316, 319, 324, 332, and 333 of the Communications Act of 1934, as amended, and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 1122–96, 126 Stat. 156, 47 U.S.C. 151, 152, 154(i), 201, 301, 302a, 303, 307, 308, 309, 310, 316, 319, 324, 332, 333, 1403, 1404, and 1451.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

198. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities to which the proposed rules and policies will apply, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

199. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards that encompass entities that could be directly affected by the proposals under consideration. Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA. Additionally, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2007 indicate that there were 89,527 governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,761 entities may qualify as ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

200. *Wireless Telecommunications Carriers (except satellite).* The *NPRM* proposes to apply various Commission policies and rules to service in the AWS–3 bands. We cannot predict who may in the future become a licensee or lease spectrum for use in these bands. In general, any wireless telecommunications provider would be eligible to become an Advanced Wireless Service licensee or lease spectrum from an AWS–3 licensee. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers. The size standard for that category is that a business is small if it has 1,500 or fewer employees. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 11,163 firms that operated for the entire year. Of this total, 10,791 firms had employment of 999 or fewer employees and 372 had employment of 1000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

202. This *NPRM* proposes or seeks comment on a number of possible rule changes that could affect reporting, recordkeeping and other compliance requirements that would apply to all entities in the same manner. These include requirements related to Federal/non-Federal sharing and coordination, technical rules, license term, performance requirements, renewal criteria, permanent discontinuance of operations, other operating requirements and non-Federal relocation and cost sharing. The Commission believes that applying the same rules equally to all entities in this context promotes fairness. The Commission does not believe that the costs and/or administrative burdens associated with the rules will unduly burden small entities. The revisions the Commission adopts should benefit small entities by giving them more information, more flexibility, and more options for gaining access to valuable wireless spectrum.

203. The Commission proposes to require any applicants for licenses of AWS–3 Block spectrum to file license applications using the Commission's automated Universal Licensing System (ULS). ULS is an online electronic filing system that also serves as a powerful information tool that enables potential licensees to research applications, licenses, and antennae structures. It also keeps the public informed with weekly public notices, FCC rulemakings, processing utilities, and a telecommunications glossary.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives

204. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

205. The proposal in the *NPRM* to license the AWS–3 spectrum under Economic Areas (EA) geographic size licenses will provide regulatory parity with other AWS bands that are licensed on an EA basis, such as AWS–1 B and C block licenses. Additionally, assigning AWS–3 in EA geographic areas would allow AWS–3 licensees to make adjustments to suit their individual needs. EA license areas are small enough to provide spectrum access opportunities for smaller carriers. EA license areas also nest within and may be aggregated up to larger license areas. Therefore, the benefits and burdens resulting from assigning AWS–3 spectrum in EA license areas are equivalent for small and large businesses. Depending on the licensing mechanism we adopt, licensees may adjust their geographic coverage through

auction or, as we discuss in paragraphs 139–143 *above,* through secondary markets. This proposal should enable AWS–3 providers, or any entities, whether large or small, providing service in other AWS bands to more easily adjust their spectrum to build their networks pursuant to individual business plans. As a result, we believe the ability of licensees to adjust spectrum holdings will provide an economic benefit by making it easier for small entities to acquire spectrum or access AWS spectrum.

206. The technical rules proposed in paragraphs 83–112 above will protect entities operating in nearby spectrum bands from harmful interference, which may include small entities. In the proposed band plan, AWS–3 spectrum would be licensed in five-megahertz blocks using EA licenses. Interference must therefore be considered between adjacent AWS–3 blocks, *e.g.,* between 2155–2160 MHz and 2160–2165 MHz, as well as between AWS–3 operations in the 2155–2180 MHz band and services in the adjacent AWS–1 and AWS–4 bands. Similarly, AWS–3 mobiles could interfere with proximate Federal or non-Federal operations in the same or nearby bands.

207. The *discussion* in paragraphs 148–158 above pertaining to how the AWS–3 licenses will be assigned includes proposals to assist small entities in competitive bidding. We propose that the Commission would conduct any auction for licenses for spectrum in the 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz, and 2155–2180 MHz bands in conformity with the general competitive bidding rules set forth in part 1, subpart Q, of the Commission's rules, and substantially consistent with the competitive bidding procedures that have been employed in previous auctions. Specifically, we propose to employ the part 1 rules governing competitive bidding design, designated entity preferences, unjust enrichment, application and payment procedures, reporting requirements, and the prohibition on certain communications between auction applicants. Specifically, small entities will benefit from the proposal to provide small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent. Providing small businesses and very small businesses with bidding credits will provide an economic benefit to small entities by making it easier for small entities to acquire spectrum or access to spectrum in these bands. The Commission also seeks comment on whether the small business provisions we propose today are sufficient to promote participation by businesses owned by minorities and women, as well as rural telephone companies.

208. In para. 115 above, the Commission, consistent with the Spectrum Act's mandate to license under flexible use service rules, proposes service rules that permit a licensee to employ the spectrum for any non-Federal use permitted by the United States Table of Frequency Allocations, subject to the Commission's part 27 flexible use and other applicable rules (including service rules to avoid harmful interference). Thus, we propose that the spectrum may be used for any fixed or mobile service that is consistent with the allocations for the band. The technical rules we propose or seek comment on will allow licensees of AWS–3 spectrum to operate while also protecting licensees of nearby spectrum, some of whom are small entities, from harmful interference.

209. Consistent with the proposed flexible use of the AWS–3 band, we also propose licensing the spectrum under the flexible regulatory framework of part 27 of our rules. For each frequency band under its umbrella, part 27 defines permissible uses and any limitations thereon, and specifies basic licensing requirements. We believe that our part 27 rules are consistent with the Spectrum Act's requirement for ''flexible-use service rules.''

210. We propose to permit partitioning and disaggregation by licensees in the AWS–3 band. These secondary market rules apply equally to all entities, whether small or large. We believe the opportunity to enter into secondary market agreements for AWS–3 spectrum will provide an economic benefit to all entities, whether large or small Therefore, the benefits and burdens resulting from secondary market agreements for AWS–3 spectrum are equivalent for small and large businesses. Further, in the *NPRM,* we propose to provide small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent, as set forth in the standardized schedule in part 1 of our rules.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

VI. Ordering Clauses

211. Accordingly, *it is ordered*, pursuant to sections 1, 2, 4(i), 10, 201, 301, 302, 303, 307, 308, 309, 310, 316, 319, 324, 332, and 333 of the Communications Act of 1934, as amended, and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156, 47 U.S.C. 151, 152, 154(i), 160, 201, 301, 302a, 303, 307, 308, 309, 310, 316, 319, 324, 332, 333, 1403, 1404, and 1451, that this *Notice of Proposed Rulemaking* is hereby *adopted*.

212. *It is further ordered* that notice is hereby given of the proposed regulatory changes described in this notice and that comment is sought on these proposals.

213. *It is further ordered* that the Initial Regulatory Flexibility Analysis is adopted.

214. *It is further ordered* that WT Docket Nos. 04–356, 07–16, 07–30, and 07–195 are terminated.

215. *It is further ordered* that the Petitions for Reconsideration filed by McElroy Electronics Corp., Netfree US, LLC, and Open Range Communications Inc., on October 1, 2007, are denied.

216. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 2 and 27

Communications common carriers, Radio.

Federal Communications Commission.

Gloria Miles,

Federal Register Liaison.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 2 and 27 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

■ a. In the list of United States (US) Footnotes, footnotes US88, and US289 are added to read as follows, and

■ b. In the list of non-Federal Government (NG) Footnotes, footnote NG41 is added to read as follows and footnotes NG153, NG177, and NG178 are removed.

§ 2.106 Table of Frequency Allocations.

* * * * *

United States (US) Footnotes

US88 In the band 1695–1710 MHz, Federal earth stations in the meteorological-satellite service (space-to-Earth) shall be afforded protection from harmful interference at the 27 sites listed below:

Earth Station Location	Latitude	Longitude	Maximum Protection Distance (km)
Wallops Island, Virginia	375645 N	752745 W	30
Fairbanks, Alaska	645822 N	1473002 W	20
Suitland, Maryland	385107 N	765612 W	98
Miami, Florida	254405 N	800945 W	51
Hickam AFB, Hawaii	211918 N	1575730 W	28
Sioux Falls, South Dakota	434409 N	963733 W	42
Cincinnati, Ohio	390610 N	843035 W	32
Rock Island, Illinois	413104 N	903346 W	19
St. Louis, Missouri	383526 N	901225 W	34
Vicksburg, Mississippi	322047 N	905010 W	16
Omaha, Nebraska	412056 N	955734 W	30
Sacramento, California	383550 N	1213234 W	55
Elmendorf AFB, Alaska	611408 N	1495531 W	98
Andersen AFB, Guam	133452 N	1445528 E	42
Monterey, California	363534 N	1215120 W	76
Stennis Space Center, Mississippi	302123 N	893641 W	57
Twenty-Nine-Palms, California	341746 N	1160944 W	80
Yuma, Arizona	323924 N	1143622 W	95
Barrow, Alaska	711922 N	1563641 W	35
Boise, Idaho	433542 N	1161349 W	39
Boulder, Colorado	395926 N	1051551W	2
Columbus Lake, Mississippi	333204 N	883006 W	3
Fairmont, West Virginia	392602 N	801133 W	4
Guaynabo, Puerto Rico	182526 N	660650 W	48
Kansas City, Missouri	391640 N	943944 W	40
Knoxville, Tennessee	355758 N	835513 W	50
Norman, Oklahoma	351052 N	972621 W	3

Note: The year 2030 is the projected date when the last legacy space station is expected to cease operations in the band 1695–1710 MHz. Stations at the 27 locations must be protected until legacy operations in the band actually cease operations.

* * * * *

US289 Earth exploration-satellite service applications, other than the meteorological-satellite service, may also be used in the bands 460–470 MHz and 1690–1695 MHz for space-to-Earth transmissions subject to not causing harmful interference to stations operating in accordance with the Table of Frequency Allocations.

* * * * *

Non-Federal Government (NG) Footnotes

NG41 In the 2160–2180 MHz band, the following provisions shall apply to grandfathered stations in the fixed service:

(a) Stations operating pursuant to licenses applied for after January 16, 1992 in the Common Carrier Fixed Point-to-Point Microwave Service and in the 2160–2162 MHz sub-band of the Broadband Radio Service may operate on a secondary basis to the Advanced Wireless Service (AWS).

(b) Fixed stations in the Common Carrier Fixed Point-to-Point Microwave Service that were authorized on a primary basis will retain that status unless and until an AWS licensee requires use of the spectrum. AWS licensees are required to pay relocation costs until ten years after the first AWS license is issued in the band.

* * * * *

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 3. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, and 337, unless otherwise noted.

■ 4. Section 27.1 is amended by adding paragraphs (b)(11) through (14) to read as follows:

§ 27.1 Basis and purpose.

* * * * *

(b) * * *

(11) 1695–1710 MHz.

(12) 1755–1780 MHz.

(13) 2020–2025 MHz.

(14) 2155–2180 MHz.

* * * * *

■ 5. Section 27.5 is amended by revising paragraph (h) introductory text and adding paragraph (h)(3) to read as follows:

§ 27.5 Frequencies.

* * * * *

(h) *1710–1755 MHz, 2110–2155 MHz, 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz, and 2155–2180 MHz bands.* The following frequencies are available for licensing pursuant to this part in the 1710–1755 MHz, 2110–2155 MHz, 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz, and 2155–2180 MHz bands:

* * * * *

(3) Channel blocks of 5 megahertz each are available for assignment as follows:

Block G: reserved
Block J1: 1695–1700 MHz
Block J2: 1700–1705 MHz
Block J3: 1705–1710 MHz
Block K1: 1755–1760 MHz
Block K2: 1760–1765 MHz
Block K3: 1765–1770 MHz
Block K4: 1770–1775 MHz
Block K5: 1775–1780 MHz
Block L: 2020–2025 MHz
Block M1: 2155–2160 MHz
Block M2: 2160–2165 MHz
Block M3: 2165–2170 MHz
Block M4: 2170–2175 MHz
Block M5: 2175–2180 MHz

* * * * *

■ 6. Section 27.6 is amended by adding paragraph (j) to read as follows:

§ 27.6 Service areas.

* * * * *

(j) *1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz and 2155–2180 MHz bands.* AWS service areas for the 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz and 2155–2180 MHz bands are based on Economic Areas (EAs) as defined in paragraph (a) of this section.

■ 7. Section 27.13 is amended by adding paragraph (j) to read as follows:

§ 27.13 License period.

* * * * *

(j) *1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz, and 2155–2180 MHz bands.* Authorizations for the 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz, and 2155–2180 MHz bands will have a term not to exceed ten years from the date of issuance or renewal.

■ 8. Section 27.14 is amended by revising the first sentence of paragraphs (a), (f), and (k), and adding paragraph (r) to read as follows:

§ 27.14 Construction requirements; Criteria for renewal.

(a) AWS and WCS licensees, with the exception of WCS licensees holding authorizations for Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, Block C, C1, or C2 in the 746–757 MHz and 776–787 MHz bands, Block D in the 758–763 MHz and 788–793 MHz bands, Block A in the 2305–2310 MHz and 2350–2355 MHz bands, Block B in the 2310–2315 MHz and 2355–2360 MHz bands, Block C in the 2315–2320 MHz band, and Block D in the 2345–2350 MHz band, and with the exception of licensees holding AWS authorizations in the 1695–1710 MHz, 1755–1780 MHz, 2000–2020 MHz, 2020–2025 MHz, 2155–2180 MHz, and 2180–2200 MHz bands, must, as a performance requirement, make a showing of ''substantial service'' in their license area within the prescribed license term set forth in § 27.13. * * * * * * * * *

(f) Comparative renewal proceedings do not apply to WCS licensees holding authorizations for the 698–746 MHz, 747–762 MHz, and 777–792 MHz bands and licensees holding AWS authorizations for the 1695–1710 MHz, 1755–1780 MHz, 2000–2020 MHz, 2020–2025 MHz, 2155–2180 MHz, and 2180–2200 MHz bands. * * * * * * * * *

(k) Licensees holding WCS or AWS authorizations in the spectrum blocks enumerated in paragraphs (g), (h), (i), (q), or (r) of this section, including any licensee that obtained its license pursuant to the procedures set forth in paragraph (j) of this section, shall demonstrate compliance with performance requirements by filing a construction notification with the Commission, within 15 days of the expiration of the applicable benchmark, in accordance with the provisions set forth in § 1.946(d) of this chapter. * * * * * * * * *

(r) The following provisions apply to any licensee holding an AWS authorization in the 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz, and 2155–2180 MHz bands:

(1) An AWS licensee in the bands covered by paragraph (r) of this section shall provide signal coverage and offer service within four (4) years from the date of the initial license to at least forty (40) percent of the total population in each service area that it has licensed in the 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz, and 2155–2180 MHz bands (''AWS Interim Buildout Requirement'').

(2) An AWS licensee in the bands covered by paragraph (r) of this section shall provide signal coverage and offer service within ten (10) years from the date of the initial license to at least seventy-five (75) percent of the population in each of its licensed areas in the 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz, and 2155–2180 MHz bands (''AWS Final Buildout Requirement'').

(3) If an AWS licensee in the bands covered by this paragraph fails to establish that it meets the AWS Interim Buildout Requirement for a particular licensed area, then the AWS Final Buildout Requirement (in paragraph (r) of this section) and the AWS license term (as set forth in § 27.13(j)) for each license area in which it fails to meet the AWS Interim Buildout Requirement shall be accelerated by two years (from ten to eight years).

(4) If an AWS licensee fails to establish that it meets the AWS Final Buildout Requirement for particular licensed areas in the 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz, and 2155–2180 MHz bands, its authorization for each license area in which it fails to meet the AWS Final Buildout Requirement shall terminate automatically without Commission action. The AWS licensee that has its license automatically terminate under this paragraph (r) will be ineligible to regain it if the Commission makes the license available at a later date.

(5) To demonstrate compliance with these performance requirements, licensees shall use the most recently available U.S. Census Data at the time of measurement and shall base their measurements of population served on areas no larger than the Census Tract level. The population within a specific Census Tract (or other acceptable identifier) will be deemed served by the licensee only if it provides signal coverage to and offers service within the specific Census Tract (or other acceptable identifier). To the extent the Census Tract (or other acceptable identifier) extends beyond the boundaries of a license area, a licensee with authorizations for such areas may include only the population within the Census Tract (or other acceptable identifier) towards meeting the performance requirement of a single, individual license.

(6) An applicant for renewal of a geographic-area authorization in the 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz, and 2155–2180 MHz service bands must make a renewal showing, independent of its performance requirements, as a condition of renewal. The showing must include a detailed description of the applicant's provision of service during the entire license period and address:

(i) The level and quality of service provided by the applicant (*e.g.,* the population served, the area served, the number of subscribers, the services offered);

(ii) The date service commenced, whether service was ever interrupted, and the duration of any interruption or outage;

(iii) The extent to which service is provided to rural areas;

(iv) The extent to which service is provided to qualifying tribal land as defined in § 1.2110(f)(3)(i) of this chapter; and

(v) Any other factors associated with the level of service to the public.

■ 9. Section 27.15 is amended by revising the first sentence in paragraph (d)(1)(i); adding paragraph (d)(1)(iv); revising the first sentence in paragraph (d)(2)(i), and adding paragraph (d)(2)(iv) to read as follows:

§ 27.15 Geographic partitioning and spectrum disaggregation.

* * * * *

(d) * * *

(1) * * *

(i) Except for WCS licensees holding authorizations for Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, Blocks C, C1, or C2 in the 746–757 MHz and 776–787 MHz bands, or Block D in the 758–763 MHz and 788–793 MHz bands; and for licensees holding AWS authorizations in the 1695–1710 MHz, 1755–1780 MHz,

2000–2020 MHz, 2020–2025 MHz, 2155–2180 MHz, and 2180–2200 MHz bands the following rules apply to WCS and AWS licensees holding authorizations for purposes of implementing the construction requirements set forth in § 27.14. * * * * * * * * *

(iv) For licensees holding AWS authorizations in the 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz, and 2155–2180 MHz bands, the following rules apply for purposes of implementing the construction requirements set forth in § 27.14. Each party to a geographic partitioning must individually meet any service-specific performance requirements (*i.e.,* construction and operation requirements). If a partitioner or partitionee fails to meet any service-specific performance requirements on or before the required date, then the consequences for this failure shall be those enumerated in § 27.14(r).

(2) * * *

(i) Except for WCS licensees holding authorizations for Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, Blocks C, C1, or C2 in the 746–757 MHz and 776–787 MHz bands, or Block D in the 758–763 MHz and 788–793 MHz bands; and for licensees holding AWS authorizations in the 1695–1710 MHz, 1755–1780 MHz, 2000–2020 MHz, 2020–2025 MHz, 2155–2180 MHz, and 2180–2200 MHz bands; the following rules apply to WCS and AWS licensees holding authorizations for purposes of implementing the construction requirements set forth in § 27.14. * * * * * * * * *

(iv) For licensees holding AWS authorizations in the 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz, and 2155–2180 MHz bands, the following rules apply for purposes of implementing the construction requirements set forth in § 27.14. Each party to a spectrum disaggregation must individually meet any service-specific performance requirements (*i.e.,* construction and operation requirements). If a disaggregator or a disagregatee fails to meet any service-specific performance requirements on or before the required date, then the consequences for this failure shall be those enumerated in § 27.14(r).

■ 10. Section 27.18 is added to read as follows:

§ 27.18 Discontinuance of service in the 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz, and 2155–2180 MHz bands.

(a) *Termination of Authorization.* A licensee's AWS authorization in the 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz, and 2155–2180 MHz bands will automatically terminate, without specific Commission action, if it permanently discontinues service after meeting the AWS Interim Buildout Requirement specified in § 27.14.

(b) For licensees with common carrier or non-common carrier regulatory status that hold AWS authorizations in the 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz, and 2155–2180 MHz bands, permanent discontinuance of service is defined as 180 consecutive days during which a licensee does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the licensee. For licensees with private, internal regulatory status that hold AWS authorizations in the 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz, and 2155–2180 MHz bands, permanent discontinuance of service is defined as 180 consecutive days during which a licensee does not operate.

(c) *Filing Requirements.* A licensee of the 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz, and 2155–2180 MHz bands that permanently discontinues service as defined in this section must notify the Commission of the discontinuance within 10 days by filing FCC Form 601 or 605 requesting license cancellation. An authorization will automatically terminate, without specific Commission action, if service is permanently discontinued as defined in this section, even if a licensee fails to file the required form requesting license cancellation.

■ 11. Section 27.50 is amended by revising paragraph (d) introductory text and paragraphs (d)(1), (2), (4) and (7) to read as follows:

§ 27.50 Power limits and duty cycle.

* * * * *

(d) The following power and antenna height requirements apply to stations transmitting in the 1695–1710 MHz, 1710–1755 MHz, 1755–1780 MHz, 2000–2020 MHz, 2020–2025 MHz, 2110–2155 MHz, 2155–2180 MHz and 2180–2200 MHz bands:

(1) The power of each fixed or base station transmitting in the 2110–2155 MHz, 2155–2180 MHz, or 2180–2200 MHz bands and located in any county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, is limited to:

(i) An equivalent isotropically radiated power (EIRP) of 3280 watts when transmitting with an emission bandwidth of 1 MHz or less;

(ii) An EIRP of 3280 watts/MHz when transmitting with an emission bandwidth greater than 1 MHz.

(2) The power of each fixed or base station transmitting in the 2110–2155 MHz, 2155–2180 MHz, or 2180–2200 MHz bands and situated in any geographic location other than that described in paragraph (d)(1) of this section is limited to:

(i) An equivalent isotropically radiated power (EIRP) of 1640 watts when transmitting with an emission bandwidth of 1 MHz or less;

(ii) An EIRP of 1640 watts/MHz when transmitting with an emission bandwidth greater than 1 MHz.

* * * * *

(4) Mobile and portable (hand-held) stations operating in the 1695–1710 MHz, 1710–1755 MHz, and 1755–1780 bands are limited to 100 milliwatts (20 dBm) EIRP. Mobile and portable stations operating in this band must employ a means for limiting power to the minimum necessary for successful communications. Mobile and portable (hand-held) stations in the 1695–1710 MHz and 1755–1780 MHz bands are permitted to transmit only when controlled by an associated base station.

* * * * *

(7) Fixed, mobile, and portable (hand-held) stations operating in the 2000–2020 MHz and 2020–2025 MHz bands are limited to 2 watts EIRP, except that the total power of any portion of an emission that falls within the 2000–2005 MHz band may not exceed 5 milliwatts. A licensee of AWS–4 authority may enter into private operator-to-operator agreements with all 1995–2000 MHz licensees to operate in 2000–2005 MHz at power levels above 5 milliwatts EIRP; except the total power of the AWS–4 mobile emissions may not exceed 2 watts EIRP.

* * * * *

■ 12. Section 27.53 is amended by revising paragraph (h)(1) to read as follows:

§ 27.53 Emission limits.

* * * * *

(h) *AWS emission limits*—(1) *General protection levels.* Except as otherwise specified below, for operations in the 1695–1710 MHz, 1710–1755 MHz, 1755–1780 MHz, 2000–2020 MHz, 2020–2025MHz, 2110–2155 MHz, 2155–2180 MHz, and 2180–2200 bands, the power of any emission outside a licensee's frequency block shall be attenuated below the transmitter power

(P) in watts by at least 43 + 10 $\log_{10}$ (P) dB.

* * * * *

■ 13. Section 27.55 is amended by revising paragraph (a) introductory text and (a)(1) to read as follows:

§ 27.55 Power strength limits.

(a) *Field strength limits.* For the following bands, the predicted or measured median field strength at any location on the geographical border of a licensee's service area shall not exceed the value specified unless the adjacent affected service area licensee(s) agree(s) to a different field strength. This value applies to both the initially offered service areas and to partitioned service areas.

(1) 2110–2155, 2155–2180, 2180–2200, 2305–2320, and 2345–2360 MHz bands: 47 dBμV/m.

* * * * *

■ 14. Section 27.57(c) is revised to read as follows:

§ 27.57 International coordination.

* * * * *

(c) Operation in the 1695–1710 MHz, 1710–1755 MHz, 1755–1780 MHz, 2000–2020 MHz, 2020–2025 MHz, 2110–2155 MHz, and 2180–2200 MHz bands is subject to international agreements with Mexico and Canada.

■ 15. The heading of subpart L in part 27 is revised as follows:

Subpart L—1695–1710 MHz, 1710–1755 MHz, 1755–1780 MHz, 2020–2025 MHz, 2110–2155 MHz, 2155–2180 MHz, 2180–2200 MHz Bands

■ 16. Section 27.1105 is added to read as follows:

§ 27.1105 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz, and 2155–2180 MHz bands subject to competitive bidding.

Mutually exclusive initial applications for 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz, and 2155–2180 MHz band licenses are subject to competitive bidding. The general competitive bidding procedures set forth in 47 CFR Part 1, subpart Q will apply unless otherwise provided in this subpart.

■ 17. Section 27.1106 is added to read as follows:

§ 27.1106 Designated entities in the 1695–1710 MHz, 1755–1780 MHz, 2020–2025 MHz and 2155–2180 MHz bands.

Eligibility for small business provisions:

(a) *Small business.* (1) A small business is an entity that, together with its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship, has average gross revenues not exceeding $40 million for the preceding three years.

(2) A very small business is an entity that, together with its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship, has average gross revenues not exceeding $15 million for the preceding three years.

(b) *Bidding credits.* A winning bidder that qualifies as a small business as defined in this section or a consortium of small businesses may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter. A winning bidder that qualifies as a very small business as defined in this section or a consortium of very small businesses may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter.

■ 18. Section 27.1131 is revised to read as follows:

§ 27.1131 Protection of Part 101 operations.

All AWS licensees, prior to initiating operations from any base or fixed station, must coordinate their frequency usage with co-channel and adjacent-channel incumbent, part 101 fixed-point-to-point microwave licensees operating in the 2110–2180 MHz band. Coordination shall be conducted in accordance with the provisions of § 24.237 of this chapter.

■ 19. Section 27.1134 is amended by revising paragraph (c) and adding paragraph (f) to read as follows:

§ 27.1134 Protection of Federal Government operations.

* * * * *

(c) *Protection of Federal operations in the 1675–1710 MHz band.* (1) *Protection Zones.* Prior to operating a base station within the radius of operation of a facility protected pursuant to Table [X] (''Protection Zones'') of this section that permits mobile or portable stations to transit in the 1695–1710 MHz band, licensees must successfully coordinate said base station operation with Federal Government entities operating meteorological satellite Earth-station receivers in the 1695–1710 MHz band listed in Table [X]. Coordination must be implemented in accordance with methodologies recommended by NTIA (CSMAC WG1 Final Report).

(i) *Interference:* If Federal users at a protected facility receive harmful interference, AWS licensees must, upon notification, modify the stations' location and/or technical parameters as necessary to eliminate the interference.

(ii) *Point of contact:* Licensees in the 1695–1710 MHz band must provide and maintain a point of contact at all times so that immediate contact can be made should interference against protected Federal sites occur.

(iii) *Procedures for coordination of operations within the Protection Zones:*

[To be determined. For an example, see The Federal Communications Commission and the National Telecommunications and Information Administration—Coordination Procedures in the 1755–1780 MHz Band, WTB Docket No. 02–353, *Public Notice,* 71 FR 28696, May 17, 2006).]

(iv) *Operation outside of Protection Zones.* Non-Federal operations outside of the protection zones are permitted without coordination. Such operations may not cause harmful interference to the Federal sites listed in Table X.

(2) *Requirements for licensees operating in the 1710–1755 MHz band.* AWS licensees operating fixed stations in the 1710–1755 MHz band, if notified that such stations are causing interference to radiosonde receivers operating in the Meteorological Aids Service in the 1675–1700 MHz band or a meteorological-satellite earth receiver operating in the Meteorological-Satellite Service in the 1675–1710 MHz band, shall be required to modify the stations' location and/or technical parameters as necessary to eliminate the interference.

* * * * *

(f) *Protection of Federal operations in the 1755–1780 MHz band.* The Federal Government operates communications systems in the 1755–1780 MHz band. See 47 CFR 2.106, US note 89. Licensees in the 1755–1780 MHz band must accept any interference received from these Federal operations and are excluded from certain areas (Exclusion Zones), subject to successful coordination in other areas (Protection Zones), and permitted without Federal coordination elsewhere subject to paragraph (b) of this section. The Exclusion Zones are set forth in Table [Y] and the Protection Zones are set forth in Table [Z].

(1) *Exclusion Zones.* 1755–1780 MHz band licensees may not operate in any of the Exclusion Zones defined by the radii of operation specified in Table [Y] of this section.

(2) *Protection Zones.* Prior to operating a base station within the radius of operation of a facility protected pursuant to Table [Z] (''Protection Zones'') of this section that permits mobile or portable stations to transmit in the 1755–1780 MHz band, licensees must successfully coordinate said base station operation with Federal Government entities operating facilities identified in Table [Z]. Coordination

must be implemented in accordance with methodologies recommended by NTIA (CSMAC [TBD] Final Report).

(i) *Interference:* If Federal operations identified in 47 CFR 2.106, U.S. note 89 receive harmful interference, 1755–1780 MHz licensees must, upon notification, modify the stations' location and/or technical parameters as necessary to eliminate the interference.

(ii) *Point of contact.* Licensees in the 1755–1780 MHz band must provide and maintain a point of contact at all times so that immediate contact can be made should interference against protected Federal sites occur.

(iii) *Procedures for coordination of operations within the Protection Zones:*

[To be determined. For an example, see The Federal Communications Commission and the National Telecommunications and Information Administration—Coordination Procedures in the 1755–1780 MHz Band, WTB Docket No. 02–353, *Public Notice,* 71 FR 28696, May 17, 2006.]

(3) *Operation outside of Protection Zones.* Non-Federal operations outside of the protection zones are permitted without coordination. Such operations may not cause harmful interference to the Federal operations in 47 CFR 2.106, US note 89.

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Part VII

Federal Communications Commission

47 CFR Part 54
Modernizing the E-Rate Program for Schools and Libraries; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 13–184; FCC 13–100]

Modernizing the E-Rate Program for Schools and Libraries

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) initiates a thorough review and update of the E-rate program (more formally known as the schools and libraries universal service support mechanism), building on reforms adopted in 2010 as well as the Commission's reforms of each of the other universal service programs. The Commission takes this step because there is a growing chorus of calls to build on the success of the E-rate program by modernizing the program and adopting clear forward-looking goals aimed at efficiently and effectively ensuring high-capacity connections to schools and libraries nationwide.

DATES: Comments are due on or before September 16, 2013, and reply comments are due on or before October 16, 2013. 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: You may submit comments, identified by WC Docket No. 13–184, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/*. Follow the instructions for submitting comments.
- *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: Regina Brown, Wireline Competition Bureau, (202) 418–0792, or James Bachtell, Wireline Competition Bureau, (202) 418–2694, or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rulemaking (NPRM) in WC Docket No. 13–184, FCC 13–100, adopted July 19, 2013, and released July 23, 2013. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com*. It is also available on the Commission's Web site at *http://www.fcc.gov*.

We invite comment on the issues and questions set forth in the NPRM and IRFA contained herein. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on this NPRM by September 16, 2013 and may file reply comments by October 16, 2013. *All filings related to this NPRM shall refer to WC Docket No. 13–184.* Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *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.
- 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).

In addition, one copy of each paper filing must be sent to each of the following: (1) the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554; Web site: *www.bcpiweb.com;* phone: (800) 378–3160; (2) Lisa Hone, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 6–A326, Washington, DC 20554; email: *Lisa.Hone@fcc.gov*; and (3) Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 5–A452, Washington, DC 20554; email: *Charles.Tyler@fcc.gov*.

Filing and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI through its Web site: *www.bcpi.com*, by email at *fcc@bcpiweb.com*, by telephone at (202) 488–5300 or (800) 378–3160 or by facsimile at (202) 488–5563.

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with § 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the NPRM in order to facilitate or internal review process.

For additional information on this proceeding, contact Regina Brown at (202) 418–0792 or James Bachtell at (202) 418–2694 in the Telecommunications Access Policy Division, Wireline Competition Bureau.

I. Introduction

1. In this Notice of Proposed Rulemaking (NPRM), we initiate a thorough review and update of the E-rate program (more formally known as the schools and libraries universal service support mechanism), building on reforms adopted in 2010 as well as the Commission's reforms of each of the other universal service programs. During the past 15 years, the financial support provided by the E-rate program has helped revolutionize schools' and libraries' access to modern communications networks. E-rate-supported Internet connections are crucial for learning and for the operation of modern schools and libraries. Increasingly, schools and libraries require high-capacity broadband connections to take advantage of digital learning technologies that hold the promise of substantially improving educational experiences and expanding opportunity for students, teachers, parents and whole communities. As a result, there is a growing chorus of calls to build on the success of the E-rate program by modernizing the program and adopting clear forward-looking goals aimed at efficiently and effectively ensuring high-capacity connections to schools and libraries nationwide.

2. E-rate has been instrumental in ensuring our schools and libraries have the connectivity necessary to enable students and library patrons to participate in the digital world. When Congress passed the Telecommunications Act of 1996 authorizing the creation of the E-rate program, only 14 percent of classrooms had access to the Internet, and most schools with Internet access (74 percent) used dial-up Internet access. By 2005, nearly all schools had access to the Internet, and 94 percent of all instructional classrooms had Internet access. Similarly, by 2006, nearly all public libraries were connected to the Internet, and 98 percent of them offered public Internet access. The challenge we now face is modernizing the program to ensure that our nation's students and communities have access to high-capacity broadband connections that support digital learning while making sure that the program remains fiscally responsible and fair to the consumers and businesses that pay into the universal service fund (USF or Fund).

3. In schools, high-capacity broadband connectivity, combined with cutting-edge educational tools and content, is transforming learning by providing customized teaching opportunities, giving students and teachers access to interactive content, and offering assessments and analytics that provide students, their teachers, and their parents, real-time information about student performance. High-capacity broadband is also expanding the boundaries of our schools by allowing for interactive and collaborative distance learning applications, providing all students—from rural communities to inner cities—access to high-quality courses and expert instruction, no matter how small a school they attend or how far they live from experts in their field of study. High-capacity broadband platforms and the educational options they enable are particularly crucial for providing all students, in both rural and urban communities, customized and personalized education and access to cutting-edge learning tools in the areas of science, technology, engineering and math (STEM) education, thus preparing our students to compete in the global economy.

4. In libraries, high-capacity broadband access provides patrons the ability to search for and apply for jobs; learn new skills; interact with federal, state, local, and Tribal government agencies; search for health-care and other crucial information; make well-informed purchasing decisions; engage in life-long learning; and stay in touch with friends and family. In Idaho, for example, the state agency's Libraries Linking Idaho database portal, available in all Idaho libraries, provides essential resources to library patrons such as an online video encyclopedia and a program to provide tools for test preparation and skill-building. Additionally, the Chicago Public Library's YOUMedia and The Labs at the Carnegie Library of Pittsburgh offer young people an opportunity to produce rich, multi-media products using the latest technology tools while connecting these learning experiences directly back to school and careers. Further, the Howard County Public Library in Maryland houses a Learning Lab to engage young adults in using new and emerging media and technology. Libraries are uniquely important because they provide Internet access to all residents in communities they serve. In addition, libraries support distance learning and continuing education for college and adult students.

5. There is strong evidence and growing consensus that E-rate needs to sharpen its focus and provide schools and libraries with high-capacity broadband connections. In response to a 2010 Commission survey of E-rate funded schools and libraries, only 10 percent of survey respondents reported broadband speeds of 100 Mbps or greater, while 48 percent reported broadband speeds of less than 10 Mbps. Approximately 39 percent of the respondents cited cost of service as a barrier in meeting their needs, and 27 percent cited cost of installation as a barrier.

6. Likewise, although the speeds of library connections have been increasing over time, many libraries report that speeds are insufficient to meet their growing needs. An annual survey done by the American Library Association (ALA) shows that in 2011–2012, while 9 percent of libraries reported connection speeds of greater than 100 Mbps, 25 percent of libraries still have speeds of 1.5 Mbps or less, and approximately 62 percent of libraries reported connection speeds of 10 Mbps or less. Thus, notwithstanding the trend towards faster speeds, 41 percent of libraries reported that their speeds fail to meet their patrons' needs some or most of the time.

7. Last month, President Obama announced the ConnectED initiative aimed at connecting all schools to the digital age. The ConnectED initiative seeks to connect schools and libraries serving 99 percent of our students to next-generation high-capacity broadband (with speeds of no less than 100 Mbps and a target speed of 1 Gbps) and to provide high-capacity wireless connectivity within those schools and libraries within five years. President Obama has called on the Commission to modernize and leverage the E-rate program to help meet those targets. Teachers, local school officials, state education leaders, digital learning experts, and businesses from across the country endorsed President Obama's vision and have called for an update to the E-rate program to meet today's teaching and learning needs.

8. In voicing his support for President Obama's ConnectED initiative, Senator John D. Rockefeller IV, one of the original supporters of the E-rate program, explained: ''[I]n its almost two decades, the E-Rate program has fundamentally transformed education in this country—we have connected our most remote schools and libraries to the world. But as impressive and important as the E-Rate program has been, basic Internet connectivity is no longer sufficient to meet our 21st Century educational needs.'' Even more recently, the bipartisan Leading Education by Advancing Digital (LEAD) Commission has taken up the call and released a blue print for paving a path to digital learning in the United States which highlights ''inadequate high-speed Internet connectivity in the classrooms''

as ''the most immediate and expensive barrier to implementing technology in education,'' and calls modernizing E-rate the ''centerpiece of solving the infrastructure challenge.''

9. The need for E-rate reform is also clear given the extraordinary demand for existing E-rate support. For this funding year, schools and libraries sought E-rate funding in excess of $4.9 billion, more than twice the annual cap of $2.25 billion. The E-rate funding cap was set by the Commission when it created the E-rate program in 1997 and demand for funds has exceeded the cap every year since the inception of the program. Moreover, technology is constantly evolving, so to be most effective, the E-rate program must evolve to meet the current and future needs of schools and libraries. Therefore, in this NPRM, we seek to modernize E-rate to ensure that it can most efficiently and effectively help schools and libraries meet their connectivity needs over the course of the rest of this decade and the next.

10. Three years ago, the Commission took important initial steps to modernize E-rate to improve efficiency and respond to the increasing technological needs of schools and libraries in response to recommendations made in the National Broadband Plan. The reforms, adopted in the *Schools and Libraries Sixth Report and Order,* 75 FR 75393, December 3, 2010, focused on: (1) Providing greater flexibility to schools and libraries in their selection of the most cost-effective broadband services; (2) streamlining the E-rate application process; and (3) improving safeguards against fraud, waste, and abuse. Among other things, the Commission allowed schools and libraries to lease dark fiber from any entity, including state, municipal or regional research networks and utility companies; made permanent a rule to allow schools to open their facilities to the public when schools are not in session so that community members may use the school's E-rate supported services on the school's campus; and established the Learning On-The-Go (also known as E-rate Deployed Ubiquitously (EDU) 2011) pilot program to investigate the merits and challenges of wireless off-premises connectivity services for mobile learning devices.

11. In this NPRM, we seek comment on ways to build on these steps and more comprehensively modernize E-rate, including improving the efficiency and administration of the program. We begin by proposing explicit program goals and seeking comment on specific ways to measure our progress towards meeting those goals. During the last two years, the Commission has established goals and measures as part of modernizing the three other universal service support programs. Today, we propose to do the same for the E-rate program. We then seek comment on a number of possible approaches to achieving each of our proposed goals.

12. Thus, the balance of this NPRM is organized into the following six sections:

- In Section II, we propose three goals for the E-rate program:

(1) Ensuring schools and libraries have affordable access to 21st Century broadband that supports digital learning;

(2) Maximizing the cost-effectiveness of E-rate funds; and

(3) Streamlining the administration of the E-rate program.

We also propose to adopt measures for each of the proposed goals.

In proposing to adopt specific goals and measures, we seek to focus available funds on the highest communications priorities for schools and libraries and, over time, to determine whether E-rate funds are effectively targeted to meet those goals.

- In section III, we focus on the first proposed goal and seek comment on ways to modernize and reform the E-rate program to better ensure eligible schools and libraries have affordable access to high-capacity broadband. First, we propose to focus E-rate funds on supporting high-capacity broadband to and within schools and libraries, and we seek comment on updating the list of services eligible for E-rate support. Second, we seek comment on various options for ensuring equitable access to limited E-rate funding. Finally, we seek comment on what other measures we could take if these steps, combined with the other efficiency measures proposed elsewhere in this NPRM, appear insufficient to meet our program goals. In particular, we seek comment on potential options to focus additional state, local, and federal funding on school connectivity and to lower the costs of new high-capacity broadband deployment to schools and libraries.
- In section IV, we focus on the second proposed goal and seek comment on maximizing the cost-effectiveness of E-rate purchases, including how we can encourage increased consortium purchasing; create bulk buying opportunities; increase transparency of spending and prices; amend the competitive bidding processes; and encouraging efficient use of funding. We also seek comment on a pilot program to incent and test more efficient purchasing practices.
- In section V, we focus on the third proposed goal and seek comment on ways to streamline the administration of the E-rate program by, among other things, requiring electronic filing of all documents with the E-rate program Administrator, the Universal Service Administrative Company (USAC); increasing transparency of USAC's processes; speeding USAC's review of E-rate applications; simplifying the eligible services list; finding more efficient ways to disburse E-rate funds; addressing unused E-rate funding; and streamlining the E-rate appeals process.
- In section VI, we seek comment on several additional issues relating to the E-rate program that have been raised by stakeholders, including issues related to school and library obligations under the Children's Internet Protection Act (CIPA); identifying rural schools and libraries; changes to the National School Lunch Program; fraud protection measures; use of E-rate supported services for community Wi-Fi hotspots; and procedures for dealing with national emergencies.

In seeking comment on our proposed goals and measures, and on options to modernize E-rate to better align it with these goals, in addition to specific questions posed throughout, we encourage input from Tribal governments and ask generally whether there are any unique circumstances on Tribal lands that would necessitate a different approach. Similarly, we request comment on whether there are any unique circumstances in insular areas that would necessitate a different approach.

II. Goals and Measures

A. Ensuring Schools and Libraries Have Affordable Access to 21st Century Broadband That Supports Digital Learning

1. Proposed Goal

13. The first goal of the E-rate program we propose to adopt is to ensure that schools and libraries have affordable access to 21st Century broadband that supports digital learning. As discussed above, the communications priorities of schools and libraries have shifted as they seek access to higher-speed connectivity and to allow students and teachers to take advantage of the rapidly expanding opportunities for interactive digital learning.

14. Section 254(h) of the Act, requires the Commission to enhance access to advanced telecommunications and information services to schools and libraries ''to the extent technically feasible and economically reasonable,'' and determine a discount level for all E-

rate funded services that is ''appropriate and necessary to ensure affordable access to and use of such services.'' Thus, in considering our statutory obligations and in light of the growing technological needs of schools and libraries, this proposed goal has two components. The first component of this proposed goal requires that all schools and libraries have access to high-capacity broadband connectivity necessary to support digital learning. The second component of this goal is that schools and libraries be able to afford such services.

15. We also seek comment on whether we should adopt specific goals for other communications services, including voice services. If so, what should those goals be and how can we best harmonize those goals with our proposed goal of ensuring schools and libraries have access to 21st Century broadband that supports digital learning?

2. Proposed Measurements

16. We seek comment on what performance measure or measures we should adopt to support our proposed goal of ensuring eligible schools and libraries have affordable access to high-capacity broadband at speeds that will support digital learning. We also seek comment on how best to perform the relevant measurements.

17. One of the primary measures of progress towards meeting this goal would be benchmarking the performance of schools' and libraries' broadband connections against specific speed targets. We also seek comment on other measures of the availability and affordability of high-capacity broadband to schools and the educational impact of high-capacity broadband in the classroom. We seek comment on whether these are the areas on which we should focus in measuring progress towards this goal. We also seek comment on how other network performance measurement efforts, including the Commission's own Measuring Broadband America Program, should inform our consideration of how to measure network performance. Commenters are encouraged to propose any additional or alternative measures.

18. *Connectivity metrics.* We seek comment on how to define ''broadband that supports digital learning'' for purposes of measuring progress toward our first goal. President Obama's ConnectED initiative set a target of at least 100 Mbps service with a target of 1 Gbps to most schools and libraries within 5 years. The ConnectED proposals are consistent with those made by the State Education Technology Directors Association (SETDA). According to SETDA, in order to have sufficient broadband access for enhanced teaching and learning, K–12 schools will need Internet connections of at least 100 Mbps per 1,000 students and staff (users) by the 2014–15 school year and at least 1 Gbps Internet access per 1,000 users by the 2017–18 school year.

19. We seek comment on adopting the SETDA target of ensuring that schools have 100 Mbps per 1,000 users increasing to 1 Gbps per 1,000 users. SETDA also recommends that a school within a district have Wide Area Network (WAN) connectivity to other schools within their district of at least 10 Gbps per 1,000 students and staff by 2017–2018. We also seek comment on adopting that target for WAN connectivity.

20. More specifically, we seek comment on whether the SETDA targets are appropriate for all schools, or whether we should set some other minimum levels of broadband speed necessary to meet our proposed goal, and what those levels should be. How much capacity do schools currently use? How are schools' bandwidth needs changing, particularly in those schools that have one-to-one device initiatives? We also seek comment on what our goals should be for schools or school districts with less than 1,000 students and staff if we do adopt the SETDA targets. Will schools with 500 students need 500 Mbps Internet capacity, and how much WAN connectivity will they need? How about schools with 100 students? We also seek comment on the timing of reaching these proposed bandwidth targets for schools. What percent of schools currently have 100 Mbps per 1,000 users? What percent of schools currently have 1 Gbps per 1,000 users? How quickly are schools already moving towards these targets? What percent of schools currently have fiber connectivity to the school? How much would it cost to reach these targets? What are the challenges for schools and the E-rate program in meeting these targets?

21. We also seek comment on the appropriate bandwidth target for libraries. According to the Gates Foundation, the State Library of Kansas has developed a broadband capacity tool that recommends that all libraries have a minimum of 1 Gbps Internet connectivity by 2020 and recognizes that libraries with a large number of connected users will likely need even greater capacity. We seek comment on whether a target of 1 Gbps for all libraries by 2020 is an appropriate measure or whether we should set some other minimum level of broadband speed for libraries necessary to meet our proposed measure and what that should be. We also seek comment on whether we should adopt a WAN connectivity target for libraries interconnected by WANs, and if so, what that target should be. We also seek comment on the target date of 2020 for libraries to have 1 Gbps Internet connectivity. What are the challenges to libraries and the E-rate program of meeting this goal? What percent of libraries currently have 100 Mbps connectivity? What percent of libraries currently have 1 Gbps connectivity?

22. Further, we seek comment on whether there are schools and libraries in some extremely remote parts of our country where the SETDA and the State Library of Kansas capacity targets may not be economically feasible. If so, why are the SETDA or the State Library of Kansas targets unfeasible and what are feasible connectivity targets or benchmarks for those extremely remote geographic areas?

23. As part of the ConnectED initiative, President Obama also called for high-capacity connectivity within schools, and others, including the bi-partisan LEAD Commission, have echoed that proposal. We seek comment on adopting specific bandwidth targets for wireless connectivity within schools, similar to our targets for Internet and WAN bandwidth. Specifically, we seek comment on whether all schools should have internal wireless networks capable of supporting one-to-one device initiatives, and whether libraries should have comparable wireless connectivity. We seek comment on more quantitatively defining these standards. Should we define connectivity in Mbps of wireless capacity available per-student in classrooms, school libraries, and other areas of schools? Should these match the Internet or WAN connectivity recommendations of SETDA? For example, building off SETDA's 2017 recommendation of 100 Mbps Internet connectivity per 1000 students, should we aim for 1 Mbps of wireless capacity per 10 students in classrooms and other learning spaces? What would this standard generally require to implement? We seek comment on this proposal and on alternative bandwidth targets.

24. Many of the applications that enable digital learning require not just high-capacity connections, but also high-quality connections that have associated latency, jitter and packet loss requirements. For example, online viewing of a real-time science lecture and demonstration requires low latency (transmission delay), low jitter

(variability in the timing of packets' arrival), and low packet loss. Should we adopt latency, jitter and packet loss performance requirements tailored to the specific uses of broadband connectivity by schools and libraries to ensure successful learning experiences? If so, what such requirements should be? We also seek comment on how best to update network performance requirements as technology and network uses evolve.

25. *Using adoption to measure availability and affordability.* The simplest measure of broadband availability and affordability for schools and libraries may observe whether eligible schools and libraries are purchasing broadband services that meet our proposed speed benchmarks. We therefore seek comment on whether to measure school and library broadband speeds as one metric of broadband availability and affordability.

26. If we adopt this proposal, we seek comment on how best to collect data on the speed and quality of school and library connections. Currently, all schools and libraries must complete an FCC Form 471 application when applying for E-rate funding, and among other things, are requested to provide information about the level of broadband services requested on that form. The Commission is currently seeking comment on modifying the FCC Form 471 to collect more detailed information from applicants on connection speeds and the types of technologies being used for connectivity.

27. We seek comment on additional ways to update the FCC Form 471 to provide information necessary to monitor and measure our proposed goal. Should we require that E-rate applicants provide specific information about the bandwidth or speed for which they seek funding? Should we make that information publicly available? Should there be specific, required mechanisms for making the information public? For example, should we require such information be published on data.gov?

28. Should we adopt additional measures based on information we gather? For example, should we measure the difference in each school's or library's baseline capacity and speed for each workstation or device over a specified time period?

29. We seek comment on whether there are other methods we should consider adopting for measuring broadband performance, including not only bandwidth available but actual usage as well. We also seek comment on how measuring actual usage would take into account the different possible reasons for level of usage. For example, how would such a measurement account for schools that use broadband connections less because the speeds available are too slow for use of educational software or other reasons? In addition, how do we account for levels of usage that vary based on the availability of teacher technology training? In addition to collecting information on the FCC Form 471, should we conduct an annual or biennial survey to assess the broadband capability of schools and libraries? If so, should it be modeled on the survey of E-rate recipients that the Commission conducted in 2010?

30. In the alternative, should we require some or all E-rate applicants to have dedicated equipment measuring performance to and within each of their buildings? If so, what would be the cost of such a requirement and what would be the benefits? Should we require applicants to pay for such equipment or provide E-rate support for such equipment and the related information collection? Should we make the collected information available to the public? We ask for recommendations on performance measurement systems that are low cost and of minimal burden; easy to implement; low-impact; that will produce uniform results and test a full range of performance metrics; and that include a proven design and are generally accepted as valid testing.

31. Are there other less burdensome methods that would still ensure we are able to examine and employ useful information in lieu of requiring all applicants to employ equipment to test broadband? For example, could we test a sample of schools? Are most schools and libraries or their service providers already measuring the speed of their broadband connections? Are there cost-efficient ways of collecting that information from schools and libraries? Several years ago, the Commission created the Measuring Broadband America Program to measure residential broadband performance. Should we adopt a national performance measurement system for schools and libraries similar to our Measuring Broadband America Program? If so, how could we accommodate measuring not only average or peak performance but also actual usage? We recognize that some third parties are already attempting to collect some such information. For example, Education Superhighway is encouraging schools to participate in its national School Speed Test program. Are there ways the Commission can use the information collected by Education Superhighway or other third-party groups to measure progress towards this goal?

32. As part of measuring progress towards the goal of ensuring eligible schools and libraries have affordable access to high-capacity broadband at speeds that will support digital learning, we seek comment on how to measure high-capacity broadband availability and affordability and the metrics that should be used.

33. For example, to measure availability, should we use the National Broadband Map to estimate what fraction of schools and libraries have access to at least one broadband provider within the same census block offering broadband at speeds that meet our proposed performance metrics? If so, what geographic vicinity should we use? Should we use census blocks as the measure? Should we supplement National Broadband Map data with other information? Instead, or in addition, should we collect data on the number of zero-bid service requests as a measure of service availability?

34. Similarly, to measure affordability, we could benchmark the post-discount prices paid by schools for broadband connections against some objective measure. We seek comment on this approach, and on what measures we could use. Would there be benefit to conducting an annual or biennial survey to measure school and library perceptions about affordability? If so, what questions should we ask? Alternatively, should we survey just those schools that do not adopt broadband connections meeting our performance targets to find out why they have not done so?

35. We also seek comment on whether the Commission should measure compliance with its ''lowest corresponding price'' rule as a measure of affordability to ensure that service providers are providing schools and libraries with the lowest corresponding price for E-rate supported services that a provider charges to a similarly situated non-residential customer. The rule mandates that service providers cannot charge schools, school districts, libraries, library consortia, or consortia including any of these entities a price above the lowest corresponding price for supported services, unless the Commission, with respect to interstate services, or the state commission with respect to intrastate services, finds that the lowest corresponding price is not compensatory.

36. *Educational Impact Measurements.* Is there a way to measure how success in the classroom is affected by access to E-rate funding or services supported by E-rate?

Stakeholders have, in the past, raised concerns with attempts to correlate E-rate funding with educational outcomes. Critics claim that because classroom performance is affected by many factors, there are no reliable conclusions to be drawn. However, proponents believe that assessing the contribution of digital learning and E-rate funded connectivity towards student outcomes may guide schools in determining the bandwidth and usage of broadband that are most effective as well as provide us guidance in ensuring that universal service dollars are efficiently spent. Is there a way to measure how success in the classroom is affected by access to E-rate funding or access to Internet access services? If so, what should such measures look like, and should they be tied specifically to E-rate funding or more generally to the deployment or use of broadband and next-generation infrastructure? A 2006 study by Austan Goolsbee and Jonathan Guryan found that E-rate support substantially increased the investment of some public schools in Internet and communications technologies, but did not find a statistically significant effect on student test scores. Have more recent studies suggested otherwise? We also seek comment on whether the Commission should adopt educational-outcome measurements. Is it appropriate for the Commission to do so, given that educational outcomes are outside the agency's core competence? Are there any legal or jurisdictional issues with doing so?

B. Maximizing the Cost-Effectiveness of E-Rate Funds

1. Proposed Goal

37. We propose to adopt, as the second goal of the E-rate program, to maximize the cost-effectiveness of E-rate funds. Ensuring that schools and libraries spend E-rate money in the most cost-effective ways possible maximizes the impact of limited E-rate funds and helps ensure that all eligible schools and libraries are able to receive all the support they need. Funds available through the E-rate program come from contributions made by consumers and businesses to the USF, and the Commission has a responsibility to ensure they are spent effectively.

38. This proposed goal is consistent with section 254(h)(2)(A) of the Communications Act, which requires that support to schools and libraries be ''economically reasonable.'' As the Commission has previously observed, we have a ''responsibility to be a prudent guardian of the public's resources.'' We seek comment on this proposed goal.

2. Proposed Measurements

39. We seek comment on what performance measure or measures we should adopt to support the goal of maximizing the cost-effectiveness of purchases made using E-rate funds. Should we measure the value delivered to schools and libraries with support from the E-rate program by tracking the prices and speed of the broadband connections supported by the program? Should we measure an applicant's costs per-student and costs of products and services in comparison with other costs for products and services available in the marketplace? Are there additional data we would need to require from applicants to track relevant measures, or are there existing data repositories we could use for this purpose? Above, we seek comment on a number of possible affordability measures. Should we use any of these to measure cost-effectiveness instead of, or in addition to, affordability?

40. What data will best allow us to track these metrics? Should we encourage studies on the impact of E-rate support on prices paid for services? We currently report on the results of USAC's audits, and progress in reducing improper payments and waste, fraud and abuse. Should we use this information as part of this measurement?

C. Streamlining the Administration of the E-Rate Program

1. Proposed Goal

41. We propose to adopt, as the third goal of the E-rate program, to streamline the administration of the E-rate program. The number of applications the Administrator, USAC, receives from schools and libraries seeking E-rate support is daunting. For example, in funding year 2013, at the close of the application filing window, USAC received 46,189 applications seeking an estimated $4.986 billion in support. In some cases applicants request more in funding commitments than they actually use, and there is no requirement or incentive for applicants to notify USAC in a timely fashion that they have received funding commitments that they will not use. Moreover, the application and disbursement processes are complicated, so that many schools and libraries now feel compelled to spend money on E-rate consultants just to navigate the E-rate processes. Thus, it is essential that we continue to improve the E-rate program procedures and continue to simplify and streamline the program's application review and disbursement processes.

42. This goal therefore includes further streamlining and simplification of the application, review, commitment and disbursement processes, in order to make the most of E-rate funding and accelerate the delivery of support for high-capacity broadband at speeds that will support digital learning, while maintaining appropriate safeguards against waste and abuse. We seek comment on this proposed goal. We are mindful that the Commission and USAC have a duty to protect against waste, fraud and abuse in the program and that the procedures intended to protect against waste, fraud and abuse can complicate and slow down program administration. Therefore, we also seek comment on ways to reconcile the need to simplify the program with the need to protect against waste, fraud and abuse.

2. Proposed Measurements

43. We seek comment on what performance measure or measures we should adopt to support the proposed goal of streamlining the administration of the E-rate program. In 2007, the Commission adopted certain output measurements for evaluating the effectiveness of the E-rate program related to the application and invoicing processes and the resolution of appeals submitted to USAC. Specifically, the Commission required USAC to provide data, on a funding year basis by reporting the number of applications and funding request numbers (FRNs) submitted, rejected, and granted, and the processing time for applications and FRNs. The Commission also required USAC to document the amount of time it takes to make a billed entity applicant reimbursement payment to the service provider, and the number of paid and rejected invoices. Additionally, the Commission required USAC to determine the percentage of appeals resolved by USAC within 90 days from the date of appeal, and how long it takes to process 50 percent, 75 percent, and 100 percent of the pending appeals from the schools and libraries division.

44. What additional measurements should we adopt? The State E-rate Coordinators Alliance (SECA) previously suggested establishing deadlines for making priority one funding commitments and the payment of invoices. As noted above, the Commission currently requires USAC to report data measures for commitments, disbursements and appeals. Should specific targets be established for each of those categories? If so, how should

we establish those targets? Should we require USAC to improve on those targets each year or to maintain a certain level of performance?

45. Should we set goals for funding commitments by USAC to applicants as compared to actual disbursements by funding year? In addition, how should we ensure the administrative budget is appropriate for the program? Should we establish targets for the cost of administering the program compared to the program funds disbursed to recipients? Should we measure the number of students and patrons served with E-rate funding over a specified period of time? If so, what should we compare the results to? For example, should we compare it to other federal programs that administer the disbursement of subsidies, such as other USF programs, the Broadband Technology Opportunities Program (BTOP) or educational grant programs?

46. We also seek comment on whether we should adopt a proposal by SECA that USAC be required to retain an independent third party to perform an annual analysis of the barriers to schools and libraries participating in the E-rate program. If such an analysis is warranted, should it be performed annually, as proposed, or on some other time period, such as every three years?

47. We are also mindful of the cost to applicants associated with participating in this program and we seek ways to reduce and measure these costs. Should we collect data regarding administrative costs E-rate applicants incur throughout the application process? If so, what are the best methods to obtain that data? Should applicants be required to disclose on an FCC form the amount of time and cost spent preparing an application? Should we instead consider a survey or sample of participants to obtain this and other information relevant to determine the financial impact including, for example, the cost of hiring an E-rate consultant?

D. Data Collection

48. Finally, we seek comment on a number of cross-cutting issues regarding the collection of accurate, relevant and timely data to track our progress in meeting these goals. We seek comment on the benefits and burdens of requiring E-rate recipients and service providers to provide data to USAC in open, machine-readable formats in order to enhance the accessibility and usefulness of the data. We also seek general comment on what data we collect during the application and disbursement process that should make public. Are there any barriers to making public any data we collect that helps measure our progress towards meeting our proposed goals? Will making such data public encourage the public to develop new and innovative methods to analyze E-rate data? If there are concerns about protecting the confidentiality of some of the data, are there ways to protect sensitive information while still making public the most relevant data or are there ways to aggregate the data to obviate confidentiality concerns? Finally, we seek comment on the extent to which we should apply the principles of the Office of Management and Budget's (OMB's) Open Data Policy to our efforts to collect and share E-rate data?

49. In addition to the specific revisions suggested above, should we revise any of the Commission's E-rate forms, such as the FCC Form 471 application, Item 21, or the FCC Form 500, to collect new data, or to change the formats in which we collect data? For example, should we revise the Item 21 attachment to the FCC Form 471 to collect data more consistently from all applicants? Are there ways we can change the format of the Item 21 to collect more granular data in a way that will allow us to more easily identify what products and services applicants are purchasing and at what prices? Commenters who advocate changes in data collection should indicate which form(s) and what specific revisions we would need to make on those forms in order to ensure that we receive useful information.

50. We also seek comment on essential definitions for purposes of measurement. When considering different policy outcomes, what are the key concepts that require a formal common definition upfront to enable more desirable measurements *(e.g.,* ''per school,'' ''per-student,'' ''per patron'')? Unique persistent identifiers are important because they designate which entity is being dealt with and also are used to model relationships. Are there unique persistent identifiers for schools, school districts and libraries? For example, are locale codes used by the U.S. Department of Education's National Center for Education Statistics (NCES), also known as urban-centric locale codes, good identifiers to use for schools and school districts? To the extent existing identifiers are missing or have problems, would there be value in creating persistent identifiers or supplementing existing identifiers for some or all such entities, or for other types of applicants? What would be the requirements of such persistent identifiers?

51. Finally, are there goals and measures that we should adopt that we have not already discussed? Commenters should be as specific as possible about their proposed goals and measures.

III. Ensuring Schools and Libraries Have Affordable Access to 21st Century Broadband That Supports Digital Learning

52. In this section, we seek ways to further our proposed first goal for the E-rate program: ensuring schools and libraries have affordable access to high-capacity broadband services that support digital learning. We explore methods to focus E-rate funds on supporting high-capacity broadband to and within schools and libraries, to ensure equitable access to limited E-rate funds, and to lower new build costs and tap into other funding sources.

A. Focusing E-Rate Funds on Supporting Broadband to and Within Schools and Libraries

53. To support the goal of ensuring that schools and libraries have access to affordable high-capacity broadband, both to and within schools and libraries, we propose to update the E-rate program's funding priorities, and seek comment on how to do so. In particular, we seek comment on possible updates to the list of services eligible for E-rate support and the related rules to focus funding on those services that provide high-capacity broadband to school and library buildings and those services and equipment that disseminate the high-capacity broadband within those buildings, while deprioritizing or phasing out support for services associated with legacy technologies and services that have little direct educational application.

54. We recognize that E-rate has historically provided support for voice services, and voice services remain essential for communications and public safety at schools and libraries. However, we also recognize that voice services may increasingly be transitioning to a low-marginal-cost application delivered over broadband platforms. We seek comment on how to approach voice services within this framework.

1. Funding for Broadband Connections

55. *Technological architecture.* We begin by seeking general comment on the most efficient technological architectures that schools and libraries are likely to use for connectivity. Are fiber connections generally the most cost effective and future-proof way to deliver high-capacity broadband to community anchor institutions like schools and libraries? Are other

technologies, such as point-to-point microwave or coaxial cable, which are widely used to provide high-capacity broadband to schools and libraries today, also efficient and cost-effective ways to provide service as bandwidth demands increase?

56. Smaller schools and libraries may not need the bandwidth provided by fiber connectivity and, particularly for small rural and Tribal schools and libraries, fiber connectivity to the school or library may not currently be available in some areas, or requires the payment of very high up-front construction charges. For these schools and libraries, what are the most cost-effective ways to meet high-capacity broadband needs? Are there fixed wireless solutions that are cost-effective for such schools? Are there some schools where satellite connectivity is the only viable option?

57. How do schools generally purchase connectivity? As an all-inclusive service? Or do schools purchase long-term indefeasible rights of use (IRUs) in physical infrastructure separately from managed services? What approaches are most efficient?

58. Fiber deployment. In the *Schools and Libraries Sixth Report and Order,* subject to certain limitations, the Commission added dark fiber to the list of services eligible for E-rate support. We seek comment on how schools and libraries have incorporated dark fiber into their broadband deployment plans as the result of this change.

59. To further improve applicants' flexibility in finding cost effective ways to deploy high-capacity broadband, we propose to make our treatment of lit and dark fiber more consistent. The E-rate program currently supports the recurring costs of leasing lit and dark fiber as priority one services. When a school or library leases lit fiber, the modulating electronics necessary to light that fiber are included in the recurring supported cost of the service and are therefore funded as part of the priority one service. By contrast, a school or library that leases dark fiber will not receive priority one support for the modulating electronics necessary to light the dark fiber. To eliminate this disparity, we propose to provide priority one support for the modulating electronics necessary to light leased dark fiber.

60. Installation charges for lit and dark fiber are also treated somewhat differently under current rules. Currently, the E-rate program provides priority one support for the installation of lit or dark fiber up to the property line of eligible schools and libraries. It also supports all ''special construction charges'' for leased lit fiber, but does not support ''special construction charges'' for leased dark fiber beyond an entity's property line. Special construction charges include design and engineering costs, project management costs, digging trenches and laying fiber. In order to maximize the options available for schools and libraries seeking to deploy fiber to their premises, we propose to provide priority one support for special construction charges for leased dark fiber, as we do for leased lit fiber.

61. Additionally, although the E-rate program currently provides support for some installation and special construction charges, it requires the cost of large projects to be spread over three years or more. The Commission's intent in requiring the cost to be spread over multiple years was to reduce the demand on the fund, but it may have the unintended consequence of deterring efficient investments, including the deployment of fiber. Should we continue to require that large installation and construction costs be spread over multiple years? If so, what should the threshold be for requiring that costs be spread over multiple years? Is three years the right period? Does the answer depend on how many sites are being connected?

62. We seek comment on the cost to deploy fiber or other technologies that would provide high-capacity broadband connectivity to schools. We also seek comment on other aspects of support for installation and construction charges. Is there a limit to the amount of funding we should provide to any one library, school or school district over a certain amount of time for construction and installation costs? Are there specific costs that we should or should not fund as part of installation and construction? Are there other approaches we should consider in dealing with high installation and construction costs? We seek comment on whether fiber deployment to schools and libraries being slowed because applicants cannot afford to pay the non-discounted portion of deployment costs. Are there any other conditions we should impose on applicants who seek prioritized support for lit or dark fiber and modulating electronics? Are there ways to cost effectively deploy fiber and minimize recurring costs to schools and libraries?

63. We also seek comment on whether prioritizing special construction charges to deploy fiber or other technologies from middle mile networks to schools and libraries (lateral fiber builds) by dedicating a specific amount of E-rate funding to support such deployment would help meet our connectivity goals. Would some prioritization to support lateral fiber builds create long term cost efficiencies for schools and libraries and for the E-rate program? If so, what should that amount be? Should we encourage or require schools and libraries to enter into long-term IRUs or other long-term arrangements on such lateral builds to get the maximum value of initial investments in fiber? How should we determine the rules of priority for such funding and how much funding should be allocated to each applicant? For example, should funding for fiber builds be distributed based on the poverty level of the students at a school, rurality, location on Tribal lands, lack of fiber or other high-capacity broadband connections to community anchor institutions, or some other objective, observable metric? How much support do we need to provide to make it possible for schools and libraries to apply for such funds, particularly in rural, tribal and other areas where deployment is likely to be expensive? Should we also consider allowing applicants to amortize the costs over a period of time longer than the three years currently required?

64. Is there a role for the states or Tribal governments to play in determining priority for such funds? For example, should we seek state and Tribal government recommendations for the neediest communities (*e.g.,* low income or schools or libraries without broadband), allowing the Commission to make the final determinations based on the amount of funding set aside for particular schools and libraries for fiber lateral builds? We specifically seek comment on any other factors to determine priority of funding for fiber lateral builds. We also seek comment on any potential requirements for receipt of specific support for fiber lateral builds. Should we, for example, require community access to high-capacity broadband facilities in exchange for such funding? We ask commenters to be as specific as possible in response to these questions.

65. If we prioritize some funding for new high-capacity broadband deployment should we be technology neutral or should we prioritize fiber connectivity over other types of broadband connectivity? Should we give schools flexibility to select the best technology that meets their needs? As discussed above there may be some schools and libraries, particularly small rural schools and libraries, where fiber deployment is either not necessary or simply cost-prohibitive. How should we address the needs of schools and libraries in areas where fiber is far less likely to be offered or available, such as Tribal lands? Are there other solutions

such as fixed wireless or cable solutions that would be sufficient today or in the future for meeting such schools' and libraries' high-capacity broadband needs? Are there deployment costs associated with any of those technologies that should be supported by the E-rate program?

66. If we seek to spur fiber or other broadband deployments through dedicated funding, are there associated changes we should make in how we fund the recurring costs for telecommunications and Internet access services, which are also priority one services today? For example, should we fund broadband deployment upgrades before recurring costs, creating a further prioritization within existing priority one services? Should we consider providing a different discount rate for ongoing services than for initial fiber upgrades? Would this approach encourage schools and libraries to enter more efficient long-term service arrangements as part of new infrastructure investments?

67. *Wide Area Networks (WANS).* Many schools and libraries use WANs to provide broadband connectivity to and among their buildings. WANs are useful for participants in the E-rate program, particularly school districts and consortia, because they provide dedicated connections between the schools within a school district or the schools and libraries within a consortium allowing them to easily share information and resources. For example, last August, Red Lion School District in Pennsylvania finished deploying a fiber-based WAN network that was supported by the E-rate program. Prior to deploying the new WAN, the district, which has nine schools, had an assortment of technologies but no school had bandwidth greater than 50 Mbps. The new WAN, which incorporates both microwave and fiber technology, provides many of the schools with 1 Gbps in bandwidth to support distance learning, social media, Web 2.0, and cloud-based services. Under the current E-rate rules, however, applicants are allowed to seek support for leased access to WANs but are not permitted to seek support for WANs that they build or purchase.

68. We seek comment on whether there are circumstances under which it will be more cost-effective for schools and libraries to build or purchase their own WAN rather than to lease a WAN. We also seek comment on whether there might be occasions where building or purchasing their own WAN is the only way for schools and libraries to get broadband access. If so, we seek comment on whether we should lift our prohibition on schools and libraries building or purchasing their own WANs by removing § 54.518 of our rules, or amend that section of our rules to allow schools and libraries to build or purchase their own WANs under certain circumstances. If the latter, we seek comment on the criteria we should use in determining whether to provide E-rate support to schools and libraries that purchase or build their own WANs.

69. In the *Healthcare Connect Fund Order,* 78 FR 13935, March 1, 2013, the Commission allowed consortia to seek rural health care fund support to build and own their own network facilities if construction was determined to be the most cost-effective option after competitive bidding. However, the *Healthcare Connect Fund Order* also imposed several safeguards on the program to ensure that consortia only exercised their option to self-construct when it was absolutely necessary. Should we impose similar safeguards on schools and libraries' option to self-construct WANs in the E-rate program? Are there other E-rate supported services that we should allow applicants to self-provision? If so, what services and under what conditions?

70. More generally, are there any other rule changes needed to ensure schools and libraries can access high-capacity connections to their premises? What other steps can we take to spur efficient new broadband deployments, particularly those deployments, like new fiber builds, that will dramatically increase speeds while bringing down long-term per Mbps prices?

71. Broadband connectivity within schools and libraries. We also seek comment on options to support connectivity within schools and libraries. In recent years, the E-rate program has been unable to fund billions of dollars in requests from applicants seeking support for internal connections. For example, in funding year 2012, USAC received approximately $2.47 billion in funding requests for internal connections, and was unable to fund any requests below the 88 percent discount rate. As a result, many E-rate recipients have not received support for internal connections, and must provide full funding for needed internal connections or go without. We seek comment on the percent of schools and libraries that do not have the necessary equipment to provide high-capacity broadband connectivity within schools, and the amount it would cost to provide high-capacity broadband connectivity within such schools and libraries. We invite commenters to be as specific as possible and to provide any data they have available on this issue.

72. More broadly, we request that commenters provide data on the nature of internal networks generally deployed within schools and libraries today and the likely needs of schools and libraries going forward. Previously in this section, we asked for information about the most efficient and cost effective network architectures for deployment of high-capacity broadband. Similarly, we ask for detailed information about internal network configurations. Will school networks generally consist of wired connections between classrooms and high-capacity wireless routers in each classroom? Do schools generally have internal high-capacity wired connections to each classroom today? If so, should we focus funding on newer high-capacity wireless routers, which are needed to allow multiple simultaneous high-capacity connections in a classroom environment?

73. Are there other equipment or services necessary for high-capacity broadband connections that should qualify for prioritized support? For example, which of the internal connection services listed as priority two services on the current ESL are necessary for providing high-capacity broadband connectivity within schools or libraries? What services not on the ESL should we consider supporting? Should we, for example, consider providing support for caching services or for services necessary for providing network security for schools and libraries? Is there evidence that outdated networking equipment (firewalls, content filters, etc.) creates significant speed bottlenecks on school and library networks? Is adding these types of services to the list of supported services, so that schools and libraries have the funding necessary to update those services, needed to eliminate significant speed bottlenecks? Are there any services not currently receiving support that would allow more cost effective use of E-rate funds?

74. In 2001, the Commission prohibited E-rate recipients from obtaining discounts under the universal service support mechanism for the purchase or acquisition of technology protection measures necessary for the Children's Internet Protection Act (CIPA) compliance. At the time of the *2001 CIPA Order,* 66 FR 8374, January 31, 2001, protection delivered at the network level was in its nascent stages and now schools and libraries need to employ network-level protection more ubiquitously. Should the 2001 decision to prohibit schools and libraries from receiving E-rate discounts for

technology protection measures apply to the broad spectrum of services schools and libraries employ for network security which may include, or go beyond those protections necessary for CIPA compliance, in order to maintain and protect high-capacity broadband networks? We seek comment on whether we should review the *2001 CIPA Order* decision in light of the network security needs of schools and libraries today.

75. Are there any other rule changes needed to ensure schools and libraries can effectively use high-capacity connections to their premises? What other steps can we take to spur efficient new high-capacity broadband deployment within schools and libraries.

76. *Recurring costs.* We also seek comment on the recurring costs of high-capacity broadband services. As schools and libraries have been increasingly purchasing high-bandwidth connections, how have their recurring monthly costs changed? We anticipate that in order to meet our proposed connectivity goals, the average recurring per-megabit prices of connectivity purchased by schools will need to come down substantially. Fortunately, there is precedent for significant price reductions associated with infrastructure upgrades. For example, the Commission's Rural Health Care Pilot Program showed that bulk buying through consortia coupled with competitive bidding can reduce the prices that recipients pay for services and infrastructure.

77. How can we ensure that recurring costs come down sufficiently over time within the E-rate program to make our proposed connectivity goals achievable and sustainable? Are the program's existing matching and competitive bidding requirements sufficient safeguards, or are further steps required? For example, should we phase in maximum per-megabit prices over time that are eligible for E-rate discounts, or set program-wide per-megabit price guidelines or targets? Would such prices give schools and libraries greater leverage in soliciting bids from vendors, or simply limit the choices available to schools and libraries? What should such prices be? If we set maximum per-megabit prices, should we allow exceptions in certain circumstances? What impact would such price guidelines or targets have on schools or libraries in areas that lack competition for high-capacity broadband, such as Tribal lands? How would such prices account for differences between more and less heavily-managed services? We seek comment on other options. Below, we also seek comment on how to maximize cost-efficient purchasing. Will these approaches ensure cost-effective purchasing of recurring services?

2. Phasing Down Support for Certain Services

78. Above we seek comment on modifying our rules to ensure availability of the key products and services needed for high-capacity broadband connectivity to and within schools and libraries. We now seek comment on two approaches for streamlining the remainder of the ESL to focus support on high-capacity broadband. First, we propose to phase out support for a number of specific services, including outdated services currently on the ESL, for components of voice service, and seek comment on phasing out support for services that are not used primarily for educational purposes. Second, we seek comment on more fundamentally shifting the way we direct E-rate support to focus exclusively on high-capacity broadband connectivity to and within schools. In so doing, we seek comment on whether there are additional services for which we should phase out or reduce support, including traditional telephone services. Finally, we seek comment on a number of issues that will need to be addressed whichever approach we take.

79. We recognize that flash-cuts to support in a funding year could be financially difficult for schools and libraries and therefore, throughout this section, we seek comment on phasing out support for services we remove from the ESL, rather than eliminating them immediately. We also seek comment on other changes we could make, such as assigning such services a different discount rate that would require applicants to pay for a greater share of those services than for services that we consider to be directly connected to the fundamental purpose of the E-rate program. We also seek comment on how to address bundling of supported services, including bundles that include services for which we phase out support.

a. Specific Services for Which Support May No Longer Be Appropriate

80. *Outdated services.* We first propose to phase out funding for those services that are outdated. For example, paging services are eligible for support because in 1998, the first year of E-rate funding, the adoption of mobile phones was not yet widespread and pagers filled the role of common personal and mobile communications. Paging services have grown increasingly obsolete with the advent and explosive growth of mobile technology and services, many of which are also supported by the E-rate program. Yet, paging services continue to be eligible for E-rate support, and in funding year 2011, USAC committed approximately $934,000 for paging services for more than 500 E-rate requests.

81. Likewise, directory assistance services are eligible for support because, in 1997, directory assistance was considered a core service. Now, however, Internet search has largely replaced directory services. We, therefore, seek comment on our proposal to phase out E-rate support for paging services and directory assistance.

82. Do either paging services or directory assistance service serve any important educational purposes? Is it in the public interest to continue to provide support for either paging services or directory assistance? Are there any other services that are similarly outdated and should no longer be eligible for E-rate support? For example, is there any reason to continue to provide support for dial-up services? In funding year 2011, there were more than 100 requests for approximately $95,000 in funding commitments for dial-up services. Is that still necessary today? Are there any schools or libraries that have no other option for accessing the Internet besides dial up services?

83. *Components of voice service and supplemental services.* We also propose to phase out funding for services that are simply components of voice service as well as those services, other than voice, that ride over or are supplemental to high-capacity broadband connections but are not necessary to make a broadband service functional. More specifically, we first propose to eliminate support for custom calling features, inside wiring maintenance plans, call blocking, 800 number services, and text messaging as components of voice services that may not serve educational purposes and do not further our proposed goals. USAC has estimated that it committed more than $85,000 for 800 number service in funding year 2011 and more than $75,000 for unbundled text messaging in funding year 2011. We seek comment on this proposal and we ask whether there are other such services for which we should no longer provide E-rate support?

84. We also seek comment on phasing out funding for supplemental or ''ride-over'' services. In the *Healthcare Connect Fund Order,* the Commission determined it would only provide support for services necessary to make a high-capacity broadband service functional as distinguished from

services or applications that ride over the network. The Commission explained that it was connectivity that served as the ''input'' to making the ride-over services functional and not the other way around. Although the proposed goals for the E-rate program are somewhat different from our Healthcare Connect Fund goals, should we use the *Healthcare Connect Fund Order's* concept of ''ride over'' services to help determine what currently supported E-rate services should be considered supplemental to broadband, and therefore no longer supported? We seek comment on whether the *Healthcare Connect Fund Order's* characterization of ride-over services is instructive for E-rate purposes.

85. Based on the concept articulated in the *Healthcare Connect Fund Order,* we seek comment on phasing out E-rate support for services that are not directly related to connectivity and seek comment on this proposal, such as electronic mail services (email) service and web hosting as supplemental services. In previous proceedings, commenters have claimed that the pricing of web hosting in the K–12 market has become skewed when compared to other commercially available web hosting services and claim that vendors have become adept at packaging their services to increase the cost of web hosting above market rates in order to decrease the cost of the ineligible services. USAC estimates that it committed $9.8 million for email services and almost $28 million for web hosting in funding year 2011. Should the E-rate fund be supporting services such as web hosting and email at costly monthly rates when many such services are cloud based and offered basically for free to other users? Is there any continuing and compelling policy reason to continue to fund such services?

86. We note that ''electronic mail services'' are included with in the definition of ''Internet access'' in § 54.5 of our rules and we therefore seek comment on whether we would need to change the definition of ''Internet access'' for purposes of the E-rate program if we were to stop providing support for email services. If so, should we simply delete the reference to electronic mail services in the definition of Internet access in § 54.5 of our rules? Are there are other changes we need to make to our rules if we phase down or eliminate support for the types of services discussed above? Are other services that are currently eligible for E-rate support that ride over or are supplemental to high-capacity broadband connections, but are not necessary to make a high-capacity broadband service functional?

87. *Educational purposes.* In the *Schools and Libraries Second Report and Order,* 68 FR 36931, June 20, 2003, the Commission determined that activities that are integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate, and proximate to the provision of library services to library patrons, qualify as ''educational purposes.'' The *Schools and Libraries Second Report and Order* also, however, provided a presumption that services provided on-campus serve an educational purpose. More recently, the Commission clarified educational purposes in *Schools and Libraries Sixth Report and Order* by requiring that schools must primarily use services funded under the E-rate program, in the first instance, for educational purposes.

88. We seek comment on whether we should make changes to the E-rate program to ensure that supported services are, at a minimum, used for the core purpose of educating students and serving library patrons. More specifically, we seek comment on whether we should allow a school or library to seek E-rate support for services that will be used only by school and library staff, administrators, or board members. If school and library staff use the supported services in their role as educators and information providers but the services are inaccessible to students and library patrons, does this satisfy the statutory requirement that the support be used for educational purposes in 47 U.S.C. 254(h)(1)(B) and that advanced telecommunications be enhanced for all classrooms and libraries in 47 U.S.C. 254(h)(2)(A)? Should E-rate funds be provided if school and library staff use such services only for administrative or other purposes not directly tied to education? If funds are provided for administrative or other purposes not directly tied to education, should they have a lower priority than funds provided for the core purpose of serving students and library patrons? Alternatively or additionally, should we stop providing E-rate support for services to non-instructional buildings, such as bus garages? If so, how should we treat non-instructional buildings, such as technology centers, that support E-rate supported services? Are there some administrative functions such as parent-teacher communication that should always be considered as primarily serving an educational purpose? Or, even if there are services that further the educational mission of the school, is it now no longer realistic to support all of these services within our budget since funding is always limited? We invite commenters to distinguish between and among E-rate supported services when responding to these questions. For example, do commenters think we should take a different approach when it comes to Internet access services as opposed to basic voice services? What changes to the E-rate program would be necessary, such as changes to our rules or required program certifications, if we were to limit E-rate funding to services directly available, at least in part, to students and patrons? Would placing limits on funding for services that are not directly available to students or patrons be too difficult to monitor or audit or raise cost-allocation challenges? Commenters should be specific in their proposals.

89. *Basic maintenance of internal connections (BMIC).* We seek comment on phasing out funding for BMIC. For funding year 2011, USAC committed nearly $125 million for BMIC. We previously sought comment on modifying our approach to funding for BMIC, and now seek to refresh the record. We recognize that maintenance in some form is necessary for broadband and other supported services to remain available to schools and libraries. However, under our current rules which fund BMIC as a priority two service, the same high-discount school districts receive more than ample funding for basic maintenance each year, while other needy schools and school districts have received no priority two support for increasingly important and necessary internal connections. Additionally, it is especially difficult for USAC to monitor compliance with rules regarding BMIC, and BMIC may therefore be more susceptible to abuse than other funded services. We therefore seek comment on whether to amend § 54.502 of our rules by deleting subsection (a)(2) and removing all other references to basic maintenance services. We also seek comment on whether there are other provisions of our rules that need to be amended if we phase out support for BMIC.

90. *Cellular data plans and air cards.* We also seek comment on how to treat support for Internet access services provided via cellular data plans, including air cards. Such services are costly, and can be provided more efficiently on-campus via an E-rate supported local area (LAN) network that connects to the Internet. Should we phase out support for cellular data plans and air cards or should we instead deprioritize support for such services?

b. Tightly Focusing the Eligible Service List

91. In addition to the specific services identified above, we seek comment on whether we should more fundamentally shift the way we prioritize E-rate support to emphasize and accelerate high-capacity broadband connectivity to and within schools and libraries. In particular, we seek comment on whether we should seek to identify the services currently on the ESL—plus any additional services—that are essential for high-capacity broadband connectivity, and limit the ESL to just those services. What services, in addition to those identified above, should we remove from eligibility under this approach? Would taking this approach help ensure that schools and libraries have the bandwidth necessary to support digital learning?

92. SECA's recent proposal to streamline priority two services is one example of such an approach. SECA recommends that the priority two ESL be ''redefined to focus on ensuring that the transmission of bandwidth inside the building is sufficient, and all other functionality should no longer be eligible for support.'' It therefore suggests that priority two eligible services should be limited to routers, up to one per building; wireless access points, up to one per classroom for schools; and internal cabling, up to three cabling drops per classroom for schools. We seek comment on SECA's proposal, as well as on variations and alternatives.

c. Transitioning Voice Support to Broadband

93. We also seek comment on phasing out services that are used only for voice communications. At the inception of the E-rate program, one of the primary ways to access the Internet was through voice telephone lines that delivered dial-up service via a 56 kbps modem. Today, widespread deployment of faster-speed technology has permitted schools and libraries to have access to high-capacity broadband connections that permit many types of digital learning technologies. We ask whether focusing on the transport of broadband and transitioning away from voice services would better serve the proposed priorities of the program.

94. In funding year 2011, there were more than 37,000 requests for local and long distance telephone service, amounting to approximately $260 million in funding commitments. While, for funding year 2011, USAC estimates that it committed close to an additional $176 million for cellular services. We seek comments on whether this funding would have greater impact for students and library patrons if it were transitioned to support broadband for schools and libraries.

95. SECA's June 2013 White Paper recommends that telecommunications services that are used only for voice communications should be phased out of E-rate support because such services are not used to provide advanced telecommunications or information services to schools or libraries. It suggests, however, that telecommunications services used for both data and voice telecommunications services should continue to be fully eligible for E-rate without requiring any cost allocation. SECA specifically proposes a tiered phase out of funding for all basic phone service over a five-year period to allow the smaller and more rural applicants who disproportionately use the basic phone service and legacy technologies ample opportunity to upgrade their infrastructure, and for their associated service providers to also update their service offerings. We seek comment on SECA's plan for phasing out E-rate support for basic voice telecommunications. Would the savings resulting from the phase out of funding for basic voice be better spent on high-capacity broadband that supports digital learning? Would the phase out of voice services give more E-rate applicants the opportunity to have internal connections project funded under the program?

96. We ask about the potential hardship schools and libraries would face if voice phone service was phased out under the E-rate program. As we noted in the *E-rate Broadband NPRM,* 75 FR 32699, June 9, 2010, we recognize that local, state and Tribal jurisdictions around the country are facing economic difficulties and budget tightening. At the same time, we seek comment on the extent to which E-rate support for voice service serves to provide schools and libraries access to services they would not otherwise be able to afford, or simply subsidizes voice telephone service that schools and libraries would purchase anyway, including voice services schools across the country may have been paying for in full before the inception of the E-rate program.

97. Should the Commission consider subsidizing more cost-effective ways to make local and long-distance calls? Does Voice over Internet Protocol (VoIP) service provide a viable alternative to public-switch telephone service? Has the advent of increased broadband speeds in schools and libraries made VoIP service a more cost-efficient and attractive way to receive voice services? How should our rules accommodate the needs of schools and libraries in areas without VoIP services, including some Tribal lands? Or should the Commission also phase out funding for all voice services, including VoIP service?

98. We seek comment on whether there are any statutory limitations that must be considered in eliminating voice telephone service from the ESL. To the extent there are legal concerns with removal of voice telephony service from the ESL, could we condition support for voice telephony service in a way that would eliminate stand-alone support for voice telephony service but allow it for bundles that include broadband service? Could the Commission forbear from applying the obligation on telecommunications carriers to discount their voice telephony service, thus eliminating the need for such reimbursement?

d. General Issues Related to Phasing out Support

99. In the paragraphs above, we have proposed or sought comment on proposing phasing out funding for several types of services. If we decide to phase out support for these services, should we begin immediately for funding year 2014? Or should we instead phase down such support over a longer period of time to provide more time for applicants? If so, what period of time would be appropriate? Are there some services we should stop supporting immediately, and others we should phase out incrementally over time?

100. Alternatively, should we consider maintaining support for some or all of these services, but at a lower priority than the funding of high-capacity broadband services? Or, as another alternative to phasing out funding for the services described above, should we consider reducing the percentage of support we provide for those services? If so, what percentage of support would be appropriate?

101. Are there other services for which we should phase out support or reduce the percentage of support E-rate provides? We ask commenters to identify any specific services that they think should be supported by the E-rate program, but at a lower discount rate, and what discount rate commenters think we should use. Should the discount be flat for all services, regardless of the applicant or should we adjust all applicant discount rates for such services? Finally, we invite commenters to help us refine USAC's estimates of the amount of E-rate funding spent on each of the services at

issue in this section and elsewhere in this NPRM. Should we consider other changes to the ESL?

102. We seek comment on any other approaches we should consider. For example, because access to high-capacity broadband is far below the national average on Tribal lands, should we consider adopting an E-rate Tribal priority? If so, how should such Tribal priority operate? Should, for example, a Tribal priority be available to schools operated by the Bureau of Indian Education or by individual Tribal governments? Commenters should be as specific as possible.

B. Ensuring Equitable Access to Limited E-Rate Funds

103. To help address high demand for E-rate funding and to ensure equitable access to limited E-rate funds, we seek comment on revisions to the way E-rate funding is currently distributed. As explained in more detail above, under current program rules, eligible applicants must contribute between 10 and 80 percent of the cost of the supported service. The discount available to a particular school is determined by the percentage of student enrollment that is eligible for a free or reduced price lunch under the NSLP or a federally-approved alternative mechanism, such as a survey. A library's discount percentage is based on the discount rate of the public school district in which the library is physically located. Schools and libraries located in rural areas also may receive an additional 5 to 10 percent discount compared to urban areas. The rules provide a matrix, produced above in Figure 1, reflecting both a school's urban or rural status and the percentage of its students eligible for the school lunch program to establish a school's discount rate, ranging from 20 percent to 90 percent, to be applied to eligible services.

104. Below we seek comment on six options for revising the structure for distributing funds under the E-rate program by: (1) revising the discount matrix to increase certain applicants' matching requirements; (2) providing support on a district-wide basis; (3) revising our approach to supporting rural schools and libraries; (4) incorporating a per-student or per-building cap on funding into the discount matrix; (5) providing more equitable access to priority two funding; and (6) allocating funds to all eligible schools and libraries up front. These options are not necessarily exclusive of one another and we encourage interested parties to address comprehensively the various proposals, particularly if aspects of one are in tension with another. We also ask that parties consider the impact of changes to the discount matrix on libraries, and we seek comment on what particular challenges libraries will face if we change the discount matrix.

1. Modifying the Discount Matrix

105. To have sufficient funds to meet applicants' needs for high-capacity broadband and equitably distribute funding across schools and libraries, we seek comment on whether we should gradually increase, over time, the minimum percentage of matching funds that E-rate applicants must provide when seeking support from the E-rate program. We seek comment on whether this would better serve—on a cost benefit basis—our statutory mandate to ''ensure affordable access to and use of'' E-rate services. We also seek comment on other possible changes to the discount matrix.

106. *Increasing applicants' matching requirement.* Gradually increasing the minimum matching funds provided by applicants would broaden the availability of E-rate support. In funding year 2011, for example, USAC committed approximately $818 million in support for applicants at the 90 percent discount level, and $790 million in support for applicants at 80–89 percent discount levels. Thus, nearly two thirds of all funding went to applicants at these funding levels. Some previous commenters have suggested reducing the maximum discount rate to 80 or even 70 percent. If the maximum discount rate had been 80 percent in funding year 2011, there would have been approximately $150 million in funding to spread more widely to applicants who did not receive support for priority two services.

107. Increasing the matching requirement could also encourage applicants to make more efficient and smarter decisions. In 2003, a USAC task force on the prevention of waste, fraud and abuse found that increasing the percentage of costs that schools and libraries pay for E-rate supported services would encourage more careful and cost-efficient purchasing of E-rate supported services and would thereby reduce the risk of waste, fraud and abuse of E-rate funds. Therefore, it recommended requiring applicants to pay at least 20 percent of the price of priority two E-rate services. We seek comment on that analysis.

108. More recently, Funds for Learning, an E-rate consultant, issued a report demonstrating that school districts with high discount rates spend, on average, far more on E-rate supported services than schools that have to pay a higher percentage of the costs of the supported services they purchase. We seek comment on that analysis and whether it supports a decision to reduce the maximum discount level. Funds for Learning also notes, however, that the majority of high-discount schools are not, in its words, ''big spenders.''

109. Recent changes to the Rural Health Care program provide an example of the potential benefits of reducing the maximum discount level. In adopting the *Healthcare Connect Fund Order* last year, the Commission required fund recipients to contribute 35 percent of the costs of the supported services. The Commission found that requiring recipients of Healthcare Connect funds to contribute 35 percent of the costs of services gave health care providers a strong incentive to control the total costs of the supported services and ''appropriately balances the objectives of enhancing access to advanced telecommunications and information services with ensuring fiscal responsibility and maximizing the efficiency of the program.''

110. We anticipate several advantages to increasing the matching requirement even if we do so over time. For example, requiring the schools and libraries with the highest discount rate to pay for a greater share of their purchases could help drive down the purchase price for E-rate supported services. Applicants receiving substantial (80–90 percent) discounts have greatly reduced incentives to ensure they are receiving the lowest priced services or that they are getting only services they need. We also seek comment on the other benefits, as well as the drawbacks, to increasing schools' and libraries' minimum matching requirement for E-rate supported services.

111. For any revisions we may ultimately make to the discount an applicant can receive for E-rate supported services, we propose to phase in such changes over some period of time, such as three years. Is this enough of a phase-in to allow applicants to adjust their requests? Does the length of the necessary phase-in depend on the extent of reduction in the maximum discount level? We seek comment on such a phase-in for each of the different suggested revisions noted above.

112. *Other modifications to the discount matrix.* We also seek comment on other potential adjustments to the discount matrix to ensure that we can provide some funding to all eligible schools and libraries for all supported services. Should we, for example, reduce the lowest discount rate from 20 percent to 10 percent? How would that

change affect the ability of schools and libraries with the lowest number of students qualifying for free and reduced lunch to receive affordable high-capacity broadband? Should we reduce the top discount to 85 percent, 75 percent, or 65 percent? If so, should there be a reasonable transition period? Should we consider reducing each discount level by a set percentage, such as five percent or ten percent? We estimate that if all the discount rates were five percent lower in 2011, USAC would have been able to distribute an additional $169 million in priority two funding. We estimate that if all discount rates were ten percent lower, in 2011 USAC would have been able to distribute an additional $338.5 million in priority two funding. Would reducing the discount rate across the board result in a disparate impact on applicants depending on the discount level? What would the impact be if we reduced the number of discount levels? Would such a decision simplify the discount calculation process for applicants? Should we consider combining applicants at similar discount levels into a single discount level? Should we require all applicants eligible for a discount between 75 percent and 85 percent, for example, to apply using only an 80 percent discount? Should we have a flat rate discount, or one flat rate discount for rural schools and libraries and one for all other schools and libraries? Are there other ways to adjust the discounts applicants are eligible for? In order to encourage consortium purchasing, should we have a higher minimum discount rate for consortia applications than for individual school and school district applications?

113. There are other possible ways to modify the matching funds requirement, and we invite commenters to offer other proposals. We also invite commenters to refresh the record on previous proposals. For example, in response to the *E-rate Broadband NPRM,* SECA proposed simplifying the discount matrix by setting applicants' discount rate at the sum of the applicant's NSLP discount percentage plus 20 percent for non-urban areas, and 25 percent for rural areas, up to a maximum discount rate. We invite comments on that proposal, and specifically seek comment on how such a change would affect applicants and the fund. What should the maximum discount rate be? Are there other ways that SECA's proposal should be adjusted?

2. Support Based on District-Wide Eligibility and Application by School District

114. We seek comment on requiring all schools within a school district to submit applications by school district, rather than by individual school or groups of schools within the same discount, and to use the average discount rate for the entire school district rather than the weighted average for each school building. We also seek comment on whether all libraries located within a school district should use the school district's discount rate when calculating their discount rate.

115. Currently, school districts, library systems, or other billed entities are required to calculate discounts for services that are shared by two or more of their schools, libraries, or consortia members by calculating an average discount based on the discounts of all member schools and libraries. School districts, library systems, or other billed entities are required to ensure that, for each year in which an eligible school or library is included in an application for purposes of calculating the aggregate discount rate, that eligible school or library receives a proportionate share of the shared services for which support is sought. For schools, the average discount is the weighted average of the applicable discount of all schools sharing a portion of the shared services, with the weighting based on the number of students in each school. For libraries, the average discount is a simple average of the applicable discounts to which the libraries sharing a portion of the shared services are entitled. Each billed entity–the entity responsible for making payments directly to a service provider—must file a separate FCC Form 471 application to certify their eligibility to receive discounts on eligible services for eligible schools, libraries, and consortia of those entities.

116. In the *E-rate Broadband NPRM,* the Commission sought comment on a proposal to revise the discount rules so that schools would calculate discounts on supported services by using the average discount rate for the entire school district rather than the weighted average for each school building. As the Commission observed in the *E-rate Broadband NPRM,* calculating discounts by individual school adds a significant level of complexity to the application process, because the discounts must be calculated separately by school and checked individually by USAC. Simplifying the discount percentage rate calculation across a school district could streamline the application process for school districts and reduce the administrative burden on USAC by no longer requiring USAC to verify each individual school's discount percentage rate. We also anticipate that applying one discount rate to all eligible schools in a school district could lead to more timely funding commitments from USAC. Additionally, the Commission stated that it could significantly reduce the amount of information necessary for Block 4 of the FCC Form 471 application and eliminate a billed entity's submission of multiple FCC Form 471 applications at different discount levels. Moreover, SECA argues that calculating discounts on a district-wide basis better reflects schools' financial realities: tax bases are calculated on an entire district population, not just those of a subset of schools, and budgets are set district-wide. Allowing libraries located within a school district to use the school district's discount rate would also ease the administrative burden of such libraries.

117. Accordingly, we propose to revise § 54.505(b) of the E-rate rules to read:

School districts shall calculate discounts on supported services described in § 54.502(b) by calculating a single discount percentage rate for the entire school district by dividing the total number of students eligible for the National School Lunch Program within the school district by the total number of students within the school district. This single discount percentage rate shall then be applied to the discount matrix to set a discount rate for the supported services purchased by all schools within the school district.

We seek comment on this proposed rule. We also seek comment on whether we should define ''school district'' for purposes of this proposal.

118. We also propose below to change our definition of ''rural'' for purposes of the E-rate program to ensure greater funding to truly rural areas by using the U.S. Department of Education's NCES definitions. Currently, the definition of ''rural area'' is the same used by the U.S. Department of Health and Human Service's Office of Rural Health Care Policy (ORHP). Are there any school districts for which some schools would be differently classified as ''rural'' or not under our current or proposed definition? If so, we seek comment on whether to apply the rural discount if any schools in a district are considered to be located in a ''rural'' area or if a majority of the schools in a district are considered rural. Alternatively, should we consider partial rural discounts depending on the proportion of schools

that are rural, or other approaches? We recognize that there may be specific instances where adopting a district-wide discount rate may result in a lower discount for certain entities. We therefore seek comment on the impact of this proposal on schools and libraries.

119. Additionally, in the *E-rate Broadband NPRM,* as part of its efforts to streamline the application process, the Commission sought comment on a proposal to require all schools and libraries that are part of the same school district to submit applications for priority two internal connections by school district, rather than by individual school. As the Commission stated in the *E-rate Broadband NPRM,* requiring schools to apply by school district would help streamline the process and simplify the discount calculation for schools as well as the review process for both applicants and USAC. Additionally, it would ensure that libraries receive funding for internal connections and at the same discount level as schools located within their school district. We thus seek comment on amending § 54.504(a) of the E-rate rules to read:

An eligible school, library, or consortium that includes an eligible school or library seeking to receive discounts for eligible services under this subpart, shall, upon signing a contract for eligible services, submit a completed FCC Form 471 to the Administrator. All schools and libraries that are part of the same school district and seek priority two internal connections shall submit a completed FCC Form 471 to the Administrator as part of the school district in which they are located. A commitment of support is contingent upon the filing of an FCC Form 471.

We seek comment on this proposed rule.

120. We also seek comment on whether we should require schools and libraries to submit applications for priority one services by school district. Commenters should address what, if any, additional burden such proposal may place on applicants. In addition, we seek comment on whether to limit applications for a school district to one for each category of service requested. For example, if the Commission retains the current priority one and priority two distinctions, an applicant could only submit two applications—one for each category. What are the advantages and disadvantages of such a requirement?

3. More Equitable Funding for Rural Schools and Libraries

121. In order to ensure more equitable access to E-rate funding, we seek comment on whether we should further increase the discount rate or the amount of E-rate funds available for schools and libraries in rural areas or in remote rural areas. When the Commission created the E-rate program, it recognized that schools and libraries in rural areas would likely face higher costs for E-rate supported services, and therefore provided an additional 5–10 percent discount rate for rural schools and libraries that would otherwise receive a discount rate of 60 percent or less. E-rate has been crucial in supporting connectivity to rural schools and libraries. However, those schools and libraries in rural areas that also have a high percentage of students that qualify for free or reduced-price school lunches do not get an additional discount, even though there costs may be higher. We therefore seek comment on whether all rural schools and libraries, or those in remote-rural areas should receive additional E-rate support to recognize the unique challenges of providing services in rural, less dense areas.

122. Conversely, some commenters argue that the Commission should adjust the discount matrix so that E-rate applicants with similar levels of participation in the national school lunch program receive the same discount percentage, regardless of the location. Given that most E-rate funding goes to schools and libraries that receive discount rates above 60 percent, and therefore the majority of E-rate funds USAC commits are not subject to the discount, is there value in simplifying how discount levels are established for all schools and libraries, as these commenters suggest? Should our approach differ for priority one and priority two services?

4. Setting Budgets or Limits

123. In this section, we seek comment on whether we should impose a per-student or per-building budget, or similar limits, on funding for schools and libraries. Building on a recommendation of the 2003 USAC Task Force, Funds for Learning, an E-rate consultant that has analyzed USAC's data, has argued that appropriately-structured budgets on a per-student or per-building basis could lead to more equitable and predictable distribution of E-rate funds by limiting the funding that is allocated to a small number of high-spending applicants. According to Funds for Learning, 2012 funding requests averaged $44.30 per-student for priority one services across all applicants, but more than 10 percent of applicants sought funding of at least $180 per-student for priority one services. Notably, four school districts in the nation's largest cities requested at least $240 per-student, and more than a dozen other applicants sought over $1,000 per student in total support in funding year 2012.

124. Some variation in funding is not surprising because discount rates range from 90 percent to 20 percent. Moreover, the Commission has always recognized that schools and libraries across the country would have different needs and different challenges in purchasing E-rate supported services. Yet the Funds for Learning analysis of funding year 2013 requests shows that applicants with higher discount rates also planned to spend significantly more per-student in pre-discount dollars for telecommunications and Internet access (priority one services). Those seeking 20–59 percent discounts plan $35.23 per-student in pre-discount purchases of priority one services, while those seeking 60–79 percent discounts plan $43.02 per-student pre-discount purchases for such services, and those seeking 80–90 percent discounts, $86.53 per-student pre-discount purchases for such services. We also expect that a small rural school may have to pay more per-student for Internet access than a large urban school. However, Funds for Learning finds that some of the highest per-student costs are in urban areas, where competition should drive down prices. While the 2,360 applicants in large cities plan an average of $67.88 per-student in pre-discount purchases for priority one services for funding year 2013, the 4,987 applicants in large, medium, and small-size suburban schools plan per-student purchases of priority one services averaging only $40.76, $39.17, and $46.44 in pre-discount prices, respectively. Even the 3,129 applicants in ''rural: distant'' areas planned pre-discount purchases averaging only $65.35 per-student.

125. In the *E-rate Broadband NPRM,* the Commission proposed a per-student cap on annual priority two spending for schools of $15 per-student per year. A $15 per-student cap would have limited the most disadvantaged schools to 90 percent of $15 in support, or $13.50 per-student per year. Notably, this amount is less than half the average per student funding amount for priority two funding over the past five years. Commenters argued that the proposed cap failed to account for a number of factors that could affect applicants' needs.

126. Having considered the record on that proposal, we now seek comment on whether we should consider a higher and more flexible per-student limit, per-building limit or alternative forms of limits or budget on an applicant's E-rate funding. If we adopt a per-student limit or other form of limit for some or all

services, we seek comment on where we might set the limit. Should any limits we adopt include adjustments to reflect the higher costs faced by applicants in more expensive-to-serve locations, such as Tribal lands? Should any such adjustment be based on observed current costs, some relatively simple and reliable proxies for costs, or some other measure? Should limits be set relatively high, so as to serve as a check on excessive funding requests and help prevent a few applicants from securing so much funding that other disadvantaged applicants are crowded out, while leaving most applicants unaffected? Alternatively, should limits be set lower to more aggressively spread funding annually to disadvantaged applicants that have rarely, if ever, received funding for internal connections?

127. We invite commenters to propose limits for either total annual funding, pre-discount requests, or for priority one and priority two purchases separately and ask commenters to explain their rationale for the limits that they recommend. We seek particular comment on Funds for Learning's most recent proposal calling for a per-student budget calculation. We note that we have sought comment on prioritizing broadband connectivity to and within schools and libraries, which could, among other changes, raise the per student cost of supported services for those schools and libraries seeking support for large installation and construction costs. How do we implement this prioritization of broadband connectivity while also instituting any of the potential funding limits? Should we consider excluding some costs from the limit, such as non-recurring installation and construction costs? Should we instead impose some other cap on costs related to the higher priority services?

128. We realize that anything but a very high per-student limit could prevent the smallest schools and particularly those in remote areas of the country, such as schools on Tribal lands, from affording supported services. Is this an argument for using per-building caps for certain types of services instead? As we did in the *E-rate Broadband NPRM,* we also seek comment on whether there should be a minimum amount of E-rate support for which a school, library, or school district is eligible, irrespective of the number of students, and what it should be. If a minimum amount is established, how should we compute that minimum? Should we provide for different limits depending on the number of students at a school or in a school district? If so, what should those limits be? We also repeat our question about whether any limit should permit additional funding for rural applicants, either by establishing a higher limit for rural applicants or through some other mechanism.

129. We also seek comment on how to set caps for libraries if we were to take either approach above for schools. The *E-rate Broadband NPRM* suggested that library demand might be capped at the level of the public school district in which they were located, but it also noted that it might be advisable to modify that approach. We seek comment on the best way to set caps on E-rate support for libraries, whether based on the cap for the closest public school district, the size of their patron population, or some other figure or figures.

130. We are also particularly interested in any examples that commenters can offer of other funding programs in the United States or elsewhere that have used analogous per-customer caps effectively in other settings, for us to learn what might work best. We also welcome comments pointing us to examples of problems with funding caps that have arisen in other programs.

5. More Equitable Access to Funding for Internal Broadband Connections

131. As described above, internal connections are needed to make effective use of high-capacity connectivity to schools. High bandwidth connectivity to a school or library serves little purpose if students and patrons inside are not able to use it effectively because internal wired and wireless connections are missing or insufficient. Yet today, few schools are able to receive support for internal connections. Indeed some commenters have argued that lack of internal connections funding—due to increasing restrictions on the availability of priority two support—have become a barrier to adoption of higher speed connections for many schools and libraries. In this section we seek comment on how to increase access to funding for internal connections.

132. In order to provide more equitable access to priority two funding, in 2003 the Commission adopted a rule limiting each eligible entity's discounts receipt of discounts on internal connections to twice every five funding years (commonly referred to as the two-in-five rule). However, because requests for priority two funding exceed the E-rate funding cap, there is wide-spread agreement that a relatively small number of applicants, those that qualify for the highest discount rates, receive priority two funding over and over again, while other applicants seldom qualify for priority two funding. Therefore, we seek comment on whether we should revise or rescind the two-in-five rule, and if so, what we should replace it with.

133. SECA recently suggested that the Commission rescind the two-in-five rule. Instead of using the two-in-five rule, SECA suggested that the Commission allow all applicants to receive funding on a rolling funding cycle. Under SECA's proposal, a different set of applicants would be eligible for priority two funding every year, until all applicants have been eligible for some priority two funding and then the cycle would start again. The benefit to the SECA approach is that it ensures all E-rate applicants have access to some priority two funding over time. If we continue to prioritize funding for some services over others, we seek comment on the approach offered by SECA.

134. *Eliminating the distinction between priority one and priority two.* Other commenters appear to support replacing the current prioritization system with a ''whole networks'' approach, under which connectivity to schools and internal connections are funded together and all eligible services are given equal priority. Commenters argue that this approach would give schools the flexibility to focus E-rate funding on those portions of their network where upgrades are most needed—whether connection to the schools or internal connections. It could also eliminate incentives for vendors to re-characterize priority two services as priority one, or for schools to purchase more expensive priority one services—like cellular data connections– in lieu of cheaper priority two services, like internal wireless connections.

135. We therefore seek comment on whether we should more fundamentally shift the way we prioritize E-rate support by eliminating the distinction between priority one and priority two services. Under this approach we would instead allow schools and libraries to choose from one consolidated menu of services. Would this approach allow more schools access to funding for internal connections? Would this additional flexibility be beneficial? If we instituted this proposal, how should we determine the amount of support that each school or library receives? And if we took such an approach, how would we prioritize among funding requests to the extent they exceeded the funding cap? Would such an approach necessarily require a per-student or per-

building limit, or other form of budget for individual applicants, as discussed above?

136. Are there other changes we should make to the prioritization of services? For example, instead of consolidating the two existing priority levels should we create more priority levels than currently exist? If so, what should be in the various categories and how should we transition services between the current priority levels and any new ones? Are there any other approaches we should consider?

6. Simplified Allocation of Funds to All Schools and Libraries

137. In this section, we seek comment on a more fundamental approach to changing the distribution of E-rate funding. Under this approach, we would eliminate the discount matrix and the priority system; instead, each eligible applicant would receive a fixed budget at the beginning of the funding year to spend on any eligible services of their choosing. In contrast to the existing system, whether or not a school or library receives funding would be determined at the beginning of the funding year; thus applicants could know the amount of funding available before committing to any particular project. We seek comment on this approach. We seek comment on the costs and benefits of this approach, how this approach would impact other proposals we have discussed herein, and whether it would further our proposed goals.

138. If we adopted the simplified-allocation approach, we seek comment on how we should allocate such funds among eligible applicants. One method of allocating funding to schools would be to allocate funds to each school (or school district) on a per-student basis. Rural schools facing higher costs and schools serving low-income areas or student populations would receive additional funding for each student. Thus, a school serving a rural area might receive twice as much per student as a school serving an urban area, or a school located in an area with high poverty might receive twice as much per student.

139. If we were to adopt a per-student allocation system, how much additional funding per student should rural schools receive? How much additional funding for schools serving low-income populations? Should these determinations be done on a bright-line basis (*e.g.,* areas with poverty rates of more than 15 percent be classified ''low-income'' and those with less than 15 percent poverty ''high-income'') or should we use a sliding scale (such as adjusting funding based on median household income, poverty rate, or some similar metric)? Should there be additional allocations for schools in remote areas (such as schools in the northern villages of Alaska)? If so, what criteria should we use for determining which schools should be eligible for additional allocations? Should there be a minimum funding level (a floor) or a baseline funding amount for all schools? We also ask that commenters explain how this approach and any modifications they offer would affect schools' and libraries' ability to purchase the E-rate supported services they currently receive, those they receive no discount for today under the priority system, and those they are likely to need in the future in order to meet our proposed goals for the E-rate program.

140. Under this system, how should the Commission allocate funds among libraries? For example, could we look at the number of patrons served by a library or the population it serves? Should we adjust the funding for libraries based on whether they are located in a rural or extremely remote area? Should we adjust the funding to reflect the wealth of the surrounding population? How do libraries determine the area they serve, and how could we adjust the allocation methodology to reflect the unique needs of libraries? Should we consider a per-building funding amount for libraries? We also ask commenters to explain the impact of this approach, and of any modifications they offer, to libraries' ability to meet their connectivity needs.

141. We also seek comment on how to allocate funding between schools and libraries. For example, should we look at the past allocation of distributed funds and reserve a similar proportion of the Fund for each group separately? Would allocating 90 percent of E-rate funding each year to schools and ten percent to libraries be a fair appraisal of historical spending patterns (or future spending needs)?

142. We also seek comment on how the simplified-allocation approach might impact group applicants, including school districts and consortia. For example, under this approach, should school districts be required to report the number of students at each school or could the school district simply report the total number of students in the district? If the latter, how should we calculate the per-student allocation, on a school-by-school basis or using some district-wide averaging? How do we ensure that all schools in a district or a consortia benefit from E-rate support? Would the fact that vendors know the budget of each school, school district, or consortium impact the ability of districts and consortia to drive down prices by aggregating demand?

143. In turn, how might this proposal impact consortia? Today, funding for priority two services is determined in part by the student-weighted average discount-level of consortium applicants. Does that system impact priority two requests, given that a lower discount might prevent a consortium from receiving any funding at all? Under the simplified-allocation approach, each school or library in a consortium could know up front the number of E-rate dollars it can bring to the table, and each consortium could prioritize its spending as it sees fit. Would that knowledge aid or inhibit the formation of consortia?

144. If we adopted the simplified-allocation approach, what sort of matching requirements should we include to ensure that applicants spend E-rate funds prudently? As discussed above, just last year the Commission found that requiring recipients of Healthcare Connect funds to contribute 35 percent of the costs of services gave applicants a strong incentive to control the total costs of the supported services and ''appropriately balances the objections of enhancing access to advanced telecommunications and information services with ensuring fiscal responsibility and maximizing the efficiency of the program.'' Could a lower matching funds requirement, such as requiring E-rate applicants to pay one dollar for every three E-rate dollars they receive, serve the same purposes for schools and libraries that depend on the E-rate program? Would such a requirement deter wasteful spending? Would a flat 25 percent matching requirement give applicants sufficient incentive to control the costs of supported services? Would the fact that they have a specific budget encourage some applicants to spend more money than they might otherwise, or would a specific budget aid schools in long-term planning and prudent spending? How would a flat 25 percent matching requirement impact schools' and libraries' ability to afford high-capacity broadband given that current contribution requirements range from 10 percent to 80 percent? Would it impose a hardship on certain schools, such as schools with few resources and facing extreme costs? If so, should there be an alternative matching requirement for such schools and under what circumstances?

145. We seek comment on the relative fairness to recipients of this approach

versus the current system or other options we seek comment on in this Notice. We seek comment on whether, under this approach, recipients would benefit from a more stable, and predictable level of support from year to year. Would such stability aid in long-term planning? We also seek comment on whether there are ways to implement this approach that would ensure that poor, rural schools and libraries that do not currently have access to high-capacity services get them.

146. Would the simplified-allocation proposal give local schools and libraries additional flexibility to meet their diverse needs, allowing some to prioritize higher-capacity circuits and others to prioritize connecting classrooms or deploying Wi-Fi? For example, could we retain support for basic maintenance and other services since funding availability will no longer depend on the specific services ordered by other schools and libraries?

147. One of the proposed goals is streamlining the administration of the E-rate program. We seek comment on whether adopting the simplified-allocation approach would further that goal or hinder it. For example, could we consider eliminating all or portions of our competitive bidding rules, and if so which ones? Under this approach, would schools and libraries' incentives to watch over their E-rate funds increase sufficiently to allow us to eliminate the 28-day waiting period? Should we eliminate the price as the primary factor requirement for competitive bidding? If we eliminate some or all of our competitive bidding requirements, should we continue to require applicants to conduct fair and open competitive bidding processes? How should we and USAC determine whether applicants' processes have been conducted in an open and fair competitive manner? How can we best protect against waste, fraud and abuse under the simplified-allocation approach?

148. We also seek comment on other administrative issues under the alternative funding approach. Should we eliminate FCC Forms 470 and 471 and replace them with a single-page form that requires the school or library to identify contact information, certify compliance with federal rules, and certify the number of students/patrons served? Would that initial application need to be filed several months before the start of the funding year (as FCC Forms 470 and 471 are today), or could the initial application be filed after the funding year begins? Could we eliminate the requirement that applicants for internal connections funding file technology plans? Could USAC bear a greater part of the burden of calculating funding amounts for applicants to simplify the process for them? If so, after that initial application, USAC could provide the school with the total amount of funding available in a commitment letter and the school would have the flexibility to spend that funding on any eligible service. Are there other forms, deadlines, or requirements, such as the technology plan and technology-plan-review process, that we could eliminate? To actually receive money, could a school submit invoices or other proof that it has paid and received particular services? Would this approach reduce the time between funding commitments and disbursements? Why or why not, and by how much?

149. What sort of reporting requirements would work best under this proposal? How can we best ascertain that applicants actually purchased supported services and that they are being properly used? Should we, for example, require a school district superintendent or school principal to certify under oath that all supported services are being used to benefit students. Would such a certification make sense at the beginning of the E-rate funding process (such as on FCC Form 471) or at its end (such as on FCC Form 486)? Should libraries be subject to a similar certification requirement? For example, should libraries be required to certify that E-rate funds are being used to benefit their patrons? Would the head librarian be the appropriate representative for such a certification?

150. If we adopted this approach, how could we phase it in over time to give applicants time to adjust? Or would this approach require sufficiently fundamental changes in the program that a flash cut would be required?

C. Lowering New Build Costs and Identifying Additional Funding To Support Broadband to Schools and Libraries

151. In this section, we seek comment on what additional steps the Commission should take to ensure that there are sufficient funds to meet the connectivity needs of students, teaching staff, and libraries.

152. *Public-private partnerships.* Are there steps the Commission could take to improve the private sector business case for deploying fiber to schools and libraries, or otherwise expanding connectivity, and thereby reduce the need for E-rate funding? For example, are there steps the Commission could take to facilitate use of new fiber runs for multiple business objectives, such as backhaul for cell towers or service to other enterprise users, and thereby incent greater sharing of new construction costs? Could waiving, forbearing from, or reducing certain otherwise-applicable requirements in conjunction with new infrastructure builds to schools and libraries help lower costs and therefore extend the reach of E-rate funding? Should the Commission condition certain forms of E-rate funding on changes in local permitting practices or other state and local policy changes (*e.g.,* state and local dig-once initiatives) to help reduce new build costs? What impact would such a policy have on schools and libraries on federal or other trust lands, such as Tribal lands? How can the Commission best coordinate with and support state, local, and Tribal government efforts to increase broadband access to schools and libraries? Are there other Commission rule changes that would facilitate coordination or support state and local efforts?

153. We also seek comment on other potential public or private sources of funding and how the Commission could help encourage the deployment of such funding to meet school and library needs. For example, in addition to the possible changes to the discount matrix discussed above, could the Commission make certain types of E-rate support, or E-rate support above certain amounts, conditional on state, local, Tribal, or private funds above the otherwise-required school or library 10–80 percent contribution? Would a larger emphasis on matching funds help recruit additional funding from state, local, or private-sector sources? Would it disproportionately benefit schools with greater means or higher-income student populations? What impact would such an approach have on schools and libraries located on Tribal lands? Should schools and libraries operated by the Bureau of Indian Affairs or individual Tribal governments be exempt from such a requirement?

154. Are there other steps the Commission could take to encourage public-private partnerships to promote our proposed E-rate goals? For example, Verizon suggests that its Verizon Foundation Innovative Learning Schools program, which focuses on teacher training and professional development for select schools nationwide, complements E-rate but sometimes faces challenges with respect to E-rate gift rules. We seek comment on whether there are ways that E-rate could allow schools and libraries to take greater advantage of private philanthropy while still allowing the

Commission to maintain appropriate control over E-rate expenditures and to prevent improper influence over E-rate service provider selections.

155. *Coordination with other universal service programs.* We also seek comment on whether greater coordination of E-rate funding with funding from other universal service programs could multiply the impact of these other programs to support the goals of E-rate. In the *USF/ICC Transformation Order,* 76 FR 78384, December 16, 2011, the Commission adopted broadband service obligations for eligible telecommunications carriers (ETCs) that receive high-cost support. The Commission noted that it expected ETCs to engage with community anchor institutions, which include schools and libraries, in the network planning stages with respect to the deployment of Connect America-supported networks. Both price cap and rate-of-return ETCs that receive high-cost support are already required to include in their annual reports the number, names and addresses of community anchor institutions to which the ETC newly began providing access to broadband service in the preceding calendar year.

156. We seek comment on how to minimize any overlap in funding for broadband, while extending the reach of both programs to support the deployment and adoption of broadband by E-rate applicants? How can we best ensure and encourage the two support mechanisms to achieve our universal service objectives, including the goals identified herein? For example, should we consider what portion of deployment should high-cost funding support and what portion should E-rate support? Would it be useful to specify that certain costs—such as construction charges to extend fiber to the school or library property line—are funded by high cost, and other costs—such as recurring charges for broadband service—are funded by E-rate? What measures should we adopt to ensure that there is no duplicative funding of the same facilities or services from the two programs?

157. The Commission has concluded that a forward-looking wireline cost model will be used to determine support to be offered to price cap carriers. After the model is finalized and adopted for Phase II purposes, should we consider how it might be used or modified to assist in determining the cost of providing fiber-based broadband to the E-rate applicants in the relevant geographic area? Could we use a model-derived cost to establish a benchmark for the prices an E-rate applicant should pay for broadband? Should we instead consider a model-derived cost—with the relevant E-rate discount applied—as a cap on the amount the E-rate program will fund for such broadband?

158. We also ask for comment on how we can maintain the core requirements and procedures in the E-rate program if we closely coordinate support with other universal service programs. How could we implement some of these ideas while maintaining the framework of the existing competitive bidding requirements for the E-rate program?

159. In the *Healthcare Connect Fund Order,* the Commission allowed an exemption from the rural health care competitive bidding obligations for health care providers entering into a consortium with E-rate participants. Should we consider a similar accommodation for applicants to the E-rate program?

160. *Funding the proposed goals through E-rate.* In this Notice, we seek comment on various approaches to refocusing or reprioritizing funds, or adjusting the support levels for certain services, as well as other proposals that will reduce costs while better targeting support to help schools and libraries get the connectivity they need. We seek comment on whether, in concert with these changes, enough funding will be saved or preserved to enable the E-rate program to meet our proposed connectivity goals within the existing E-rate funding cap. Recent reforms to the other USF programs were achieved without having to increase the overall size of the USF. For example, the Commission established a budget for the Connect America Fund and a savings target for the Lifeline program. Also, the Commission recently reformed the Rural Health Care program to encourage consortium applications, increase eligibility in covered services and provide applicants more flexibility in renewing multi-year contracts. We ask commenters to identify the funding that could become available as a result of the reforms suggested in this NPRM and whether these reforms will result in sufficient cost savings to the E-rate program to meet our proposed program goals.

161. Alternatively, we seek comment on whether a temporary increase in the E-rate cap is necessary to reach our goals and ensure high-capacity broadband connectivity to and within schools? If we were to authorize such a temporary increase, should we modify our rules to focus the temporary funds on providing services related solely on high-capacity broadband connectivity? What services should be eligible for support under such a short-term program? How much short-term funding would be needed to connect all or virtually all schools to infrastructure or other connectivity sufficient to meet their needs? How much short term funding, and over what period of time, would be needed to provide robust internal connections sufficient to take advantage of the high-capacity broadband connectivity to schools and libraries? Should any such funding be allocated using the generally applicable discount matrix, application process, timeline, and other rules, or should we consider modifications, for example to accelerate availability of funding for upgrades? If we consider a temporary increase in E-rate funding to upgrade school and library connections for digital learning, should we limit participation to only some category of applicants, such as only regional consortia?

162. Should we instead consider a more permanent change to the cap to achieve the goals of a modern E-rate program? When the Commission adopted the $2.25 billion cap 16 years ago, it recognized that it was a best efforts attempt to estimate what the demand would be for telecommunications and Internet access services by schools and libraries. Commenters advocating an increase in the cap emphasize that every funding year applicants have requested more than is available in E-rate support. They further argue that because of the effects of inflation and the growth in the number of students in our nation's schools, the actual purchasing power of the E-rate program declined by nearly one third from the start of the program in 1998 to today. We seek comment on these arguments.

163. Also, under either a temporary, long-term or permanent approach to providing additional funding, would it make sense to initially provide funding to a small group of schools and libraries on a competitive basis with the goal of developing best practices and cost-effective approaches to building out high-capacity broadband services? Are there other ways to use competitive approaches to maximize the impact of funding?

164. We also seek comment on the appropriate role for the Federal-State Joint Board on Universal Service in providing the Commission with advice and guidance on any temporary, long-term or permanent approach to providing additional funding for the E-rate program. For example, if we consider any increase in E-rate funding, should we first seek the opinion of the Joint Board regarding the necessity and the amount of the increase?

IV. Maximizing the Cost Effectiveness of E-Rate Funds

A. Increasing Consortium Purchasing

165. In the *Universal Service First Report and Order,* 62 FR 32862, June 17, 1997, the Commission envisioned that allowing schools and libraries to participate in consortia would aggregate demand to influence existing carriers to lower their prices and promote efficient use of shared facilities. The Commission expected that consortia would be particularly important in rural regions to negotiate lower rates as well as secure efficiencies. Today, there are more than 400 consortia, representing more than 9,400 schools and libraries (which include schools in more than 800 school districts), participating in the E-rate program. Every state in the nation has at least one consortium and many states have multiple consortia.

166. At the same time, in funding year 2011, consortium purchasing accounted for only about $300 million of E-rate funds committed by USAC, or about 13 percent of all E-rate funds disbursed. In the recent *Healthcare Connect Fund Order* the Commission found that bulk purchasing by consortia helped drive down service rates, increase bandwidth, improve service quality and reduce administrative overhead. We therefore seek comment on whether we should adopt additional incentives or mechanisms to facilitate the use of consortium purchasing in the E-rate program. In particular, we are interested in ways that consortium purchasing can drive down prices and otherwise benefit applicants and the E-rate fund.

167. We also seek comment on whether there are legal, geographic or other barriers preventing certain schools and libraries from taking advantage of consortium purchasing. Are there ways in which our rules prevent or discourage participation by applicants who might otherwise join a consortium? We invite commenters to identify specific amendments we can make to our rules to ensure that applicants can join or form consortia.

168. Are there other actions the Commission can take to remove barriers to participation in consortia? We recognize that not all applicants choose to join a consortium and we therefore ask about the factors that contribute to an applicant's decision to join or not to join a consortium. In particular, we seek comment from applicants on how they weigh the administrative benefits of joining a consortium in the E-rate program against the burdens the program imposes today. We seek comment on whether there are consortia-friendly application processes that would minimize the administrative burden on applicants and USAC. Should we, for example, prioritize consortium applications in the USAC review process? Should we allow for prioritization for all consortia or only those that, for example, include the neediest schools and libraries? In what ways should we streamline the consortia review process? What steps should we take to avoid disadvantaging schools and libraries unable to participate in consortia, such as some schools and libraries on Tribal lands?

169. We also seek comment on whether particular types of services lend themselves better to consortium purchasing. For example, we note that while schools and libraries might join consortia for broadband access, they might apply independently for internal connections. In particular, we seek comment on whether consortia are effective vehicles for driving down specific costs, such as equipment purchases or broadband access.

170. We seek comment on whether our consortium procedures have different impacts depending on the composition of the consortia. For example, are there disparate impacts between consortia that include only schools, or only libraries, or both schools and libraries? Is the formation of consortia impacted by potential disparities in discount levels? Are consortia that include other entities such as health care providers and/or public sector entities such as state colleges and universities, educational broadcasters, counties, and municipalities impacted in different ways? While we seek comment on these consortia configurations, we also open the inquiry to whether there are other entities that join with schools and/or libraries to create consortia and whether there are specific impacts on those consortia. Given the potential efficiencies of broadband networks that serve multiple types of anchor institutions, are there steps we can take to facilitate the formation of consortia that extend beyond schools and libraries?

171. Finally, while we are eager for schools and libraries to secure the many benefits that consortia can provide, we are mindful that aggregation of applicants can also diminish competition. We seek comment on whether service providers who would compete to serve some of the entities in a consortium might not bid if they could not serve the entire consortium. As a result, a larger consortium could leave a single bidder facing little pressure to pass on any reduced costs to applicants. We seek comment on what the Commission might do while encouraging cost-saving consortia so as to minimize, if not avoid, negative effects on competition.

B. Encouraging Other Types of Bulk Buying Opportunities

172. We seek comment on how best to encourage other types of bulk buying of E-rate supported services. Currently, consortia are one of many ways that E-rate applicants aggregate demand for E-rate supported services in order to reduce prices and procure necessary services. In some cases, E-rate applicants purchase from state master contracts, which offer prices, terms and conditions negotiated by a state on behalf of a wide range of public institutions within that state. In many places, state or regional research and education networks (R&E networks) are also available and offer bulk purchasing opportunities for applicants. In other cases, E-rate applicants may be able to take advantage of regional contracts managed by public, non-profit or private entities that also aggregate demand and manage the procurement process. Should applicants be required to purchase from these state master or regional contracts in which they may participate, unless they can receive the same services for a lower price? We seek comment on the benefits and burdens of these and any other methods that E-rate applicants currently use to aggregate demand for E-rate supported services and request that commenters provide data on how effective such approaches are for driving down prices and creating administrative efficiencies for E-rate applicants. We also invite applicants to identify and comment on other methods of bulk buying that exist outside the E-rate program and whether such methods could be successfully adapted to the E-rate program.

173. We also seek comment on whether the Commission, working with USAC or some other entity, should create a formal bulk buying program for E-rate supported services. If so, are there specific products or services that such a program should cover? For example, are there certain products, like wireless routers, that are standard or common to school and library networks nationwide? Generally, how would such an initiative work within the structure of the current E-rate program? How would such a program appeal to applicants?

174. If we adopt a bulk buying program, should we amend our rules so that purchases made using the program would be exempt from our competitive bidding requirements? Would we incentivize participation by preempting

all or some of the USAC review processes for applicants who purchase through the bulk buying program? How should we treat applicants who purchase products and services that are available through the bulk buying program, outside of the bulk buying program? Should we, for example, treat the prices available through such a bulk-buying as the maximum price for which an applicant can seek support?

175. On the other hand, are there benefits to consortium membership or independent purchasing that could be lost if we were to encourage alternative bulk-purchasing arrangements? By suggesting one bulk buying option, we do not intend to foreclose others, and seek comment on other options.

176. We also seek comment on whether E-rate applicants can lower costs by aggregating data traffic. As we noted earlier, many schools and libraries use district-wide or regional WANs to provide broadband connectivity between buildings. Similarly, state R&E networks can provide high capacity routes from major locations within a state, relying on national networks for long-distance connections and local connections to reach smaller communities and buildings within a community. By partnering with WANs or R&E networks and aggregating Internet traffic, schools and libraries may be able to further drive down prices. E-rate applicants may also work with WANs and R&E networks to purchase circuits and network equipment in bulk and to take advantage of knowledge and relationships with commercial service providers. We seek comment on policies that we can adopt to encourage E-rate applicants to leverage these other networks to lower prices.

C. Increasing Transparency

177. We also propose to increase the transparency of E-rate spending and specifically the prices E-rate applicants pay for service. Increasing such transparency may aid oversight of the E-rate program and drive down the prices of E-rate supported services. We seek comment on directing USAC to publish more granular information about E-rate spending and on how to collect such information. We seek comment on whether increasing price transparency will result in schools and libraries paying less for E-rate supported services and on ways we can assist in making prices for E-rate supported services more transparent. More specifically, we propose options for informing schools and libraries about the prices at which service providers are willing to offer for E-rate supported services. We seek comment on the options we propose and invite commenters to offer other suggestions.

178. *Transparency of E-rate spending.* We seek ways to increase transparency with respect to how E-rate funds are allocated and spent. The National Broadband Plan, for example, recommended that we ''collect and publish more specific, quantifiable and standardized data about applicants' use of E-rate funds.'' We accordingly seek comment on whether USAC should be required to create a Web site where any American could easily look up the details of how any participant in the E-rate program had used its funds in any given year. How should such information be organized? At what level of detail should it be reported? Would such a Web site provide valuable information to parents? Would it encourage officials to spend money more wisely? How else can we increase the transparency of E-rate spending, including the access that local journalists, school boards, librarians, city governments, and parents have on how E-rate funds are allocated and on what they are spent?

179. Below we seek comment on ways to streamline the E-rate application process. In line with that discussion, how can we minimize the reporting burden on schools and libraries while maximizing the insight the American public has into the spending of E-rate funds? For example, schools report certain characteristics such as the number of classrooms connected on the current Form 471, but that information must be reported before a school has completed a project and before a school has even received a commitment of funding. Could we reduce this burden by instead requiring the disclosure of relevant information (such as capacity leased or wireless access points purchased) on the back-end as part of the invoicing/payment validation process (perhaps as part of Form 486)? Should we require such reporting in a standard format or allow or encourage a fuller description? In short, can we simultaneously increase the transparency of E-rate spending while reducing the burden on applicants?

180. *Transparency of prices available for E-rate supported services.* We seek comment on how best to increase the transparency of prices for E-rate supported services. Are there publicly available online forums, blogs or other media, where schools and libraries can share information about the best prices and deals for E-rate eligible services? If not, or if currently available information is insufficient, we seek comment on what role, if any, the Commission or USAC should have in operating, hosting or endorsing Web sites or other ways of encouraging service providers to share pricing information with E-rate applicants, and facilitate price comparisons. We invite commenters who have experience with other information exchanges to comment on examples of what does or does not work in other contexts, and whether there are models we should look to in unrelated markets or other countries.

181. *Transparency of prices being bid for E-rate supported services.* Our competitive bidding rules require applicants to publicly seek bids for E-rate supported services, but our rules do not require applicants or service providers to make the responses to those bids public. Should we consider making bid responses public or at least accessible to other E-rate applicants? Would it be advisable to release this information only after the applicant has selected a vendor for the requested services? Are there any state laws, court orders, or contracts expressly prohibiting such disclosure? If we do require public disclosure of bid responses, what is the best format and timing for making such responses public in order to maximize the usefulness of such information to other E-rate applicants? To what extent would publicizing such bids drive down prices, both with respect to specific applications and more generally? On the other hand, is there a risk that public bid responses inflate bid prices for E-rate supported services by, among other things, discouraging providers from bidding to provide E-rate supported services? Could such disclosure facilitate tacit collusion to restrict competition through coordinated pricing, market allocation or other approaches that would inflate the price or reduce the quality of E-rate supported services? We also seek comment on the degree to which state, local, and Tribal laws currently require the disclosure of bid responses for E-rate supported services, and whether service providers can and do limit any such public access.

182. *Transparency of actual purchase prices.* As an alternative to requiring public disclosure of all bids to provide E-rate services, we seek comment on making available the prices applicants are paying for E-rate supported services. We note that applicants currently provide that information to USAC. We seek comment on whether we should direct USAC to permit public access to FCC Form 471, Item 21 information or any other information provided by either applicants or service providers participating in the E-rate program. Are there any state laws, court orders, or

contracts that would prohibit such public disclosure? Should we limit disclosure of pricing information to other E-rate applicants? We also seek comment on whether requiring public disclosure of the prices applicants actually pay for E-rate supported services create a more effective competitive marketplace for those services and products, or might service providers eschew participation to shield their prices from public view. Could such disclosure facilitate tacit price fixing, bid rigging or market allocation schemes, thus inflating the price of E-rate supported services? In the alternative, do commenters believe that publicly displaying prices may encourage more service providers to approach individual schools and libraries with lower prices and discourage participation in consortia or other aggregate buying groups? Might transparency of pricing also help ensure that providers are complying with the Commission's lowest corresponding price rule?

183. Finally, we note that § 54.501(c)(3) of our rules requires service providers to ''keep and retain records of rates charged to and discounts allowed for eligible schools and libraries—on their own or as part of a consortium. Such records shall be available for public inspection.'' We seek comment on the extent to which applicants can and have availed themselves of that provision of our rules to determine the prices paid by other applicants for E-rate supported services. We also seek comment on the benefits and shortcomings of that provision of our rules and whether we can and should amend it to increase pricing transparency in order to drive down prices of E-rate supported services.

184. *Greater Assistance to Schools and Libraries.* We also seek comment on whether the Commission, USAC, or other entities should take a more active role in assisting applicants in identifying cost-effective purchasing options. The Commission previously directed USAC to develop a pilot program testing an online list of internal connections equipment eligible for discounts. USAC has not updated the database in some time in part because keeping the list current imposed significant administrative burdens on both USAC and vendors. We propose to terminate that pilot program and we invite participants to comment on how the Commission can transition to a more effective system to provide more transparent price information for applicants. For example, should we direct USAC to establish an office to help applicants identify the best prices for E-rate eligible services and products? Such an office could be staffed by consultants with expertise in configurations of educational technologies and the best prices and service providers, and could mine the USAC E-rate databases to identify and publicly disclose attractive prices, terms and conditions for the products and services. We seek comment on the likely cost of providing that sort of expert assistance and whether the benefits of such an undertaking would outweigh its costs. We also ask whether we can, or should, limit access to this pricing data to participants in the E-rate program.

185. If we adopt such an approach, should we amend our rules so that applicants who chose a product or service at the price posted on the Web site would be exempt from any additional competitive bidding requirements for such purchases? We seek comment on ways to implement such a proposal. How should the office identify best terms? What criteria should the office use to filter the information?

186. We also seek comment on whether we should direct USAC to employ a team of technical experts who could assist applicants in planning and designing cost-effective networks? Is there a need for such assistance? What are the costs and benefits of housing a team of technical experts at USAC? How should such a team prioritize its work to be most beneficial to schools and libraries and help drive efficiencies in E-rate purchasing?

187. Are there entities other than the Commission or USAC that could perform this function? For example, could USAC or the Commission assemble a list of school chief information officers or other officials from better-resourced districts that could serve as advisors to smaller or lower-resourced districts? Are there other approaches the Commission should take to ensure schools are planning to efficiently and effectively meet their needs?

D. Improving the Competitive Bidding Process

188. To maximize the cost-effectiveness of purchases made using E-rate funds, we seek comment on the current competitive bidding process, and ask how the Commission can reduce the number of E-rate recipients that do not receive multiple bids, and whether the lowest corresponding price rule helps ensure that E-rate recipients receive cost-effective prices. While USAC does not collect comprehensive information about the quantity or quality of the bids received, there is anecdotal evidence that a substantial number of E-rate applications receive one or no viable competitive bids. We seek comment on whether the current competitive bidding process typically results in multiple competitive bids, and ask commenters to elaborate on the characteristics of recipients that do not ordinarily receive multiple bids. We also seek comment on whether the current competitive bidding process continues to address the needs of the schools and libraries program, or if a different application process would better suit applicants' needs. We specifically request that commenters discuss how the current competitive bidding process and any proposed processes ensure that schools and libraries are selecting the most cost-effective services to meet their unique needs, that service providers are offering the lowest prices available, and that we continue to minimize waste, fraud, and abuse in the program.

189. *FCC Form 470.* We also seek comment on how we can ensure that applicants select cost-effective services in situations in which no entity, or only one entity, responds to a FCC Form 470 posting. Under the competitive bidding requirements, eligible schools and libraries that wish to receive support for discounted services must submit an FCC Form 470 to USAC. The FCC Form 470 describes the applicant's needs and notifies service providers of the applicant's intent to contract for eligible services. After the FCC Form 470 has been posted to the Administrator's Web site for 28 days, the applicant may contract for the provision of services and file an FCC Form 471, requesting discounts for the services. In some situations, however, there may be only one service provider capable of, or willing to, provide the requested service. How can we ensure that the prices for such services are reasonable, and do not waste scarce universal service funds? Should we adopt bright line rules that would impose limits on the amount of discounts available in such situations, or would that unfairly penalize applicants in areas where there are limited numbers of service providers (*e.g.* on Tribal lands)?

190. Currently, if an FCC Form 470 filer receives no bids, the applicant is allowed to solicit bids from service providers. Should the Commission create separate requirements for E-rate applicants that receive no bids from service providers to ensure that services are procured at reasonable prices? Are there steps we should take to avoid imposing additional administrative burdens on schools and libraries located in areas in which there is no

competition for supported services, such as some Tribal lands? Are there resources available at the state or regional level that could assist these filers in finding vendors to provide E-rate-supported services at reasonable rates? For instance, we have anecdotal evidence that E-rate applicants may be unaware of state master contracts or cooperative purchasing organizations, such as the Western States Contracting Alliance, that could be beneficial to them. Should USAC post guidance on its Web site or take other steps to assist E-rate applicants in finding these resources? Should applicants be required to certify that they have reviewed state master contracts before selecting a vendor?

191. We also seek comment on whether the current system of applying for discounted E-rate services provides potential vendors enough information to formulate bids. We seek comment on whether the FCC Form 470 is the proper tool for adequately informing vendors of the services schools and libraries are seeking through the E-rate program. Does the format of the FCC Form 470 limit the pool of service providers seeking new business? Is the information provided on the FCC Form 470 sometimes so broad or narrow as to limit the number of vendors that could reasonably respond to the posting? The Commission has previously found that an overly broad or generic FCC Form 470 posting may stifle competition among service providers. In the *Ysleta Order,* 69 FR 3349, January 23, 2004, the Commission clarified that such broad FCC Forms 470 are not consistent with our rules and that the FCC Forms 470 should mirror the level of complexity of the services and products for which discounts are being sought.

192. Our rules require E-rate applicants to ''conduct a fair and open competitive bidding process,'' as spelled out in our rules. Our rules also require E-rate applicants to comply with state and local competitive bidding requirements. We seek comment on whether we should exempt certain applications or applicants from the E-rate competitive bidding rules on the basis that they are complying with state and local competitive bidding requirements. Commenters should identify the criteria they recommend using for selecting which applications or applicants should be exempt from our competitive bidding requirements, and how we can assure that such an exemption does not increase the opportunity for waste, fraud, and abuse, and, if so, what criteria should be used for any exemptions. If we adopt this exemption, should we limit it to purchases below some threshold? What should that threshold be? We seek guidance on providing USAC a practical, reliable, and minimally burdensome way to confirm that the applicants claiming such an exemption had actually complied with these procurement processes. We also seek comment on what USAC should consider as sufficient documentation of compliance with state or local procurement rules. Further, we seek comment on whether we might consider a *de minimis* exemption. For example, if an applicant's total annual E-rate purchases fall below some minimal threshold, should that applicant be exempt from the competitive bidding requirements? What should that threshold be?

193. Many states negotiate state master services agreements (State MSAs) for services eligible for E-rate support. Should we allow applicants to purchase off a State MSA without the applicant or the State MSA having gone through our competitive bidding process? What are the benefits and burdens of such an approach? If a State MSA offers purchasing options for the same or functionally equivalent products or services at different prices, should we require an applicant select the lowest price offering if it wants to select off the State MSA and be exempt from our competitive bidding rules? In the alternative, under such circumstances should we require applicants to follow currently required process and evaluate all the options on the State MSA using price as the primary factor in selecting a vendor? We note that some State MSAs do not contain specific prices for goods and services, under those circumstances we would not be inclined to provide E-rate support for goods and services purchased off a State MSA, and we seek comment on that issue.

194. Finally we seek comment on whether to revise the deadline for applicants to sign a contract with their service provider. We note that sometimes applicants have difficulty obtaining signatures or final board approvals prior to their submission of their FCC Forms 471, as is currently required by the E-rate rules. Commenters are invited to offer specific examples of difficulty they have had obtaining a signed contract in a timely fashion, and propose alternatives to the current deadline for obtaining a signed contract. We also seek comment on whether modifying this requirement would lead to waste, fraud, and abuse and we invite comments on how to minimize that risk.

195. *Lowest Corresponding Price (LCP).* We also seek comment on the extent to which the LCP rule helps ensure that service providers charge cost-effective prices. In section II.A.2, we sought comment on using the LCP rule to measure progress towards our proposed goal of ensuring applicants have affordable access to broadband. The LCP rule requires service providers to charge the lowest price that a service provider charges to non-residential customers that are similarly situated to a particular E-rate applicant for similar services. We specifically seek comment on the role of the lowest corresponding price rule for competitive bidding. If an applicant receives only one bid or no bid for services should the applicant be required to report that fact to USAC? If an applicant receives only one bid or no bids, should USAC automatically engage in additional review of the application to determine whether the service provider has offered the lowest corresponding price? Or, should USAC only do additional review under those circumstances if the price for the service at issue is flagged as higher than similar services? If USAC should conduct further pre-commitment review for compliance with the LCP rule, what is the least burdensome but effective method for determining whether the service provider is offering the LCP?

196. We also seek comment on the clarity of the LCP rule. In 2010, US Telecom and CTIA (together Petitioners) petitioned the Commission to issue a declaratory ruling to clarify the scope and meaning of the Commission's LCP rule. More specifically, Petitioners requested that the Commission clarify that: (1) The lowest corresponding price obligation applies only to competitive bids submitted by a provider in response to a Form 470; (2) the lowest corresponding price obligation is not a continuing obligation that entitles a school or library to constantly recalculate the lowest corresponding price during the term of a contract; (3) there are no specific procedures that a service provider must use to ensure compliance with the lowest corresponding price obligation; (4) in determining whether a service bundle complies with the lowest corresponding price obligation, discrete elements in such bundles need not be individually compared and priced; and (5) in a challenge regarding whether a provider's bid satisfies the lowest corresponding price obligation, the initial burden falls on the challenger (*i.e.,* a school or library) to demonstrate a *prima facie* case that the bid is not the lowest corresponding price. The

Commission sought comment on that petition, and we now invite commenters to refresh the record on whether it is necessary to clarify the scope and meaning of the LCP rule.

E. Efficient Use of Funding

197. We seek comment on how best to ensure that any given E-rate application reflects a cost-effective approach to filling the applicant's need for E-rate supported services. Our competitive bidding rules require that price must be the primary factor when selecting a winning bid and that applicants must select cost-effective service offerings. We seek comment, however, on whether our rules and our enforcement mechanisms are sufficient to ensure cost-effective purchasing on an application-by-application basis.

198. This is not the first time the Commission has sought comment on this issue. In the 2003 *Schools and Libraries Third Report and Order,* 69 FR 6181, February 10, 2004, the Commission sought comment on whether to codify additional rules to ensure that applicants make informed and reasonable decisions in deciding which services they will seek discounts. Given that demand for E-rate funding greatly exceeds the cap and that there is a wide disparity in the amount of funds on a per-student basis that applicants seek, it is time to refresh the record on this issue. Specifically, we seek comment on how to ensure that applicants are not receiving support for expensive services that provide functionality that they do not need and will not use and that applicants are not selecting expensive priority one services simply because they are supported services, when less expensive services would fill the same need.

199. As part of our effort to ensure that applicants are making cost-effective purchasing decisions, we seek to refresh the record on whether we should adopt bright line tests, benchmark or formula for determining the most cost-effective means of meeting an applicant's technology needs. For example, should we establish limits or guidelines on purchases of certain kinds of equipment based on reasonable per-classroom, per-teacher, or per-library technology needs? If so, what are appropriate bright line tests, benchmarks or formulas? Would we need a process for granting exceptions, and if so, how should it work? As an alternative to setting hard limits, should we make purchases of equipment above per-classroom, per-teacher, per-student, or other limits a lower priority?

200. Our rules require that an applicant establish that equipment and services are installed and in use. Should we require that an applicant regularly use all of the functions provided by an E-rate supported service? If an applicant has requested and installed an E-rate supported service, but does not use all of the functionality of the service, has the applicant violated the requirement to engage in cost-effective purchasing? Does it matter if no other vendor services more closely matched the needs of the applicant?

201. We seek comment on whether applicants seek support for priority one services because they know they will receive support for those services, when in reality the services they need or are seeking are unsupported services, or priority two services that are often not funded. We noted above that many applicants purchase expensive cellular data plans and air cards that are funded as priority one services, instead of using less expensive local area network (LAN) services, which are priority two services. Is this an example of applicants seeking support for priority one services because they do not expect to qualify for priority two services, given the E-rate program's funding cap? Are there other examples of such practices? How can the Commission discourage these practices and encourage participants to select the less expensive services? Would the proposals discussed above to reprioritize the E-rate supported services help address this issue?

202. We seek comment on how our cost-effectiveness rules should apply to multi-year contracts and to purchases of ongoing services. Should we encourage or require schools and libraries to take a long-term view of cost-effectiveness? How can we provide E-rate applicants assurance that significant investments which raise costs in the short term but significantly lower recurring costs will not run afoul of our rules, while continuing to protect against wasteful or inefficient purchases? We are particularly interested in this question as it relates to the deployment of new broadband connections to schools and libraries.

F. Broadband Planning and Use

203. We next seek comment on measures E-rate applicants should take in order to ensure they are carefully assessing their need for and readiness to use high-capacity broadband. Should we require schools and libraries seeking support for high-capacity broadband to undertake a formal review and assessment of their broadband needs—both to the premises and within the premises? Such an assessment could not only help applicants determine their broadband connectivity needs but also encourage efficient and cost-effective purchasing decisions. Should we condition receipt of E-rate funds on certain criteria for the broadband assessments and if so, what should those criteria be? For example, should we require schools to plan for providing a device to every student or for a device to a small group of students? Should we require schools and libraries to conduct professional development sufficient to ensure that their staffs have the knowledge and skills to take advantage of high-capacity broadband as well as the devices and applications? Should applicants be required to demonstrate that they have specific plans for using the bandwidth? Who is in the best position to evaluate and, if necessary, approve these assessments, and help schools close any gaps? What should be the consequences be if an applicant conducts inadequate needs assessment and planning, and what resources could be made available to help them improve?

204. In the *Schools and Libraries Sixth Report and Order,* the Commission eliminated technology plan requirements for E-rate applicants seeking only support for priority one services in order to simplify the application process for those schools and libraries. We seek comment on lessons learned from our current and previous technology plan requirements and whether we should consider any elements of those requirements if we implement a broadband assessment requirement. In particular, how can we make such assessment as simple and objective as possible? Is an objective checklist or scorecard approach for school planning and readiness feasible?

205. We seek comment on quantifying the burdens schools and libraries face when completing current technology plans in compliance with federal requirements and the approval process? If we eliminate the technology plan requirement, and do not otherwise require E-rate applicants to assess their broadband needs, would schools and libraries continue to develop technology plans, or their equivalents, and if so how might they differ from current plans developed in order to access priority two funding?

G. Innovative Approaches to Encouraging Maximum Efficiency

206. Finally, as we consider various ways to maximize cost-effective purchasing in the E-rate program, we seek comment on whether utilizing scaled down testing of various approaches to purchasing would help identify the most successful practices as

well as less effective ideas. Towards that end, we seek comment on whether we should establish one or more programs to foster innovation and highlight specific, scalable best practices for purchasing E-rate supported services that eligible schools and libraries can use to drive down the cost of E-rate supported services.

207. Such a program could, for example, allow experimentation use of consortia, establish novel bulk buying opportunities, and/or test ways to streamline procurement for eligible schools and libraries. A pilot program could also provide an opportunity for the Commission and USAC to gather data about other innovative approaches to lowering costs by incenting cost-reducing measures. Pilots could, for example, offer greater discounts for participants that are able to significantly decrease the pre-discount costs of the services they purchase. This would allow participants to realize a greater share of the savings from cost-reductions. Alternatively, we could allow pilot participants to use savings from reduced spending on priority one services toward priority two services, outside the otherwise applicable prioritization system.

208. We seek comment on these options for pilot programs, and whether such programs would be an efficient use of E-rate funds. We also seek comment on other potential pilot designs, and other potential financial and administrative incentives for participation in purchasing pilot programs. How can we set up these incentives to account for the fact that some short-term investments may result in long-term cost savings? Are there other approaches we should consider to incentivize eligible schools and libraries to find the lowest price? Should we consider adopting any of the pilot program proposals discussed above for the E-rate program as a whole, without first conducting a pilot?

209. We also seek comment on what data we should collect as part of a pilot program, and to measure the effectiveness of the program. In evaluating the results of any pilot program, we would propose to consider, among other things, the quantity of services supplied, the prices per component, the expenses per-student, and the distribution of cost across districts of varying incomes. Are the other factors we should consider? What would be the most appropriate mechanism for sharing this data? How would we maximize the likelihood that any innovations developed in a pilot program could be repeated throughout the country?

V. Streamlining the Administration of the E-Rate Program

210. We propose that streamlining the administration of the E-rate program should be the third goal of the program to address concerns about the complexity and associated burdens of the current E-rate application and associated review process. Applicants for E-rate funds are required to complete approximately six FCC forms over the course of a funding year. Some applicants spend many hours not only filling out FCC forms and gathering required data, but also responding to questions from USAC and requests for additional information, including documentation. As a result, many applicants feel the need to hire consultants to handle these tasks. While consultant fees cannot be paid using E-rate funds, they are a cost to program participants, and therefore may reduce the net benefits that schools and libraries realize from participation in the E-rate program.

211. Moreover, funding review decisions can be delayed while USAC seeks to resolve issues that arise during USAC's application review process, such as ensuring that: only eligible entities receive funding for eligible services; the competitive bidding process was fair and open; the applicant has the necessary resources to make use of the requested services; and there are no discrepancies between the information on the funding request and the associated FCC Form 471 Item 21 attachment. When that happens, applicants find themselves pressed to make purchase decisions with imperfect information about the status of their applications or their prospects for receiving E-rate funding. Further, because USAC must still enter some applicants' paper filings in electronic form in order to process them, USAC's efforts to expeditiously process applications and other forms can be handicapped. At the same time, the Commission and USAC are responsible for protecting the E-rate fund from waste, fraud and abuse. Many of the burdens imposed on applicants are rooted in preventing such problems with the program.

212. We therefore propose several options for streamlining the administration of the E-rate program while preserving critical safeguards. These options include: moving to electronic filing of all FCC forms and correspondence with USAC; increasing transparency throughout the application process; speeding review of applications and issuance of commitment decisions; simplifying the eligible services list (ESL) to focus on the service provided rather than the regulatory classification of the service; recovery considerations when seeking reimbursement of previously disbursed E-rate funding; more effective disbursement of unused funds; improve invoicing and disbursement; and streamlining the E-rate appeals review process. We seek comment on our proposals below and any other ways in which we can further streamline the administrative processes, including the program integrity assurance (PIA) review process and the commitment and disbursement processes, to maximize the efficiency of the E-rate program.

A. Electronic Filing of FCC Forms and Correspondence

213. To enable USAC to manage applications more quickly and efficiently, we first propose to require all E-rate applicants and service providers to file all documents, including the FCC Form 500, with USAC electronically and to require USAC to make all notifications electronically. We seek comment on this proposal.

214. While many applicants file a majority of the forms online, many other E-rate program procedures, such as service provider identification number (SPIN) changes, invoice and service delivery deadline extension requests, as well as the FCC Form 500, require paper submissions, some of which must be filled out by hand. When the E-rate program began, some schools and libraries did not have Internet access, thus many applicants did not have the resources to file electronically. Today, however, the vast majority of schools and libraries have Internet access, and—just as we now require E-rate service providers receiving disbursements to use electronic payment systems—we propose to require electronic filing and notification of the receipt of E-rate forms. As the Commission previously concluded, the electronic submission of the FCC forms will improve the efficiency of submitting and processing applications, thereby resulting in faster commitments and disbursements of E-rate funding as well as the return of any unused funds to USAC. It will also reduce USAC's administrative costs because USAC will not have to manually enter data into its electronic system from paper submissions. Additionally, electronic completion, submission, and notification will likely result in fewer errors on the forms and other communication with USAC and to applicants. In proposing to make all forms and correspondence filed with and received by USAC electronic, we

recognize that there may be rare instances in which some applicants may still need to file and receive paper forms due to unreliable Internet access or emergency situations. We therefore seek comment on whether we should impose a minimal fee for applicants who seek to file their forms and correspondence in paper form.

215. SECA suggests that all of an applicant's forms and correspondence with USAC should be available from a centralized portal so the applicant can retrieve current and prior years' information to use as a starting point for new form submissions. SECA states that online functionality will conserve on data entry and problem resolution resources that USAC currently must utilize as well as customer service bureau inquiries. Facilitating access to previous applications will also make it easier for applicants to file forms that are similar to those of previous years and eliminate the duplicative requests for information during PIA review since all the requested information would be available online and available for review. We seek comment on SECA's proposal and any alternative ways to simplify the submission and receipt of FCC forms and other correspondence to USAC. Another way to increase E-rate program efficiencies is automate more of the processes for the program. In addition to requiring online filing, we seek comment on whether there are administrative processes in the program that could be automated and would also result in cost savings and efficiencies. What could be gained by increasing the amount of automated processes at USAC and how could this be best achieved? For example, would increased automation in the application process result in quicker commitment decisions? What aspects of this process lend themselves to automation? What are the ways that increased automation can lead to efficiencies and cost savings? What are the ways automation could reduce or eliminate improper payments? Commenters should be as specific as possible in their proposals.

216. Requiring all forms and correspondence to be available electronically may require USAC to upgrade its internal technology systems in order to accommodate additional electronic submissions and increased automation which could result in initial increased expenditures for the E-rate program. We seek comment on whether the administrative and economic benefits that would result from these changes outweigh any initial upfront costs that would be required for the technological upgrades proposed herein. We note that USAC has already sought public comment on measures to update its internal informal technology systems to improve operational efficiencies and enhance the customer experience. We therefore direct USAC to incorporate into its consideration this proposal as it adopts measures to improve operational efficiencies.

217. Other than time and resource efficiencies gained for both applicants and USAC, we estimate that several of these proposals will result in actual cost savings for the E-rate program. While it is difficult to quantify the aggregate total savings to the E-rate program as result of these proposals, according to USAC's annual report for 2012, USAC spent approximately $70 million on E-rate program operating expenses in 2012. Any reduction in these costs as a result of changes such as electronic filing and increased automation of program processes would result in increased funding availability for applicants, especially when considered in combination with the other changes proposed herein such as elimination of funding for certain services.

B. Increasing the Transparency of USAC's Processes

218. We seek comment on ways to increase transparency throughout the application, commitment and disbursement processes, so that applicants have a better understanding of the status of their funding requests. SECA suggests, among other things, that the longer a decision is pending, the more status update information should be made available on USAC's Web site to the affected parties. SECA therefore proposes that USAC should provide additional levels of detail in its ''Application Status'' tool on its Web site to provide applicants with a better understanding of where their application is in the review process. For example, SECA suggests additional designations, such as ''Normal Review,'' ''Selective Review,'' ''Policy Review,'' ''Investigative Review,'' and ''Pending Program Decision on Available Internal Connection Funding.'' Additionally, in cases where USAC is waiting for an applicant submission, it could indicate as part of the application status that it is ''awaiting applicant's response to USAC's request on [date].'' We seek comment on SECA's proposal and other ways in which to increase transparency of the review process for applicants.

C. Speeding Review of Applications, Commitment Decisions, and Funding Disbursement

219. We next seek comment on ways to reduce the time it takes USAC to review applications for E-rate support in order to more quickly release funding commitment decisions. Currently, applications can undergo a number of levels of review prior to release of funding commitment decisions. We note that, in a recent report, GAO recommended that the Commission undertake a risk assessment of the E-rate program. GAO noted that a risk assessment involving a critical examination of the program could help determine whether modifications to USAC's business practices and internal control structure are needed to appropriately address the risks identified and better align program resources to risks. In addition, applicants have found that USAC's review process can become time-consuming and can significantly delay funding commitment decisions, particularly for state networks and consortia that may file numerous funding requests per funding year. At the same time, the Commission has directed USAC to ensure that funding is disbursed to eligible recipients for eligible services. For all the suggestions below, given that we must balance administrative efficiency with protecting against waste, fraud, and abuse, we also seek comment on how we should ensure that streamlining the application and disbursement process does not then result in an increase in improper payments.

220. We seek comment on whether we should establish deadlines for USAC to issue funding decisions or complete its other processing tasks. We describe above the reporting requirements in which USAC must detail performance related to commitments, disbursements, and appeals. If commenters support deadlines, what should those deadlines be? If so, how should we balance speeding the review with protecting against improper payments and waste, fraud and abuse? Commenters should specifically address how the deadlines might improve or harm the application and invoicing processes. What should happen if USAC cannot meet the established deadlines?

221. In addition, we seek comment on ways to expedite the application review process. Are there ways in which USAC can streamline the PIA review process so that applicants are not asked duplicative questions or asked for the same documentation for different applications or funding requests where previous responses or documentation are applicable? Commenters should provide specific examples of the problems they encounter during the application review process, including identifying specific duplicative requests made in the routine review process.

222. Additionally, at times, an entire application or groups of applications involving funding requests for different service providers may be held up pending resolution of one FRN for one provider. Are there changes that should be put in place so that other unrelated funding requests are not held up pending the resolution of an issue involving another FRN? SECA proposes that, absent an active criminal investigation in which the party is the subject, within 90 days of the lack of activity on an FCC Form 471 application or invoice, USAC should notify all affected parties of concerns that are holding up a decision on the application and submit detailed requests for any additional documentation or information as part of the notification. Upon receipt of the requested information, SECA proposes that USAC should issue a decision within 90 days. We seek comment on this proposal and any other proposals setting timeframes for resolution of applications and release of funding commitments. If we were to adopt a deadline by which USAC must act, under what circumstances should we permit USAC to exceed the deadline in order to give full consideration to the application?

223. Further, for USAC to more quickly release funding commitment decisions, should we limit the number of opportunities applicants are given to respond to USAC's requests for documents and clarification? As part of its review, USAC routinely gives applicants additional time to provide missing or incomplete information to USAC during PIA review. When applicants' timely request an extension of time to submit documentation, USAC grants such extensions and gives applicants additional time to respond to their requests for information. The Commission has granted waivers of the E-rate rules providing applicants with additional time to submit documentation to USAC. These extensions of time also delay USAC's application review process and ultimately hinder the prompt release of funding commitment decisions. We thus seek comment on whether to limit the number of opportunities and length of time that applicants have to submit complete information to USAC in response to USAC's requests. Commenters should specifically indicate any potential problems that may arise if we reduce the window of opportunity and any concerns with modifying USAC's outreach to gain complete information to complete their review of pending FCC Form 471 applications.

224. Are there current cost-allocation challenges that impose undue burdens on applicants and on USAC that could be removed? For example, some states do not include preschool within their definition of elementary schools. In such states, preschools classrooms are therefore currently not eligible to receive support for E-rate services, even when those preschool classrooms are located within an elementary school building that otherwise receives E-rate supported services. As a result, in such states, applicants must cost-allocate the expenses for providing E-rate supported services to preschool classrooms, and exclude those expenses from requests for E-rate support. Consistent with the Commission's allowance for the community use of E-rate services, would an exception for these classrooms improve the efficient use of E-rate eligible services and reduce the administrative burden? Are those costs typically so small that the burden of cost allocation and administrative review outweigh the benefit to the Fund of requiring cost-allocation? Commenters should be specific in their proposals.

225. *Multi-year contracts.* E-rate applicants are permitted to enter into multi-year contracts, but applicants with multi-year contracts must file an FCC Form 471 application and go through the same review process every year. Our rules prohibit USAC from issuing multi-year funding commitments in the E-rate program. Stakeholders have argued that it is a waste of an applicant's time to file an application for the same services year after year, and that it is a waste of USAC's time to review the same applications year after year.

226. We agree with stakeholders that multi-year contracts have the potential to drive down service costs, provide more certainty, and that we should minimize duplicative application review by USAC. At the same time, given the dynamic marketplace for many E-rate supported services, it is important that E-rate applicants not bind themselves to multi-year contracts that require applicants to pay prices that are higher than they would receive had they re-sought competitive bids. In balancing those issues, we seek comment on a number of changes to our handling of multi-year contracts.

227. First, we propose that, absent a change in the contract, service provider or recipients of service, we allow E-rate applicants with multi-year contracts that are no more than three years in length (including any voluntary extensions) to file a single FCC Form 471 application for the funding year in which the contract commences and go through the full review process just one time for each such multi-year contracts. We seek comment on this proposal, and on what additional steps E-rate applicants should have to take in the second and third year of such contracts to confirm their request for E-rate support for the subsequent years. We specifically seek comment on the following proposed rule language:

Multi-year contracts. An eligible school, library or consortium that includes an eligible school or library seeking to receive discounts under this subpart may submit to USAC a single FCC Form 471 covering all the years of a multi-year contract, provided that the term of the contract including extensions, does not exceed three years. An FCC Form 471 covering a multi-year contract must be submitted to USAC before the start of the first funding year covered by the multi-year contract.

228. Second, we seek comment on amending our rules to permit multi-year commitments in the E-rate program. In the *Healthcare Connect Fund Order,* we allowed applicants to request a funding commitment for a multi-year contract that covers up to three years of funding. Unlike the E-rate program, however, the universal service rural health care program is not currently oversubscribed, so it is more feasible for that program to issue multi-year commitments. Is this difference relevant to our handling of multi-year commitments? Should multi-year funding commitments in E-rate be conditional on the funds being available in subsequent years?

229. Finally we seek comment on whether we should impose any additional or different limits on multi-year contracts. For example, should we limit the maximum term (including voluntary extensions) of multi-year contracts that E-rate applicants may enter into for E-rate supported services to three years? What are the typical terms for multi-year contracts now? What are the typical terms for comparable enterprise services in broader business broadband markets?

230. Should the maximum term of a contract for E-rate supported services depend on the type of service at issue? For example, the efficient term for an IRU in dark fiber may be longer than for Internet access services. Indeed, where significant new fiber builds are involved, long term contracts could be critical to keeping recurring costs low. When fiber is laid for the first time to a school or library, an applicant may be able to seek bids that guarantee low ongoing costs once the initial construction is paid for. If an applicant is prohibited from entering a long term

contract when the fiber is first laid, it may be unable to claim similar efficiencies. We seek comment on this analysis.

231. Should we exempt certain services, such as IRUs for dark fiber, from any limits on multi-year contracts? What are the typical terms for enterprise connectivity contracts in commercial markets? Could applicants eliminate the need for long-term contracts associated with new fiber builds by seeking a non-binding renewal option, at a predetermined rate, in contracts? Do such terms exist in contracts for enterprise connectivity for purchasers other than schools and libraries? Do similar issues generally exist for connections to schools and libraries using technologies other than fiber, such as fixed wireless?

232. Are there other approaches to multi-year contracts we should consider? Should we have a cap on the number of multi-year contracts entered into by applicants in a given funding year or the amount of future funding covered by multi-year commitments? If so, how should we select which applicants seeking multi-year funding commitments receive them?

233. *Additional filing windows.* We seek comment on other ways to streamline the administration of the E-rate program and commit available funds as quickly and efficiently as possible. For instance, assuming priority one funding requests do not exceed the E-rate funding cap, should the Commission create separate filing windows—one for priority one and one for priority two commitments? Under this process, the priority one application filing window could run from January to mid-March and the priority two application filing window could run from mid-April to the beginning of June. After the priority one application filing window closes, the Commission could announce what funds are available after the priority one funding process before applicants file for priority two funding. Under this approach, applicants would not have to expend resources unnecessarily to file for priority two services if there is no funding available. Because USAC does not start reviewing priority two funding requests until much later in the funding year, the later application filing window should not slow down the funding commitment process. If, in reforming the E-rate program, we create more than two funding priorities, should we have a separate application filing window for each set of priorities? We seek comment on the operational challenges to having multiple application filing windows, and whether it would, on balance, benefit applicants and help achieve the goal of maximizing administrative efficiencies.

D. Simplifying the Eligible Services List

234. We propose to simplify the ESL and the FCC Form 471 application process by adopting a definition of eligible services that provides funding for eligible services regardless of regulatory classification. Specifically, we propose to amend section 54.502 and the ESL to remove the regulatory classifications of telecommunications services and Internet access to allow applicants to seek eligible services from any entity. We seek comment on these proposed rule and ESL changes as explained below.

235. The ESL, which is approved by the Bureau and published by USAC each year, provides guidance to applicants on the eligibility of products and services under the E-rate program. Last year, the Bureau reorganized the priority one section of the ESL to consolidate the list of telecommunications services, telecommunications, and Internet access into a single priority one category. The Bureau recognized that, ''when applying for discounts, E-rate applicants are focused on the services they need for their schools and libraries, and may be unfamiliar with the regulatory framework for telecommunications services and Internet access established by Commission rulemakings.'' Also, the Bureau noted that many of the services purchased by schools and libraries using E-rate funding can fall into more than one of the regulatory classifications. As an example, one of the commenters in that proceeding asserted that many applicants erroneously think that they do not need to request Internet access when they are requesting cellular service with data packages and email access. The Bureau also determined that applicants would no longer be expected to classify their service requests into telecommunications service or Internet services categories when soliciting bids for those services on the FCC Form 470, but that applicants must continue to select the correct category of service on the FCC Form 471 application because this serves statutory and regulatory purposes.

236. In the *Healthcare Connect Fund Order,* the Commission determined that it should support broadband Internet access services and also high-capacity transmission services offered on a common carrier and a non-common carrier basis to allow health care providers to choose from a wide-range of connectivity solutions using any technology from any provider. Building off this decision, we seek comment on eliminating the regulatory categories with respect to E-rate supported services. Instead, we propose only that an applicant indicate on the FCC Form 470 the requested service priority level as well as provide enough detail for service providers to identify the requested services and formulate bids on the FCC Form 470. The FCC Form 471 application would also require the service priority level (*e.g.,* priority one or priority two) and the Item 21 attachment would continue to be used by applicants to describe the services for which they seek discounts for each funding request. We seek comment on these changes to the E-rate forms.

237. After the ESL was revised for funding year 2013, the Bureau continued to require applicants to select the correct category of service on the FCC Form 471 application. One of the reasons for retaining this requirement is because USAC uses the service category selections to determine which applicants have sought Internet access and/or internal connections and this need to comply with CIPA. We seek comment on an alternative way for USAC to determine which applicants are required to be CIPA-compliant. For example, should we add a checkbox to the FCC Form 471 with a certification that the applicant is seeking discounts for Internet access and/or internal connections and is subject to CIPA requirements? If so, should we also add the actual CIPA certification to this checkbox allowing the applicant to certify its compliance with CIPA? This would allow us to remove the CIPA certification from the FCC Forms 479 and 486 so that applicants would not have to certify to CIPA on multiple forms. In its June 2013 White Paper, SECA suggests that applicants be given the option of providing the information currently required on the FCC Form 486 on the Form 471. Although, SECA also suggests that applicants who prefer to continue filing the FCC Form 486, be given that option as well and a check box to designate this preference can be included on the FCC Form 471. We seek comment on both of these possible approaches. Would either approach streamline the application, commitment and disbursement process for applicants? Would moving the CIPA certification work for all applicants including consortia?

E. Funding Recovery Considerations

238. The Commission adopted the *Commitment Adjustment Implementation Order* on September 21, 2000, which, consistent with the Debt

Collection Improvement Act (DCIA), set up a framework for recovering funds committed or disbursed in violation of the Act and our rules. USAC implemented a process for recovering funds disbursed in violation of statutory and rule violations and, in 2004, as part of the *Schools and Libraries Fifth Report and Order,* 69 FR 55097, September 13, 2004, the Commission largely affirmed and further refined USAC's approach when determining what amounts should be recovered by USAC and the Commission when funds have been disbursed in violation of the Commission's E-rate program rules. The Commission concluded that there are circumstances that warrant full recovery of disbursed funds. For instance, the Commission found that full recovery is appropriate when the applicant failed to comply with the Commission's competitive bidding requirements. The Commission also found that a lack of necessary resources to use the supported services warrants full recovery of funds disbursed for all relevant funding requests. The Commission recognized, however, that recovery may not be appropriate for violation of some procedural rules implemented to enhance operation of the E-rate program. At the same time, the Commission must comply with federal obligations to recover funding that has been improperly disbursed.

239. We recognize the importance of preventing and ferreting out waste, fraud and abuse in the E-rate program and believe that strong rules requiring applicants to reimburse USAC if they are found to have violated a statutory obligation are a powerful deterrent to waste, fraud and abuse. At the same time, as our rules have expanded, the risk to applicants of having USAC or the Commission seek full reimbursement of previously disbursed funds based on a rule or program violation has also grown, and sometimes full reimbursement is not commensurate with the violation incurred. We therefore seek comment on whether there are certain program violations that warrant reduced recovery or some other punitive measure short of recovery. For example, would reduced recovery be warranted where an applicant delayed installation of equipment due to human resource limitations or where an applicant did not conduct a broadband assessment at the beginning of the full funding year? Are the Commission's findings that competitive bidding or necessary resources violations require full recovery still appropriate or should we reconsider those findings? Are there appropriate punitive measures we could implement that more closely tie to the improper behavior? We ask that commenters provide specific scenarios under which they think reduced penalties would be warranted, the rationale supporting reduced recovery under such scenarios, and commenters' suggestions for how the amount of recovery should be recovered. We specifically seek comments identifying a bright line approach to determining recovery amounts for rule violations, creating a system of recovery that is fair, predictable, transparent and administratively efficient. Furthermore, we seek comment on how the Commission could comply with its legal requirements under such a process.

F. Effective Disbursement of Unused Funding

240. We also propose to improve the administrative efficiency of the E-rate program by reducing the amount of unused E-rate funding each year. As discussed above, the demand for E-rate supported services far exceeds available funds. Since the start of the program, USAC annually issued funding commitment letters covering funding requests up to the amount of available funds. However, because applicants do not spend all of the funds for which they receive commitments, a substantial amount of funds remain unused each funding year.

241. The Commission's approach to the problem has changed over time. From 1997 to 2003, each year USAC committed up to the $2.25 billion E-rate program cap. This resulted in a large unused balance over time, and actual program disbursements well below $2.25 billion. Starting in 2003, the Commission allowed USAC to identify unused funds from previous years and issue funding commitment letters in excess of the annual cap supported by those unused funds. This change has allowed the program to increase the dollar amount of commitments each year and, as result, bring actual disbursements more in line with the E-rate cap. However, there remain many funding commitments each year for which the applicants do not purchase all or some of the requested services and consequently a large amount of funding gets carried over on the USF's balance sheet year-to-year.

242. We seek comment on whether there are changes we could make to the program to reduce the amount of unused funds. For example, should we direct USAC to identify applicants that consistently seek and receive funding commitments that substantially exceed the amount of disbursements that USAC ultimately issues and work with those applicants to make their funding requests more accurate? Should there be consequences for applicants who repeatedly seek funding commitments that substantially exceed the amount of E-rate support they receive? If so, how would we determine what constitutes commitments that substantially exceed disbursements and what should the consequences be? Is there a risk that such consequences could encourage inefficient or wasteful spending by a school to avoid those consequences, and, if so, how do we reduce or eliminate that risk? In addition, the Commission allows applicants an additional year to implement non-recurring services if a funding commitment decision is not issued until after March 1 of the funding year. We seek comment on whether the delay in the issuance of funding commitments may contribute to the amount of unused funds. If so, commenters should propose specific ways to adjust the process to eliminate or reduce this issue.

243. We also seek comment on ways to reduce the gap in time between when an applicant knows that it will not use all or some of the funds for which it has received a commitment and when USAC is able to consider those funds rollover funds that can be used the following year. Currently, E-rate participants are advised to check with USAC whether any funds remain on a funding commitment after USAC has paid the associated invoices. Applicants are then asked to submit an FCC Form 500 in order to reduce the committed amount on the FRN to the exact amount actually used. By reducing its commitment to reflect the actual amount used, USAC will know that these funds can be used in the following funding year. Otherwise, any unused funding as part of the funding commitment remains outstanding and is unavailable to use in a following funding year. Should there be a deadline during or immediately following the funding year or invoice period for applicants to notify USAC whether they will use the full amount of their funding commitments and if not, how much will be available for future funding commitments? Are there incentives we can offer to applicants to encourage them to comply with the deadline? For example, should we direct USAC not to process invoices related to an applicant's funding requests if, within three months after the close of the funding year, the applicant has failed to notify USAC whether it has or does not have unused funds from the preceding funding year? Should we direct USAC to de-obligate

funding six months after the invoicing deadline? Should we consider some other period of time? Should USAC then send notices to the applicants and service providers indicating that those funds have been de-obligated?

244. Are there other measures we could implement to more quickly identify unused E-rate funds? For example, should we require applicants to review expenditures halfway through the year to determine if part of the commitment will go unused and should be returned to USAC rather than allowing applicants to wait until after all invoices have been paid? Should we limit the number of invoicing and service delivery extensions? Are there other steps we can take to encourage or require E-rate applicants to identify funding for which they have received funding commitment letters, but will not use? More broadly, are the other steps we can take to reduce the amount of funding that is rolled-over from year-to-year and/or minimize the time between when funds are collected and when they are disbursed?

G. Invoicing and Disbursement Process

245. In order to maximize administrative efficiency, we now propose changes to improve the E-rate disbursement process. In particular, we propose to modify our process to permit schools and libraries to receive disbursements directly from USAC and to adopt specific invoice deadline and invoice deadline extension rules.

246. Currently, schools and libraries may choose either of two methods of seeking reimbursement for E-rate supported services. An applicant may pay its service provider the full cost of the E-rate supported services and then submit to USAC an FCC Form 472, Billed Entity Application for Reimbursement (BEAR) Form. In the alternative, the applicant may pay the service provider only the applicant's portion of the E-rate supported services and then the service provider must file an FCC Form 474, Service Provider Invoice Form (SPI form), with USAC to receive reimbursement. Regardless of which method the applicant chooses, USAC remits the E-rate support payments to the service provider. If the applicant is using the BEAR method, the service provider reimburses the applicant, thus requiring coordination between the applicant and service provider in order for the applicant to receive payment.

247. The Commission established the current reimbursement system in the *Universal Service First Report and Order,* concluding that service providers, rather that schools and libraries, should seek compensation from USAC for ''administrative ease.'' We seek comment on adopting a revised disbursement process that allows applicants, paying the full cost of the services under the BEAR process, to receive direct reimbursement from USAC. Under this proposal, the service provider would no longer serve as the pass-through for the reimbursement of funds where an applicant has paid the service provider in full for the services. Where an applicant, however, pays only the reduced cost of the services directly to the service provider, then the service provider will continue to file a SPI form with USAC to receive reimbursement. We seek comment on whether making direct payments to applicants under the BEAR process would simplify the E-rate disbursement process for applicants and service providers by removing a step in the process. One of the E-rate program goals proposed above is to streamline the administration of the program. We seek comment on whether this change would improve the efficiency of the program by minimizing unnecessary delays in the disbursement process due to an applicant's request to review bills before the service provider(s) submits the bills to USAC for payment. We also seek comment on whether there would be other consequences to applicants, service providers and the program from making such changes to our rules. For example, if we move the CIPA certifications to another form, would applicants using the BEAR process and seeking reimbursement directly need to submit an FCC Form 486?

248. We next seek comment on whether the Communications Act creates any barriers to the payment of universal service funds directly to E-rate applicants. We note that section 254 of the Act gives the Commission broad discretion in designing the E-rate program, and that section 254(h)(1)(B) requires that a carrier serving a school or library either apply the amount of the E-rate discount as an offset to its universal service contribution obligations or shall be reimbursed for that amount utilizing universal service support mechanisms. One possible interpretation of that provision is that a carrier must receive any universal service support for discounted services it provides to schools or libraries. On the other hand, the *Universal Service First Report and Order* suggested that schools and libraries could directly receive universal service support, although it declined to adopt such an approach for policy reasons. In addition, the Fifth Circuit upheld the Commission's authority under sections 4(i) and 254(h)(2)(A) of the Act to provide support outside the express framework of section 254(h)(1)(B). We seek comment on the possible interpretations of section 254 in this regard. If the only requirement in the Act regarding reimbursement is that the service provider be made whole, we believe modifying the current BEAR process, to allow USAC to reimburse the applicant directly would provide sufficient documentation to demonstrate that the applicant has fully paid for the requested services and is entitled to direct reimbursement from USAC. As it currently exists, the BEAR process satisfies that provision of the Act because the BEAR form requires the applicant to certify that it has made full payment to the service provider. Moreover, the service provider currently signs the BEAR form to indicate that all obligations have been met. We invite comment on these views.

249. We next ask whether there are additional improvements that could be made to the invoicing process or certifications that are required on the invoicing forms, FCC Form 472 and FCC Form 474. Currently, service providers must make a certification each time it files an FCC Form 472, resulting in some large service providers having to submit thousands of certifications each year. We seek comment on whether the FCC Form 473, the Service Provider Annual Certification Form, should incorporate Block 4 of the FCC Form 472 BEAR form to include the current service provider acknowledgement certifications in Block 4 of the current FCC Form 472, or if there are other approaches that would improve the administrative process while still adequately protecting against waste, fraud, and abuse. Are there other certifications or components of the invoicing forms that should be revised in order to improve administrative efficiency or protect against waste, fraud, and abuse? In its 2010 report, the GAO noted that USAC did not compare actual bills to the invoices before disbursing funding. Should USAC require additional documentation to be filed with the invoices in some instances? Should we require that applicants approve a service provider invoice prior to reimbursement?

250. We also seek comment on whether we should codify the invoice deadlines and deadlines for requests for an extension of the invoice deadline. Although the deadline for filing the FCC Form 472 and the FCC Form 474 has been the same, the actual day of the deadline has varied. Specifically, since the 2003–2004 funding year, the relevant invoice forms must be

postmarked or received by USAC no later than 120 days after the date of the FCC Form 486 NL or 120 days after the last day to receive service, whichever is later. A grant of a request for an extension of the filing deadline provides an applicant with an additional 120 days to submit the relevant invoice forms. In the *Schools and Libraries Third Report and Order,* the Commission sought comment as to whether the Commission should codify rules establishing deadlines for service providers to file invoices with USAC and whether USAC's existing policy to deny support for untimely filed invoices, except in limited circumstances, should be codified.

251. We now seek to refresh the record and seek comment on whether to revise our rules to automatically grant, upon request by the applicant, a one-time 120-day extension of the filing deadline for both recurring and non-recurring services to allow applicants the additional time to submit the invoice form. Applicants who receive this one-time 120-day extension would be required to show good cause for additional extensions to limit the amount of time taken for application processing. Should we also direct USAC to inform applicants promptly in writing if an invoice form is not received by the initial 120-day deadline? Applicants would then have 15 calendar days from the date of receipt of this written notice to file the relevant invoice form and necessary documentation or request a one-time 120-day extension of the invoice deadline. We believe these actions appropriately place responsibility to submit the invoice forms with E-rate participants while ensuring the goals of section 254 are realized. Additionally, adopting rules to establish deadlines for the submission of invoices and requests for an extension of the invoice deadline should help to decrease the processing time for invoices and reduce the number of outstanding unpaid invoices. The 15-day period should be sufficient time to submit any invoice forms that were untimely filed due to technical difficulties or clerical errors. Therefore, we believe this additional opportunity to file the relevant invoice form will improve the efficiency and effectiveness of the Fund. We thus seek comment on this proposal. We note that any rules we adopt on invoicing deadlines should conform to proposals aimed at reducing unused funds. For instance, we also seeking comment in this NPRM on whether USAC should be directed to de-obligate funding six months, or some other period of time, after the invoicing deadline.

H. Streamlining E-Rate Appeal Process

252. We seek comment on how to further improve and streamline the Commission's E-rate appeal process. During the last three years, the Commission has made a concerted effort to reduce the backlog of E-rate appeals and has issued orders addressing more than 1,200 appeals. However, a backlog remains, including requests that have been pending for years, and we continue to receive many new appeals every month. We recognize that with a program attracting over 46,000 applications each year, appeals are inevitable. At the same time, we recognize that certainty about the outcome of appeals benefits both applicants and the program as a whole, and we therefore invite comment on how to streamline the E-rate appeals process.

253. Currently E-rate applicants that are denied funding and parties from whom USAC seeks return of money for violating E-rate program rules, can seek review of a USAC decision by USAC or by the Commission. If a party seeks Commission review of a USAC decision, the Bureau acting on authority delegated to it by the Commission, usually resolves the appeal. If the Bureau denies a request for review, the review process dictated in the Commission's rules is triggered; the party can seek reconsideration by the Bureau of that decision and then may also seek to have full Commission consider the matter if the Bureau denies the request for reconsideration. If the Commission denies an application for review, under some circumstances the party can seek reconsideration of that decision.

254. One result of the many opportunities to seek further review of USAC and Bureau decisions is a growing number of possible appeals. For every USAC decision, the Commission staff could be required to address the matter on three different occasions. In some cases, this delay benefits the applicants who take the multiple opportunities afforded them by our rules to avoid a negative decision. At the same time, there are sizable costs to the E-rate community when applicants and service providers must sometimes wait long periods of time for their appeals to be fully resolved. During the last several years, the Commission has attempted to streamline the process by issuing more E-rate orders addressing multiple appeals, and by streamlining aspects of the written order. Where appropriate, for example, the order provides a more concise explanation of the facts. In other orders, the Commission staff truncates the written legal analysis where the determination is clearly consistent with the Commission's precedent.

255. We seek comment on other changes Commission staff can implement to improve the appeals review process. Should Commission staff explore other ways to streamline the orders disposing of the appeals? When the Bureau grants an appeal on delegated authority, should it simply specify that the appeal is granted and not provide any analysis, or does the analysis serve the important function of providing guidance to other E-rate stakeholders? Would the request for review filed by the party provide enough guidance to interested parties? We encourage commenters to suggest creative methods to improve the efficiency of the process while providing parties and other interested stakeholders with meaningful guidance about the decision. Finally, should we consider more comprehensive changes to the appeal process pertaining to E-rate decisions? Should we reduce the number of opportunities E-rate applicants have to contest adverse findings? If so, how could that be done consistent with relevant statutory requirements, and what rule changes would be needed? Could we amend or clarify the E-rate rules to reduce the number and type of USAC decisions that can be appealed? Are there other changes we can make to improve the efficiency of the appeals process?

VI. Other Outstanding Issues

256. We also take this opportunity to seek comment on or refresh the record on a variety of issues that have been raised by stakeholders in recent years, including the applicability of the Children's Internet Protection Act (CIPA) to devices brought into schools and libraries, and to devices provided by schools and libraries for at-home use; changes to the National Lunch Program; additional measures for protecting the program from waste, fraud and abuse; wireless community hotspots; and adoption of E-rate program procedures in the event of a national emergency or natural disaster.

A. The Children's Internet Protection Act

257. Stakeholders have sought clarification on the applicability of CIPA to devices not owned by E-rate recipients but using E-rate supported networks and to off-premises use of devices owned by schools and libraries. We seek input from interested parties about the measures schools and libraries

are taking and need to take to comply with CIPA when they allow third-party devices to connect to their E-rate supported networks. Also in response to stakeholder concerns, we seek comment on what steps schools and libraries are taking and must take to ensure that they are not violating CIPA when they provide employees, students and library patrons with portable, Internet-enabled devices that can be used off-premises.

258. *Covered devices.* We seek comment on what devices are covered by CIPA. Congress mandates that CIPA apply to schools and libraries ''having computers with Internet access,'' and also requires each such school or library to certify that it is enforcing a policy of Internet safety that includes the operation of a technology protection measure ''with respect to any of its computers with Internet access.'' We seek comment on whether the language ''computers with Internet access,'' as used in the context of CIPA, includes all devices used to access the Internet, including all portable devices such as laptops and netbooks with wired Internet access, with Wi-Fi capability, or with wireless data or air cards; cellular phones or ''smartphones'' capable of accessing the Internet; and Internet-enabled e-readers and tablets. As more and more devices, from routers to refrigerators, are equipped with computing capability, we seek comment on limiting principles we should apply to our treatment of what constitutes a computer with Internet access for CIPA purposes, and how those limiting principles relate to the statutory language and goals of CIPA. For example, should we consider as a limiting principle the language in CIPA that requires the operation of a technology protection measure that provides protection against access to ''visual depictions'' that are obscene, child pornography, or harmful to minors? Specifically, does the use of ''visual depictions'' in CIPA mandate that in order to fall within CIPA, the computers with Internet access in question must at least provide a screen, monitor, or other way to view the prohibited material? We also invite commenters to recommend specific changes to our rules that would clarify this issue. For example, should we include a definition of ''computers with Internet access'' in our CIPA-related rules, and what should that definition be?

259. We also seek comment on whether the phrases ''having computers with Internet access'' and ''with respect to any of *its* computers with Internet access'' and other similar language in the statute means that schools and libraries are required to comply with CIPA only with regard to those computers that they own or control. Does this interpretation fulfill the intended purpose of CIPA? We also seek comment on whether we should amend our CIPA-related rules to reflect this reading of the statute, and if so how should we amend them. In the alternative, we seek comment on whether CIPA should be interpreted more broadly to be focused on protecting children from harmful online content on any device, and therefore require CIPA compliance with respect to any computer that is accessing the Internet using E-rate supported Internet access or internal connections, regardless of the ownership or control of the device used to access such content.

260. *Off-Campus Use.* We seek comment on whether CIPA requirements extend to school or library computers taken off-campus and used with outside networks that are not supported by E-rate. If we find that CIPA requirements do not apply to computers with Internet access when used with networks that are not supported with E-rate funds, how should we address instances where school or library computers are used to access the Internet using a service that is supported for on-campus use, but not for off-campus use? For example, if a student uses a tablet with an Internet access data plan, the school could seek E-rate support for the portion of the cost of the data plan used on-campus, but not for the portion used off-campus. Should the CIPA requirements only apply when the computer is used on campus, because the school is not seeking E-rate support for the off-campus portion of the cost of the data plan? We also seek comment on whether our existing CIPA-related rules need to be amended to cover these off-campus use situations. We request that commenters be as specific as possible when recommending amendments to our rules.

B. Identifying Rural Schools and Libraries

261. We propose to modernize our definition of ''rural area'' to make it more relevant and useable for schools and libraries seeking to get the benefit of the additional discounts for rural schools and libraries. In 1997, the Commission adopted for the E-rate program the definition of ''rural area'' used by the U.S. Department of Health and Human Service's Office of Rural Health Care Policy (ORHP). Under ORHP's definition, an area is rural if it is not located in a county within a Metropolitan Statistical Area (MSA) as defined by OMB, or if it is specifically identified as ''rural'' in the Goldsmith Modification to Census data.

262. The Commission explained in the 2003 *Schools and Libraries Third Report and Order* and again in the *E-rate Broadband NPRM* and the that a new definition was necessary because the U.S. Department of Health and Human Service's Office of Rural Health Care Policy (ORHP) no longer uses the definition adopted by the Commission and therefore has not updated the Goldsmith Modification to the 2000 Census data. In the *E-rate Broadband NPRM,* we proposed that any school or library that is within a territory that is classified as ''town-distant,'' ''town-remote,'' ''rural-distant,'' or ''rural-remote'' by the U.S. Department of Education's National Center for Education Statistics (NCES) urban-centric locale code be considered rural for purposes of calculating its E-rate discount level. We seek to refresh the record on that proposal. The NCES codes could be a reliable indicator of rural areas for the E-rate, because the Department of Education's definition is specifically targeted to schools, pinpoint more precisely whether a school is located in a rural area, and is readily available through the Department of Education's Web site which has the coding system broken down by state. Therefore we seek comment on changing our rules to read as follows:

§ 54.505 Discounts.

(a) * * *

(b) * * *

(1) * * *

(2) * * *

(3) The Administrator shall classify schools and libraries as ''urban'' or ''rural'' based on location in an urban or rural area, according to the following designations.

(i) Schools and libraries whose locale code is city, suburb, town-fringe, or rural-fringe, as measured by the U.S. Department of Education's National Center for Education Statistics, shall be designated as urban.

(ii) Schools and libraries whose locale code is town-distant, town-remote, rural-distant, or rural-remote, as measured by the U.S. Department of Education's National Center for Education Statistics, shall be designated as rural.

263. Because NCES codes are not assigned immediately, it is possible that not every school that is part of an E-rate application will have a code or classification. If we adopt the proposed rule above, how should we handle such schools?

264. An alternative to relying on NCES codes would be to use census data. The census classifies areas into three groups: urbanized areas, urban clusters, and rural areas. Urbanized areas ''consist[] of densely settled territory that contains 50,000 or more people,'' urban clusters ''consist[] of densely settled territory that contains at least 2,500 people, but fewer than 50,000 people,'' and rural areas include all areas that are not urbanized areas nor urban clusters. As of the 2010 Census, 220 million Americans lived in urbanized areas, 29 million lived in urban clusters, and 59 million lived in rural areas. How could we use census data to classify a school for purposes of E-rate? Should it be based solely on the location of the school, and if so, should the ''rural'' designation only apply to schools located in rural areas or also those in urban clusters? Should it be based on where its students live, so that if a majority of student live in a rural area, the school should be designated ''rural'' for E-rate even if it's located in an urban cluster? How should the classification account for the fact that schools are often located in small towns, which may be considered urban clusters, even though the costs of providing to the service to the school are significantly higher than the costs in urbanized areas (such as cities and their suburbs)? We seek comment on relying on census data for purposes of the rural-urban classification, and on changing our rules to read as follows:

§ 54.505 Discounts.

(a) * * *
(b) * * *
(1) * * *
(2) * * *

(3) The Administrator shall designate a school or library as ''urban'' if and only if the school or library is located in an urbanized area as determined by the most recent rural-urban classification by the Bureau of the Census; the Administrator shall designate all other schools and libraries as ''rural''.

265. In 2010, the American Library Association (ALA) pointed out that libraries do not have urban-centric locale codes. We therefore seek comment on how libraries should determine whether they are considered urban or rural. How can we ensure libraries serving rural areas receive sufficient support? Should libraries use the locale-code of the school closest to each library? If we adopt our proposal below to adopt district-wide discount criteria should a library use the urban-centric code of the school district in which it is located? Are there any library systems that have facilities in multiple school districts? If so, we seek comment on how to account for such library systems. We also invite commenters to suggest alternate definitions of rural for use in the E-rate program, and we ask that commenters who offer other definitions explain the benefits and drawbacks of their proposals as compared to our proposal.

266. Finally, we seek comment on how existing E-rate schools and libraries that that receive support would be impacted by changes to the rural definition. Should we phase in changes to the rural definition over time to help schools and libraries that are reclassified as non-rural to adjust?

C. Addressing Changes to the National School Lunch Program

267. As we consider changes to the structure of the E-rate program, we also take this opportunity to address changes in the National School Lunch Program (NSLP) that necessitate some adjustments to how we determine what discounts some schools and libraries can receive. Traditionally, schools that participate in the NSLP collect individual eligibility applications from each of their students seeking free or reduced-priced lunches. Under the E-rate program, most schools and school districts use the NSLP eligibility as a proxy for poverty when calculating discounts on services received under the E-rate program. In the alternative, schools and school districts can use a federally-approved alternative mechanism, such as a survey. Libraries' discount percentages are based on the public school district in which they are physically located.

268. In 2011, as mandated by the Healthy, Hunger-Free Kids Act of 2010, the United States Department of Agriculture (USDA) began rolling out a new reimbursement mechanism called the Community Eligibility Option (CEO), allowing schools to elect to serve free breakfasts and lunches to all the students attending a school without collecting household applications from any of the students at the school. Schools that elect to participate in the CEO must: (1) have 40 percent or more of their students directly certified as eligible (''Identified Students'') for free meals (for example, on the basis of their participation in the Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families, or Food Distribution Program on Indian Reservations) in the year prior to implementing the option; (2) agree to serve free lunches and breakfasts to all students for four successive school years; and (3) agree to cover with non-federal funds any costs of providing free meals to all students above amounts provided in federal assistance. To compensate for the students who would qualify for free or reduced price meals, but who do not participate in a program which allows them to be directly certified as school lunch-eligible, schools in the CEO program apply a standard multiplier of 1.6 to their Identified Students population in order to determine the total percentage of meals for which they will be reimbursed by the USDA. Schools are then responsible for the difference between the federal reimbursement rate and the total cost of meals for all students.

269. Because schools that participate in the CEO no longer collect individual eligibility data from participating students, it could affect student eligibility for free school meals. If the E-rate program were to use the same eligibility criteria as the CEO program to determine E-rate discounts against the current discount matrix, it could potentially increase the number of schools eligible for 80 percent discounts and higher on the E-rate discount matrix.

270. In 2011, the Bureau directed USAC to allow schools participating in the CEO program to use their NSLP eligibility data for the most recent E-rate funding year in which such schools did not participate in the CEO to determine their E-rate discounts. In 2012, the Bureau repeated this guidance.

271. We now seek to gather data that will inform our ability to assess the extent and impact of challenges related to the CEO and the E-rate program. In particular, we seek comment on six over-arching issues. First, we seek comment on how we should calculate student eligibility for schools and school districts electing the CEO as opposed to those schools and school districts not electing the CEO. If we adopt two separate tracks—CEO schools and school districts and non-CEO schools and school districts—should CEO schools be permitted to qualify under either track, or should they be limited to the CEO track? Commenters should address the practical implications of adopting two separate tracks. Should any adopted methodology for determining discount rates attempt to preserve an applicant's average discount rate under the current E-rate program or the current overall distribution of discount rates among the applicants?

272. Second, we seek comment on whether we should consider alternative ways to measure the poverty level for eligible schools and libraries that is minimally burdensome for schools and

provides an accurate measure of poverty. For example, should the Commission reconsider using U.S. Census Bureau data, such as the American Community Survey (ACS), an annual socioeconomic survey of households, to determine reimbursement levels? The ACS is designed to produce relatively precise estimates throughout the nation for small geographic areas, such as school districts, by surveying large samples of households and accumulating data over periods of 1, 3, and 5 years, depending on an area's population. If we were to use U.S. Census data to set subsidy levels, how would we ensure that such data accurately measures a school's level of need rather than general community income? And how could we ensure that such data is sufficiently current? Are there any issues regarding the definition of Tribal lands and the collection of data on Tribal lands in the ACS of which we should be aware? As more states opt for the CEO, is there a common way in which to measure the poverty level for schools that the USDA, the U.S. Department of Education and the Commission could all use for CEO schools in implementing their programs based on poverty levels? Are there other ways to accurately measure poverty among schools that are familiar to most schools that we should consider? Specifically, in regard to libraries, is there an alternative method that may more accurately reflect the level of poverty in a library's service area? Commenters should indicate whether any proposed alternatives are accessible to all schools and how difficult, costly, and burdensome such alternatives may be to administer among schools.

273. Third, we seek comment on whether we should require schools and school districts to use a federally-approved alternative mechanism, such as school-wide income survey, to determine their level of poverty. Currently, for CEO schools to maintain current free and reduced poverty statistics to determine eligibility for various additional state and federal program benefits that their students may qualify for, they have had to collect Household Information Surveys, which they then process manually following poverty guidelines. Should the Commission require a similar survey or application for purposes of receiving E-rate program benefits? We understand that the requirement of such a survey or form for purposes of the E-rate program may conflict with the objective of the CEO program to eliminate the effort associated with collecting and processing applications. However, does the benefit of receiving E-rate reimbursements for services outweigh any administrative burdens associated with collecting and processing these forms or surveys, particularly, where schools and school districts have already collected and processed these forms?

274. Currently, if a school uses a school-wide income survey and at least 50 percent of the surveys are returned, the school may calculate the percentage of NSLP-eligible students from the returned surveys and project that percentage of eligibility for the entire school population, for purposes of determining its discount rate under the E-rate program. We take this opportunity to revisit that practice, and seek comment on whether allowing schools to project the percentage of their NSLP-eligible students unreasonably distorts the number of needy students by artificially inflating the E-rate discount rate they are able to claim. Should CEO or other schools that use school-wide surveys be allowed to project the percentage of their NSLP-eligible students based on the surveys they receive as permitted by our current procedures? Would those projections be more accurate if we require schools to receive a higher percentage, such as at least 75 percent of the surveys in order to project their students NSLP-eligibility from the surveys? In the alternative, should all applicants that use school-wide income surveys be required to base their E-rate discount rate only on the surveys they actually collect? Commenters should indicate what other concerns are associated with requiring schools and school districts to collect these poverty statistics for the purposes of the E-rate program.

275. Fourth, we seek comment on whether we should use direct certification data with a multiplier to determine a school's poverty level. Using only the direct certification poverty statistic without a multiplier as the basis for a CEO school's E-rate discount would tend to severely underreport a school's actual poverty statistic, because students at the reduced-price lunch status, along with some free lunch students, would not be included in the counts for determining the E-rate discount rate. Not all families who currently receive free or reduced lunch apply for benefits such as Medicaid, SSI, Section 8 and SNAP and those students would not be included in the direct certification data. While the current multiplier of 1.6 is applied to the direct certification data under the CEO program through school year 2013–2014, USDA's FNS is permitted to change the multiplier to a number between 1.3 and 1.6 after school year 2013–2014. We thus seek comment on whether we should establish a multiplier between 1.3 and 1.6, consistent with the CEO, or some other multiplier to the direct certification data? For schools and school districts currently participating in the CEO, we seek data on the difference in the poverty level when using NSLP eligibility, direct certification, and direct certification with the 1.6 multiplier currently used by USDA. Commenters should indicate what multiplier they believe is fair and reasonable and will adequately capture schools' poverty levels. Should we develop a different multiplier for priority one and priority two services? Additionally, we seek comment on whether the direct certification data and nationwide multiplier should be used for determining an applicant's discount rate or should we apply this eligibility figure to the current E-rate discount matrix? If so, should we make any adjustments to the current E-rate discount matrix given the advent of the CEO? Commenters should set forth with specificity any alternative proposed discount matrix.

276. Fifth, we seek comment on whether there are scenarios under which we should provide a mechanism for CEO schools to qualify for higher discounts than they would under whatever default approach we adopt. The CEO operates on four-year cycles, but it provides a mechanism whereby schools may demonstrate that their poverty levels have changed, thus making them eligible for additional reimbursement. The current E-rate program requires applicants to demonstrate discount eligibility on an annual basis. If the Commission adopts a mechanism that permits schools to establish their discount level for multiple funding years, as current CEO schools are now able to do, should there be a process by which they may demonstrate that their E-rate discount level has increased? If so, what information should we require from applicants seeking an exception? Should the applicant then be required to establish the discount level annually for successive years in a cycle, or would the new discount level be retained for multiple years? How would this operate if the applicant were a consortium, or a consortium comprised of CEO and non-CEO schools (and potentially libraries)?

277. Lastly, we seek comment on what procedural and administrative issues are impacted by the CEO? For example, USAC annually requests states to provide a spreadsheet listing NSLP data by school that is used for

application review. While many states attempt to comply with these requests, a states' database systems vary by state and may not easily lend themselves to producing reports in USAC's requested format. The introduction of CEO schools potentially compounds the state reporting problem, particularly because CEO states and those that will become CEO states may not yet have determined how, or if, CEO schools will be accounted for within their NSLP-based database. What procedural mechanisms can we establish to minimize the burden upon states, while mitigating any additional administrative burden for USAC in reviewing the data for CEO schools? Additionally, USAC has provided a specific designation to identify those schools providing free meals for all students under the USDA's CEO in Block 4 (Discount Calculation Worksheet) of a school's FCC Form 471 application. Should the Commission revise the FCC Form 471 application or any of the other forms in order to accurately identify a CEO school? Commenters should specifically indicate any proposed changes. Commenters should also indicate what other administrative or procedural barriers or concerns may need to be addressed as part of any proposed alternative. For example, what information or documentation should be required by USAC, as necessary, for state validation of the student eligibility data depending upon the method used? Should we consider a different approach for schools operated by federal or Tribal entities, such as the Bureau of Indian Education or Tribal governments? What should USAC's review processes entail for CEO schools? What, if any, other procedural or administrative issues may need to be addressed if applying the direct certification data with a multiplier to the E-rate program?

278. We also seek to identify best practices by those currently participating in the CEO program, so that we can fully consider possible programmatic changes, including potential rule changes. We are most interested in ways to mitigate the impact of the CEO on the E-rate program regarding discount eligibility, administrative burdens, and E-rate processes as a whole. So that we may have a factual basis and detailed record upon which to determine the nature and extent of any problems, we encourage commenters that currently participate in the CEO and those that will become eligible in the future, to provide us with detailed information regarding their experiences, both positive and negative. We believe that input from those schools and school districts that currently participate in the CEO and those libraries and library systems affected by the CEO is crucial in fully evaluating the impact of the CEO on the E-rate program. Further, identifying with specificity particular examples or concerns will ensure that we have a complete understanding of the issues involved. In responding to the questions posed above, commenters should address what, if any, additional burden any new reporting or data collections requirements may place on service providers and/or applicants.

D. Additional Measures To Prevent Waste, Fraud and Abuse

279. The Commission is committed to guarding the Fund against waste, fraud, and abuse and ensuring that funds disbursed through the E-Rate program are used for appropriate purposes. During the last 15 years, the Commission has assisted with several dozen criminal prosecutions of individuals who have sought to defraud the E-rate program, entered into compliance plans with individuals, schools and companies that are alleged to have violated the E-rate rules, and suspended or debarred dozens of persons from participating in the E-rate program. We invite commenters to identify and discuss ways that the Commission can continue to combat waste, fraud and abuse in the E-rate program. We seek to identify additional policies and procedures that we can put in place to protect against waste, fraud, and abuse; to identify waste fraud and abuse; and to aggressively pursue actions against those engaged in waste fraud and abuse. We also specifically seek comment on our proposal to extend document retention requirements for participants in the E-rate program from five years to at least ten years to ensure documents are available when needed for investigations and prosecutions involving waste, fraud and abuse in the E-rate program consistent with the time frame for pursuing recovery under the False Claims Act.

1. Extending the E-Rate Document Retention Requirements

280. We propose to extend the E-rate program document retention requirements from five to at least ten years. We seek comments on the benefits and burdens of doing so. Access to relevant documents is crucial to conducting effective audits of E-rate applicants and service providers, and otherwise investigating compliance with the requirements of the E-rate program. Our rules currently require schools and libraries to retain all documents related to the application, receipt, and delivery of eligible services received under the E-rate program for at least five years after the last day of the delivery of services. Schools and libraries must also retain all other documentation that demonstrates compliance with the statutory or regulatory requirements for the E-rate program as well as all asset and inventory records of equipment purchased as components of supported internal connections services sufficient to verify the actual location of such equipment for a period of five years after purchase. Service providers are also required to retain documents related to the delivery of eligible services for at least five years after the last day of service delivery and all other documentation that demonstrates compliance with the statutory or regulatory requirements for the E-rate program.

281. In the *USF/ICC Transformation Order,* the Commission revised the record retention requirements for recipients of high-cost support to extend the retention period from five years to ten years. In doing so, the Commission determined that the high-cost retention requirement of five years was inadequate for the purposes of litigation under the False Claims Act, which can involve conduct that relates back substantially more than five years. Similarly, in the *Lifeline Reform Order,* 77 FR 12784, March 2, 2012, the Commission proposed to amend its rules to extend the retention period for eligible telecommunications carriers receiving low-income universal service support from three years to at least ten years. Similar concerns lead us to propose to amend § 54.516 of the Commission's rules to read as specified below and we seek comment on this proposed rule:

(a) Record keeping requirements—(1) Schools, libraries and consortia. Schools, libraries, and any consortium that includes schools and libraries shall retain all documents related to the application for, receipt, and delivery of discounted telecommunications and other supported services for at least 10 years after the last day of the delivery of services or from the end of the applicable funding year, whichever is later. Schools, libraries, and any consortium that include schools or libraries shall also retain any other document necessary to demonstrate compliance with the statutory or regulatory requirements for the schools and libraries mechanism. Schools and libraries shall maintain asset and inventory records of equipment purchased as components of supported

internal connections services sufficient to verify the actual location of such equipment for a period of five years after purchase.

(2) Service providers. Service providers shall retain documents related to the delivery of discounted telecommunications and other supported services for at least 10 years after the last day of the delivery of services or from the end of the applicable funding year, whichever is later. Service providers shall also retain any other document that demonstrates compliance with the statutory or regulatory requirements for the schools and libraries universal service support mechanism.

282. We also seek comment on whether there are other changes we should make to our document retention requirements. For example, should our rules specify that applicants and service providers must keep records of all their communications relating to bids for and purchases of E-rate supported services? Should we extend the required retention of records in the event of any Governmental investigation, audit, or other governmental inquiry involving a particular participant or applicant for funding in the E-rate program to avoid destruction of potentially relevant documents. We further seek comment on the manner in which such an extension would be implemented. For example, should the obligation for an extended retention period be immediately and automatically triggered by a participant or applicant's knowledge that an investigation of its E-rate funding or E-rate requests is ongoing? If so, should the record retention extension be a blanket extension applying to all existing E-rate documents in its possession or should an extension be implemented only at the discretion of the Commission, upon direction from the Commission or USAC, to the party involved? In other words, should additional retention be required and permitted ''as directed by the Commission or USAC'' and targeted to those documents determined to be appropriate in the Commission's sole discretion? Would such a targeted ''hold'' requirement be better than an automatic, blanket hold? We seek comment on these options.

2. Documentation of Competitive Bidding

283. As discussed above, E-rate applicants are currently required to retain documentation that demonstrates compliance with the statutory or regulatory requirements for the E-rate program as well as all asset and inventory records of equipment purchased as components of supported internal connections services sufficient to verify the actual location of such equipment for a period of five years after purchase. In the *Healthcare Connect Fund Order* the Commission required applicants to the HealthCare Connect Fund to submit to USAC competitive bidding documents, including a copy of each bid received, the bid evaluation criteria, bid sheets, a list of people who evaluated bids, memos, board minutes, or similar documents, and any correspondence with vendors during the bidding, evaluation, and award phase of the process. Having such documents from E-rate recipients would allow USAC to evaluate more fully the competitive bidding process conducted by E-rate applicants and ensure that documentation of the competitive bidding process was retained in the event of an audit. At the same time, providing such documents would impose additional burdens on E-rate applicants and could increase application review time and administrative costs. We therefore seek comment on whether we should similarly require E-rate applicants to submit competitive bidding documents with their FCC Forms 471. Are there specific documents, such as the bid selection sheet, that would allow USAC to review an applicant's competitive bidding process while minimizing the burden on applicants?

3. E-rate FCC Form Certification Requirements

284. As the custodian of the universal service fund, we are committed to ensuring that universal service funds are used in a manner consistent with the E-rate program rules. One way to encourage compliance and to ensure that we hold entities responsible for failing to follow our rules is to require applicants and service providers to certify their compliance with various requirements of the E-rate program when submitting forms to USAC. Certifications of compliance with our rules will help protect against waste, fraud and abuse in the program by imposing a duty on the person submitting the certification to consider whether the applicant or service provider is in compliance with all E-rate rules. Moreover, the certifications are an important enforcement tool in protecting the USF from waste, fraud and abuse.

285. Currently, most E-rate forms submitted to USAC require an ''authorized person'' to attest to the certifications contained on those forms on behalf of the entity submitting the form. While a signatory may be ''authorized'' to sign an E-rate form pursuant to a general delegation by the applicant or service provider, occasionally signatories on the E-rate forms do not have sufficient knowledge about the actual operation of the E-rate program or a sufficient understanding of the Commission's E-rate program rules to provide a meaningful or accurate certification. As a way to further guard against waste, fraud and abuse, we therefore propose to amend our rules to require that an officer of the service provider sign certain forms submitted to USAC in support of an application for eligible services and any requests for payment. We also propose to codify the current certifications contained on our E-rate forms. We further propose to require service providers to certify their compliance with the lowest corresponding price rule and with state and local procurement laws.

a. E-rate FCC Form Signatories

286. First, we seek comment on whether the current signatories on the following E-rate forms and any other E-rate forms are sufficiently knowledgeable about the E-rate program to accurately certify to program compliance. The relevant E-rate forms include:

FCC Form 470 (Description of Services Requested and Certification Form). The FCC Form 470 is used by an applicant to open a competitive bidding process for desired eligible services. It requires an ''authorized person'' on behalf of the school or library to certify certain information to ensure, among other things, that the applicant will conduct a competitive bidding process in accordance with Commission rules, the applicant has not received anything of value from the service provider other than the requested services, and that only eligible entities receive support under the E-rate program.

FCC Form 471 (Services Ordered and Certification Form). The FCC Form 471 is used by an applicant to request funding from USAC for the services selected by the applicant during its competitive bidding process, and to provide USAC with information about the requested services and the discount(s) for which an applicant is eligible to receive on eligible services under the E-rate program. As with the FCC Form 470, the FCC Form 471 requires an ''authorized person'' to certify to certain information to ensure, among other things, that only eligible entities will receive support under the E-rate program.

FCC Form 472 (Billed Entity Applicant Reimbursement (BEAR)

Form). The FCC Form 472 is used by an applicant to seek reimbursement from USAC for discounts on services paid in full. This form requires certifications by an ''authorized person'' on behalf of both the applicant and service provider to ensure that the applicant has paid for the services, that the service provider has provided discounted services within the current funding year for which it submits an invoice to USAC, and that invoices submitted from service providers for the costs of discounted eligible services do not exceed the amount that has been approved.

FCC Form 473 (Service Provider Annual Certification Form). The FCC Form 473 is used to establish that the participating service provider is eligible to participate in the E-rate program and to confirm that the invoices submitted by the service provider are in compliance with the E-rate rules. This form requires certain annual certifications by an ''authorized person'' on behalf of the service provider to ensure that the service provider is in compliance with the Commission's rules.

FCC Form 474 (Service Provider Invoice (SPI) Form). The FCC Form 474 is used by service providers to seek payment from USAC for the discounted costs of services it provided to applicants for eligible services. The FCC Form 474 is also used to ensure that each service provider has provided discounted services within the current funding year for which it submits an invoice to USAC, and that invoices submitted from service providers for the costs of discounted eligible services do not exceed the amount that has been approved. While this form does not currently require attestation to certifications, we have recently sought renewal of this form and have proposed to include certifications by an ''authorized person'' on behalf of a service provider.

FCC Form 479 (Certification by Administrative Authority to Billed Entity of Compliance with the Children's Internet Protection Act). The FCC Form 479 is used by the Administrative Authority for one or more schools or libraries, for which universal service discounts have been requested or approved for eligible services, to certify their compliance with CIPA. This form requires an ''authorized person'' on behalf of the Administrative Authority to certify that an Internet safety policy is being enforced.

FCC Form 486 (Receipt of Service Confirmation Form). The purpose of the FCC Form 486 is to authorize the payment of invoices from service providers, indicate approval of technology plans, and indicate compliance with CIPA. This form requires an ''authorized person'' on behalf of the applicant to certify that, for example, the discounted services indicated on the form are covered by the technology plan that has been approved by the state or other authorized body and that the services listed on FCC Form 486 have been, are planned to be, or are being provided to all or some of the eligible entities identified on the FCC Form 471.

FCC Form 500 (Adjustment of Funding Commitment and Modification to Receipt of Service Confirmation Form). The FCC Form 500 is used by the applicant to make adjustments to previously filed forms, such as changing the contract expiration date filed with the FCC Form 471, changing the funding year service start date filed with the FCC Form 486, or cancelling or reducing the amount of funding commitments. This form requires an ''authorized person'' on behalf of the applicant to certify as to the veracity of the information within the form, the applicability of the discount level, and that any records relied on to complete the form will be retained for five years.

287. We propose to require that an officer of the service provider make the required certifications on the FCC Form 472 (BEAR Form), FCC Form 473 (Service Provider Annual Certification Form) and the FCC Form 474 (SPI Form), the key documents provided by service providers to USAC attesting to the service provider's compliance with the E-rate rules and seeking payment for supported services provided. Requiring an officer to certify compliance will help ensure that the certification reflects the service provider's commitment to understand and comply with the E-rate program rules and requirements.

288. Specifically, in proposing to require officer certification on the FCC Form 472, we seek comment on amending § 54.504(f) to read:

(f) Filing of FCC Form 472. All service providers must submit a Service Provider Acknowledgement as part of the Applicant's FCC Form 472 seeking reimbursement from the Administrator for eligible services. The FCC Form 472 shall be signed by an officer of the service provider and shall include the officer's certifications under oath that:

(1) This service provider will remit the discount amount authorized by the fund administrator to the Billed Entity Applicant who prepared and submitted the Billed Entity Applicant Reimbursement Form as soon as possible after the fund administrator's notification to the service provider of the amount of the approved discounts on this Billed Entity Applicant Reimbursement Form, but in no event later than 20 business days after receipt of the reimbursement payment from the fund administrator, subject to the restriction set forth in subsection (2) below.

(2) This service provider will remit payment of the approved discount amount to the Billed Entity Applicant prior to tendering or making use of the payment issued by the Universal Service Administrative Company to the service provider of the approved discounts for the Billed Entity Applicant Reimbursement Form.

(3) This service provider is in compliance with the rules and orders governing the schools and libraries universal service support program and that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of discount funding and/or cancellation of funding commitment.

(4) Failure to comply with the rules and orders governing the schools and libraries universal service support program could result in civil or criminal prosecution by law enforcement authorities.

What are the benefits and burdens of requiring an officer signature on the FCC Form 472?

289. Recently, in seeking to renew the information collection requirements associated with the FCC Form 473, we sought comment on amending that form to require an officer of the service provider, rather than just an ''authorized person'' to make the required attestations on the FCC Form 473. While we received comments in response to our proposal, we do not consider the record robust enough to support changes to the form. However, the issue is important to our efforts at reducing waste and abuse in the program and we therefore renew our request for comments. We thus seek comment on redesignating current § 54.504(f) of our rules as newly added § 54.504(g) and revise paragraph (g) to read:

(g) Filing of FCC Form 473. All service providers eligible to provide telecommunications services and other supported services under this subpart shall submit annually a completed FCC Form 473 to the Administrator. The FCC Form 473 shall be signed by an officer of the service provider and shall include that officer's certifications under oath that:

What are the benefits and burdens of requiring officer certification on the FCC Form 473?

290. Further, in proposing to require officer certification on the FCC Form 474, we seek comment on adding a new provision to our rules at § 54.504(h) that would read:

(h) Filing of FCC Form 474. All service providers seeking reimbursement from the Administrator for eligible services shall submit a completed FCC Form 474 to the Administrator. The FCC Form 474 shall be signed by an officer of the service provider and shall include the officer's certifications under oath that:

(1) This service provider is in compliance with the rules and orders governing the schools and libraries universal service support program and that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of discount funding and/or cancellation of funding commitment.

(2) Failure to comply with the rules and orders governing the schools and libraries universal service support program could result in civil or criminal prosecution by law enforcement authorities.

What are benefits and burdens of requiring officer certification on the FCC Form 474?

291. Similarly, we propose and seek comment on whether we should also require all E-rate forms submitted by E-rate applicants be signed by someone with authority equivalent to that of a corporate officer. For example, we propose amending § 54.503(a)(2) of our rules to read:

(2) The FCC Form 470 shall be signed by the person authorized to order eligible services for the eligible school, library, or consortium including such entities, and with authority equivalent to that of a corporate officer, and shall include that person's certification under oath that:

We also propose amending § 54.504(a)(1) of our rules to read:

(1) The FCC Form 471 shall be signed by person authorized to order eligible services for the eligible school, library, or consortium, and with authority equivalent to that of a corporate officer, and shall include that person's certifications under oath that:

Commenters should provide comments on both the benefits and burdens of requiring an equivalent signature for applicants on the FCC Forms 470, 471, 472, 479, 486, and 500, and any other E-rate forms attested to by the applicant.

292. In the alternative, we seek comment on whether we should require that the certifications on the FCC Forms submitted by applicants, service providers or both be made by an individual with substantial knowledge of E-rate program requirements who is also responsible for ensuring program compliance by the service provider or the applicant. Commenters should provide comments on the benefits and burdens of requiring such a knowledgeable individual to sign the FCC Forms 470, 471, 472, 473, and 474, and any other E-rate forms.

b. Existing Certifications

293. Our rules currently require certain certifications be made as part of the FCC Forms 470, 471, 472, 479, 486, and 500, but we recognize that many of the certifications on the current E-rate forms are not codified in the Commission's rules. For example, the FCC Form 471 requires that a person authorized by the applicant certify that no kickbacks were paid to anyone within the applicant. This certification, however, is not specified in § 54.504(a)(1) of our rules. We thus seek comment on whether we should amend our rules to include all of the certifications currently found on the E-rate FCC Forms. If we do so, should we make the list of certifications non-exclusive and to continue to delegate authority to the Bureau to consider including additional certifications on E-rate forms as necessary and appropriate? We seek comment on that approach.

c. Additional Certifications

294. *Lowest Corresponding Price Certification.* We also propose to amend § 54.511 to require service providers to certify their compliance with the lowest corresponding price rule. The lowest corresponding price rule requires service providers to provide applicants with prices no higher than the lowest price that it charges to similarly-situated non-residential customer for similar services. Requiring such a certification will provide additional incentive for service providers to offer schools and libraries with competitive prices for supported E-rate services and hold service providers further accountable for complying with this rule. We seek comments on the benefits and burdens of such a requirement. Specifically, we seek comment on the following proposed amendment to § 54.511(b) of our rules:

(e) The service provider must certify on the FCC Form 473 and FCC Form 474 that it is charging schools, school districts, libraries, library consortia or consortia including any of these entities, the lowest corresponding price for supported services, unless the Commission, with respect to interstate services, or the state commission, with respect to intrastate prices, had found that the lowest corresponding prices is not compensatory.

295. *State and Local Law Compliance by Service Providers.* There are state and local procurement laws that protect against waste, fraud, and abuse. Currently, our rules require applicants to comply with state and local competitive bidding requirements, but do not impose any such duty on service providers. State and local procurement requirements protect against waste, fraud and abuse. Therefore, we propose to amend §§ 54.503 and 54.504 to require service providers to comply with state and local procurement laws, and to require service providers to certify compliance with that requirement. Specifically, we seek comment on the following proposed rule changes to § 54.503(b) of our rules:

(b) Competitive Bid Requirements.

(1) Except as provided in § 54.511(c), an eligible school, school districts, library, or consortium that includes an eligible school or library shall seek competitive bids, pursuant to the requirements established in this subpart, for all services eligible for support under § 54.502. These competitive bid requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements.

(2) Service providers must certify that they are in compliance with state and local procurement laws.

296. We also propose to require service providers to certify that the service provider complied with all applicable state and local procurement laws when it participated in the competitive bidding processes as part of submitting an FCC Form 474. Thus, in addition to seeking comments above on adding paragraph (h) in § 54.504 of our rules, we also seek comment on adding the following required certification:

(3) The service provider is in compliance with state and local procurement laws.

297. As we move forward with other reforms of the E-rate program, we also seek comment on additional certifications that may be necessary to ensure that funds are being used for their intended purpose.

298. We seek comment on the benefits and burdens on service providers and applicants should we adopt these proposed changes to our rules. Are there state or local procurement requirements that do not currently apply to E-rate

service providers? We also seek comment on whether there are other obligations on applicants within the rules that do not have corresponding obligations on service providers that we should consider adopting to ensure that service providers are held responsible where appropriate and necessary to guard against waste, fraud and abuse.

4. Post-Commitment Compliance and Enforcement

299. The Commission currently has tools available to ensure compliance with our rules and to impose penalties upon those parties who willfully violate our rules. The Commission's USF audit program, called the Beneficiary and Contributor Audit Program (BCAP), is one of our most important tools for identifying and deterring program rule violations, and for recovering funding that has been improperly disbursed. We take this opportunity to reinforce our continuing commitment to ensuring that the Commission and USAC have a rigorous audit program that includes both targeted audits of high-risk applicants and vendors as well as random audits to ensure that all applicants and vendors comply with our rules. We also take this opportunity to seek comment on whether there are ways to further strengthen the BCAP audit procedures to ensure that compliance issues, particularly substantial ones, are identified.

300. Recently, in reforming the USF Lifeline program, the Commission required that every eligible telecommunications carrier (ETC) providing Lifeline services and drawing $5 million or more in the aggregate on an annual basis from the Lifeline program hire an independent audit firm to assess the ETC's overall compliance with the program's requirements. Those audits must be performed once every two years, unless otherwise directed by the Commission. We seek comment on whether we should adopt a similar third-party independent audit requirement for E-rate applicants or service providers as a method of augmenting the current BCAP program. If so, what should we establish as the threshold for the audits? Should it be a set dollar amount or should it be the top percentage of recipients—for example, the top 1 percent or the top 20 funding requests—regardless of the dollar amounts? Should the threshold be based on funding requests or funding actually disbursed? How often should such an audit be required? Would the frequency of such a requirement be different if the audit identified issues or it had no findings? What would be the burden of such a requirement on applicants and service providers? We recognize that some other federal programs require funding recipients to conduct annual audits, and seek comment on whether there are audit requirements in those programs that we should adopt in the E-rate program. We also seek comment on any other ways the Commission could improve its own audit processes.

301. We also seek comment on whether the Commission should revise its suspension and debarment rules to further ensure that individuals and entities that have violated the E-rate program rules cannot do so in the future. The Commission currently has rules providing for suspension and debarment from participation in universal service programs when there have been certain criminal convictions or civil judgments. We note that there is a government-wide debarment and suspension system for non-procurement programs and activities, for which OMB guidance is set forth in part 180 of Title 2 of the Code of Federal Regulations. We seek comment on the pros and cons of participating in that government-wide debarment and suspension system in administering our universal service programs. We seek comment on any policies or procedures that we should adopt if we were to implement part 180, and in particular on what procedures would be ''consistent with the [OMB] guidance.'' We seek comment on the extent to which our existing procedures for appealing a suspension or debarment could be used, or whether different or additional procedures should be employed.

302. We also seek comment on how we should address those matters for which the OMB guidelines give each agency some discretion, including both those noted below and the other matters identified in the part 180 rules. For example, under the government-wide system agencies have some discretion to define the scope of transactions that a person excluded or disqualified under those rules generally is restricted from participating in. Under the government-wide system, the guidelines apply to at least these two categories of transactions: A ''primary tier between a federal agency and a person''; and a ''lower tier between a participant in a covered transaction and another person.'' Under this framework, however, each agency's implementing regulations must address whether certain subcontracts also should be transactions covered by these rules. We seek comment on these issues here. Would it be appropriate or desirable to designate contracts between a service provider and its subcontractors in the E-rate context as ''an additional tier of contracts'' that should be included as a ''covered transaction?'' Alternatively, should certain transactions be exempted from coverage? Proponents of any expansion or contraction of covered transactions should explain the rationale for their recommendations. As another example, we also seek comment on considerations that might be appropriate in implementing § 180.135, which allows a Federal agency head or designee to ''grant an exception permitting an excluded person to participate in a particular covered transaction.''

303. In addition, we note that the OMB government-wide guidelines in part 180 of title 2 afford substantial discretion to agencies to evaluate whether or not to suspend or debar depending on the individual circumstances presented. Even in the absence of full implementation of part 180 of Title 2 of the Code of Federal Regulations, should the Commission adopt rules for suspension and debarment similar to those set forth in subpart G of part 180 of Title 2 (Suspension) and subpart H of part 180 of Title 2 (Debarment)? What other discretionary factors should be considered, if any, in addition to those set forth in part 180? For example, should we treat service providers differently than applicants and consultants in any circumstances? Should parties in some circumstances have an opportunity to shorten their debarment period by demonstrating that they have instituted a compliance plan with training and oversight that will facilitate program compliance? Should repeat offenders be treated differently than those violating our rules for the first time? We seek comment on these and any other factors we should take into consideration if the Commission revises its suspension and debarment rules to allow for more discretion than exists under the current regulations, which provide for debarment only after certain criminal convictions or civil judgments.

E. Wireless Community Hotspots

304. We next inquire whether we should continue to increase the reach of E-rate supported services. In the *Schools and Libraries Sixth Report and Order,* the Commission revised its rules to allow schools to open their facilities to the general public to utilize services supported by E-rate when classes are not in session. The Commission recognized that providing community use on school premises was consistent with the overarching goals of universal service to promote access to telecommunications and information

services. In order to effectuate this change, the Commission amended §§ 54.503 and 54.504 to require applicants to certify that ''[t]he services the applicant purchases at discounts will be used *primarily* for educational purposes,'' as opposed to *solely* for education purposes. We now seek comment on whether we should permit schools to provide wireless hotspots to surrounding communities using E-rate supported services.

305. We first seek comment on permitting students and the general public to receive E-rate funded Internet access offsite through wireless hotspots. In allowing community use of schools' E-rate supported broadband services, the Commission recognized that students' need for broadband access does not end when their schools' doors close for the day. Allowing after-hours, on-premises access to a school's broadband connections has given students the opportunity to work on homework, school projects and engage in extracurricular activities that require broadband access. At the same time, it has allowed other community members broadband access for adult education, job training, digital literacy programs, and online access to governmental services and resources. However, not all community members who need broadband access can take advantage of on-premises access to school's broadband services. For example, in response to this issue, Oakland Unified School District and Revere Public Schools both filed petitions with the Commission seeking waivers of our rules to allow them to provide wireless hotspots in communities surrounding their schools. We therefore seek public input on the prospect of permitting wireless hotspots for communities.

306. We also ask whether we should implement other changes to the E-rate program to accommodate the use of wireless hotspots. Currently, services used off school or library property are generally ineligible for E-rate support because they are not deemed to be used for ''educational purposes.'' Therefore, if applicants use a service both on-premises and off-premises, they must reduce their funding request by the amount of the ineligible off-site use. Recognizing the potential value to students and the broader community of having access to broadband services off-premises, are there programmatic changes we should make to ensure applicants are able to deploy such wireless hotspots? Do we need to further revise the educational purposes standard if we permit off-premises access for community use?

307. To reduce the likelihood of waste, fraud, and abuse, and to guard against potential additional costs being imposed on the E-rate program, the Commission adopted several conditions for allowing community use of schools' E-rate supported services during non-school hours. Specifically, (1) schools are not permitted to request funding for more services than are necessary for educational purposes and may not seek funding for more services or equipment than necessary to serve its current school or library population; (2) the use of E-rate funded services after hours must comply with Commission rules, including CIPA; and (3) consistent with the Act, the discounted services or network capacity may not be ''sold, resold, or transferred by such user in consideration for money or any other thing of value.'' Should we impose the same conditions with respect to off-site access via wireless hotspots? We seek comment on whether there are any unique circumstances in the context of offsite use that would reasonably change these conditions. Furthermore, we seek comment on whether there are any additional conditions to guard against waste, fraud, and abuse that should be imposed on E-rate applicants that use E-rate funded services for wireless community use.

308. We also seek comment on what other conditions we should impose on allowing community access to schools' E-rate supported services via community hot spots. Our rules allowing for community use in schools limits that use to non-school hours. Should we impose the same limitation here? Is there a justification for such a limitation in this case where wireless service will be accessible at all hours and, unlike the community use implemented in the *Schools and Libraries Sixth Report and Order,* does not require use of the applicant's physical property? Are there reasons to preclude access to the wireless service during school hours? Would permitting such wireless access to the community during school hours be detrimental to the operations of the school? For example, could testing or other school operations reliant on broadband be negatively affected by community access during school hours? If so, are there any measures applicants could take to reduce the impact of the community access on the applicant? Next, should we impose any geographic limitations on the scope of offsite Internet access? What restrictions, if any, should be placed on service providers in the communities that donate equipment, services or funding to help with the creation or expansion of the Internet access points to ensure no violations of the Commission's gift rules occur? We also seek comment on the adequacy of security measures that would be needed to guard against network security breaches. What other issues are raised by this idea?

F. Procedures for National Emergencies

309. *Discussion.* In considering what specific disaster relief mechanisms to adopt, we first consider the circumstances under which such relief procedures should apply. We propose to apply relief procedures to schools and libraries that have been directly affected by any event determined by the President of the United States to be either an ''Emergency'' or a ''Major Disaster,'' as defined by the Federal Emergency Management Agency (FEMA); which has caused severe structural damage and displaced student and patron populations, and also to those schools and libraries indirectly affected by a Major Disaster who absorb displaced populations. We note that FEMA declares numerous Emergencies and Major Disasters every year, and therefore seek comment on how to properly limit any new rule to ensure it only applies to schools and libraries in communities that have suffered major disruptions. We also seek comment on how to measure the amount of disruption to an applicant. Finally, who should make the final determination that there has been enough of a disruption to warrant relief?

310. Next, we seek comment on what particular relief procedures we should adopt. For example, we recognize that schools and libraries may need additional time to file programmatic forms, appeals, and to answer questions from USAC. We therefore propose to delegate authority to the Bureau to extend Commission deadlines for filing documents, and to direct USAC to do the same with respect to its procedures. We also propose to excuse the record retention requirement for applicants whose records are destroyed in an Emergency or Major Disaster and cannot be recovered or recreated, although we propose to require that applicants whose records were destroyed document the loss of their records.

311. We also recognize that schools and libraries affected by a Major Disaster or Emergency may need time to repair or rebuild buildings and to restore telecommunications and Internet access services and that, in the event of evacuation, schools not directly affected by the Major Disaster or Emergency may need additional funding to support the needs of displaced students and

citizens. We therefore seek comment on allowing USAC to initiate a special filing window upon the declaration of a Major Disaster or Emergency for sixty days to allow applicants directly and indirectly affected to apply for E-rate eligible services and products. When there is a Major Disaster or Emergency, we also propose to exempt affected applicants from the FCC Form 470 filing requirement and the 28-day waiting period so long as such applicants comply with state and local bidding requirements. We propose to allow affected applicants to ''restart the clock'' for the purposes of calculating compliance with the ''two-in-five'' rule for priority two services and excusing them from the requirement that substituted services or products have the same functionality as the services they are replacing.

312. Finally, we propose to require affected applicants to make certain certifications on their emergency relief forms to USAC similar to those found in the *Hurricane Katrina Order,* 70 FR 65850, November 1, 2005, to guard against waste, fraud and abuse. For example, we propose to require applicants to certify that they incurred substantial structural damage as a result of the Major Disaster and/or Emergency and that the services and products sought in their applications will be solely used to restore the network to the functional equivalent of the pre-Major Disaster or Emergency degree of functionality and that other resources are not available for restoration. We also propose to require applicants to certify that any alternative funding in excess of the cost for products or services requested on their applications will be returned to the federal Universal Service Fund. To the extent that applicants are handling increased populations, those applicants shall certify that there are more than a *de minimis* number of Major Disaster or Emergency victims and the applicant experience an associated increase in the demand for E-rate eligible services and/or products.

313. We also seek comment on whether there are other policies and rules that should govern circumstances in which schools and libraries are faced with an Emergency or Major Disaster.

VII. Procedural Matters

A. Initial Regulatory Flexibility Analysis

314. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

315. The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Specifically, under the schools and libraries universal service support mechanism, also known as the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may receive discounts for eligible telecommunications services, Internet access, and internal connections.

B. Need for, and Objectives of, the Proposed Rules

316. This NPRM is a part of the Commission's continual efforts to improve the E-rate program. In it, we propose specific goals and measures by (1) ensuring that schools and libraries have affordable access to 21st Century broadband that supports digital learning, (2) maximizing the cost-effectiveness of E-rate funds and (3) streamline the administration of the E-rate program. The rules we propose in this NPRM are directed at enabling us to meet these goals.

C. Legal Basis

317. The legal basis for the NPRM is contained in sections 1 through 4, 201–205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151 through 154, 201 through 205, 254, 303(r), and 403.

D. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

318. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA. A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''

319. Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

320. Small entities potentially affected by the proposals herein include eligible schools and libraries and the eligible service providers offering them discounted services.

1. Schools and Libraries

321. As noted, ''small entity'' includes non-profit and small government entities. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is generally ''a non-profit institutional day or residential school that provides elementary education, as determined under state law.'' A secondary school is generally defined as ''a non-profit institutional day or residential school that provides secondary education, as determined under state law,'' and not offering education beyond grade 12. A library includes ''(1) a public library, (2) a public elementary school or secondary school library, (3) an academic library, (4) a research library [] and (5) a private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition.'' For-profit schools and libraries, and schools and libraries with endowments in excess of $50,000,000,

are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools. Certain other statutory definitions apply as well. The SBA has defined for-profit, elementary and secondary schools and libraries having $6 million or less in annual receipts as small entities. In funding year 2007, approximately 105,500 schools and 10,950 libraries received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these entities that would qualify as small entities under SBA's size standard, we estimate that fewer than 105,500 schools and 10,950 libraries might be affected annually by our action, under current operation of the program.

2. Telecommunications Service Providers

322. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small incumbent local exchange services. The closest size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 incumbent carriers reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Thus, under this category and associated small business size standard, we estimate that the majority of entities are small. We have included small incumbent local exchange carriers in this RFA analysis. A ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent carriers in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

323. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for wired telecommunications carriers. This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees. According to the Commission's *2010 Trends Report,* 359 companies reported that they were engaged in the provision of interexchange services. Of these 300 IXCs, an estimated 317 have 1,500 or few employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that most providers of interexchange services are small businesses.

324. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for wired telecommunications carriers. This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees. According to the *2010 Trends Report,* 1,442 CAPs and competitive local exchange carriers (competitive LECs) reported that they were engaged in the provision of competitive local exchange services. Of these 1,442 CAPs and competitive LECs, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive exchange services are small businesses.

325. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, we estimate that the majority of wireless firms are small.

326. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to the *2010 Trends Report,* 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. We have estimated that 261 of these are small under the SBA small business size standard.

327. *Common Carrier Paging.* As noted, since 2007 the Census Bureau has placed paging providers within the broad economic census category of Wireless Telecommunications Carriers (except Satellite). Prior to that time, such firms were within the now-superseded category of ''Paging.'' Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior category and associated data. The data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, we estimate that the majority of paging firms are small.

328. In addition, in the *Paging Second Report and Order,* the Commission adopted a size standard for ''small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. The SBA has approved this definition. An initial auction of Metropolitan Economic Area (''MEA'') licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area (''EA'') licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business

status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.

329. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, 291 carriers reported that they were engaged in the provision of ''paging and messaging'' services. Of these, an estimated 289 have 1,500 or fewer employees and two have more than 1,500 employees. We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

3. Internet Service Providers

330. The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (*e.g.,* cable and DSL ISPs), or over client-supplied telecommunications connections (*e.g.,* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of $25 million or less. The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers. That category had a small business size standard of $21 million or less in annual receipts, which was revised in late 2005 to $23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year. Of those, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of ISP firms are small entities.

4. Vendors of Internal Connections

331. *Telephone Apparatus Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.'' The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which is: all such firms having 1,000 or fewer employees. According to Census Bureau data for 2002, there were a total of 518 establishments in this category that operated for the entire year. Of this total, 511 had employment of under 1,000, and an additional seven had employment of 1,000 to 2,499. Thus, under this size standard, the majority of firms can be considered small.

332. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for firms in this category, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

333. *Other Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).'' The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year. Of this total, 493 had employment of under 500, and an additional 7 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

334. Several proposals under consideration in the NPRM may, if adopted, result in additional recordkeeping requirements for small entities. It is possible that an increase in purchasing consortia could result in an increase in consortia-imposed additional reporting requirements. Additionally, reducing competitive bidding that results in a single bid would increase the number of price matrices E-rate recipients would be required to prepare.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

335. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

336. In this NPRM, we seek to improve and modernize the program by proposing the goals of (1) ensuring that schools and libraries have affordable access to 21st Century broadband that supports digital learning, (2) maximizing the cost-effectiveness of E-rate funds and (3) streamlining the administration of the E-rate program.

337. We recognize that several of our proposed rules would impact small entities. Most of the rules we propose would lessen reporting burdens on small entities. In those instances in which a proposed rule would increase these burdens on small entities, we have determined that the benefits from these rules outweigh the increased burdens on small entities.

1. Proposed Rules That Lessen Reporting Burdens

338. *Single filing for multi-year contract.* Our proposal to allow E-rate applicants with multi-year contracts that are no more than three years in length (including any voluntary

extensions) to file a single FCC Form 471 application for the funding year in which the contract commences would lessen reporting burdens on E-rate recipients by relieving them of the obligation to file an FCC Form 471 for some funding years.

339. *Internal connections applications by school district.* Requiring all schools and libraries that are part of the same school district to submit applications for priority two internal connections by school district, rather than by individual school, would streamline the process and simplify the discount calculation for the applicant. Rather than making a discount calculation for each school within a district, an applicant would merely be required to make a district-wide discount calculation.

340. *Phasing out support for certain services.* Phasing out support for certain services would lessen reporting burdens on small entities because, under this proposal, E-rate applicants would no longer be required to comply with E-rate rules for phased-out services. There would be no change to reporting burdens for services that are being phased down because E-rate applicants and recipients would still be required to comply with E-rate rules.

341. *Priority two services.* Our proposal to require that any school that is part of an organized school district must apply for priority two internal connections by school district, rather than by school, would lessen reporting burdens by simplifying the discount calculation for schools.

342. *Regulatory classification.* Likewise, our proposal to adopt a rule that allows funding for eligible services regardless of regulatory classification would simplify reporting requirements because E-rate applicants would no longer be required to designate regulatory classifications to seek eligible services from any entity.

343. *Invoicing and disbursement process.* We propose to permit applicants who submit a Billed Entity Application for Reimbursement (BEAR) Form to receive reimbursement directly from USAC, rather than receiving reimbursement from the service provider after USAC reimburses it. This proposal would lessen reporting burdens because the service provider would no longer serve as the pass-through for the reimbursement of funds.

2. Proposed Rules That Increase Reporting Burdens

344. *Compliance burdens.* Implementing any of our proposed rules would impose some burden on small entities by requiring them to become familiar with the new rule to comply with it. For many proposed rules, such as those to refresh funding priorities, streamline the Eligible Services List, increase matching funds, redefine ''rural,'' institute per-student or per-building caps, provide priority one support for the modulating electronics necessary to light dark fiber and amend the formula for determining what discounts some schools and libraries receive, this is the sole additional burden on small entities. The importance of accomplishing our goals of (1) ensuring that schools and libraries have affordable access to 21st Century broadband that supports digital learning, (2) maximizing the cost-effectiveness of E-rate funds and (3) streamlining the administration of the E-rate program outweighs the minimal burden requiring small entities to comply with new rules would impose.

345. *Increasing transparency of prices.* Our proposal to increase transparency of prices by either publicly disclosing all bids for E-rate supported services or disclosing all purchase prices would increase reporting burdens on entities required to provide this information to the Administrator, the Universal Service Administrative Company (USAC). Because E-rate applicants would already have this information, the additional burden reporting it to USAC would be minimal. The benefit other E-rate applicants would enjoy from being able to compare bids and purchases would far outweigh this minimal burden.

346. *Electronic filing.* Requiring all users to file all E-rate-related forms electronically should benefit E-rate applicants because it would provide a streamlined process and make forms easily accessible. We recognize that requiring electronic filing may burden users who do not have Internet access due to unreliable Internet access or emergency situations. Because of this, we seek comment on alternative filing requirements for these users. Ultimately, the cost savings for USAC and added efficiency of requiring electronic filing outweigh but burden of electronic filing on E-rate applicants and recipients.

347. *Separate filing windows.* Separating filing windows for priority one and priority two services would increase reporting requirements for the limited number of E-rate recipients who receive priority two services but would decrease reporting burdens for those E-rate recipients whose discount percentage prevents them from receiving priority two services. The benefit of simplifying the application process for those who will not receive priority one services justifies the added burden of filing separate applications for those who will receive priority two services.

348. *Document retention period.* Extending the E-rate document retention requirement from five years after the last day of the delivery of services to ten years after the last day of the delivery of services would increase administrative burdens on E-rate recipients by requiring them to retain documents for a longer period of time. The Commission's interest in combating waste, fraud and abuse by litigating matters under the False Claims Act, which can involve conduct that relates back substantially more than five years, justifies this additional burden.

349. *Competitive bidding documentation.* We propose to require applicants to submit to USAC competitive bidding documents, including a copy of each bid received, the bid evaluation criteria, bid sheets, a list of people who evaluated bids, memos, board minutes, or similar documents, and any correspondence with vendors during the bidding, evaluation, and award phase of the process. Providing such documents would impose additional burdens on E-rate applicants and could increase application review time and administrative costs. The benefit of allowing USAC to evaluate more fully the competitive bidding process conducted by E-rate applicants and ensure that documentation of the competitive bidding process was retained in the event of an audit outweighs this burden.

350. *FCC Form Signatories.* Our proposal to require that an officer of the service provider make the required certifications on the FCC Form 472 (BEAR Form), FCC Form 473 (Service Provider Annual Certification Form) and the FCC Form 474 (SPI Form) as well as certify compliance with the lowest corresponding price rule and state and local procurement laws would impose minimal additional burdens on small entities because these entities are already required to ensure compliance with E-rate rules. The only new requirement under this proposal is for officers to certify that they have complied with E-rate rules. The benefit of ensuring that the certification reflects the service provider's commitment to understand and comply with the E-rate program rules and requirements outweighs this burden. Additionally, we propose to require all E-rate forms submitted by E-rate applicants be signed by someone with authority equivalent to that of a corporate officer. This proposal would impose the additional burden of requiring corporate officers of small

entities to become familiar enough with E-rate applications that they can make the certifications. The Commission's interest in combating waste, fraud and abuse outweighs this burden. Because of the burden this proposal may impose on small entities, we seek comment on alternatives to it.

351. *National emergencies.* The proposed procedures for national emergencies would require the Commission to waive document retention requirements for E-rate recipients whose records are destroyed in an Emergency or Major Disaster if the recipients document the loss of their records. Other proposals would require applicants affected by an Emergency or Major Disaster to make certifications regarding the extent of the damage they incurred, the extent of planned repairs, funding for repairs, population changes and funding demand changes to receive additional assistance after an Emergency or Major Disaster. E-rate recipients affected by an Emergency or Major Disaster would not incur additional requirements if they do not seek additional assistance. The Commission's strong interest in preventing waste, fraud and abuse justifies the minimal burdens that documenting the loss of records and making these certifications would impose.

352. As noted, we believe the proposals and options being introduced for comment will not have a significant economic impact on small entities under the E-rate program. Indeed, the proposals and options will benefit small entities by simplifying processes, ensuring access to broadband, maximizing cost-effectiveness and maximizing efficiency. We nonetheless invite commenters, in responding to the questions posed and tentative conclusions in the NPRM, to discuss any economic impact that such changes may have on small entities, and possible alternatives.

G. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

353. *It is ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

H. Paperwork Reduction Act Analysis

354. This NPRM seeks comment on a potential new or revised information collection requirement. If the Commission adopts any new or revised information collection requirement, the Commission will publish a separate notice in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

I. Ex Parte Presentations

355. *Permit-But-Disclose.* The proceeding this Public Notice initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

VIII. Ordering Clauses

356. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1 through 4, 201–205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151 through 154, 201 through 205, 254, 303(r), and 403, this Notice of Proposed Rulemaking *is adopted.*

357. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Communications common carriers, Reporting and record keeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54, subpart F, as follows:

PART 54—UNIVERSAL SERVICE

Subpart F—Universal Service Support for Schools and Libraries

■ 1. The authority citation for part 54 continues to read as follows:

Authority: Sections 1, 4(i), 5, 201, 205, 214, 219, 220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and section 706 of the Communications Act of 1996, as amended; 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

■ 2. Amend § 54.503 by revising paragraphs (b) and (c)(2) introductory text to read as follows:

§ 54.503 Competitive bidding requirements.

* * * * *

(b) *Competitive bid requirements.* (1) Except as provided in § 54.511(c), an eligible school, school districts, library, or consortium that includes an eligible school or library shall seek competitive bids, pursuant to the requirements established in this subpart, for all services eligible for support under § 54.502. These competitive bid

requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements.

(2) Service providers must certify that they are in compliance with state and local procurement laws.

(c) * * *

(2) The FCC Form 470 shall be signed by the person authorized to order eligible services for the eligible school, library, or consortium including such entities, and with authority equivalent to that of a corporate officer, and shall include that person's certification under oath that:

* * * * *

■ 3. Amend § 54.504 by:

■ a. Revising paragraph (a)(1) introductory text;

■ b. Redesignating paragraph (f) as paragraph (g);

■ c. Adding new paragraph (f);

■ d. Revising newly redesignated paragraph (g) introductory text; and

■ e. Adding paragraph (h).

The revisions and additions read as follows:

§ 54.504 Requests for services.

(a) * * *

(1) The FCC Form 471 shall be signed by the person authorized to order eligible services for the eligible school, library, or consortium, and with authority equivalent to that of a corporate officer, and shall include that person's certifications under oath that:

* * * * *

(f) *Filing of FCC Form 472.* All service providers must submit a Service Provider Acknowledgement as part of the Applicant's FCC Form 472 seeking reimbursement from the Administrator for eligible services. The FCC Form 472 shall be signed by an officer of the service provider and shall include the officer's certifications under oath that:

(1) This service provider will remit the discount amount authorized by the fund administrator to the Billed Entity Applicant who prepared and submitted the Billed Entity Applicant Reimbursement Form as soon as possible after the fund administrator's notification to the service provider of the amount of the approved discounts on this Billed Entity Applicant Reimbursement Form, but in no event later than 20 business days after receipt of the reimbursement payment from the fund administrator, subject to the restriction set forth in paragraph (f)(2) of this section.

(2) This service provide will remit payment of the approved discount amount to the Billed Entity Applicant prior to tendering or making use of the payment issued by the Universal Service Administrative Company to the service provider of the approved discounts for the Billed Entity Applicant Reimbursement Form.

(3) This service provider is in compliance with the rules and orders governing the schools and libraries universal service support program and that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of discount funding and/or cancellation of funding commitment.

(4) Failure to comply with the rules and orders governing the schools and libraries universal service support program could result in civil or criminal prosecution by law enforcement authorities.

(g) *Filing of Form 473.* All service providers eligible to provide telecommunications services and other supported services under this subpart shall submit annually a completed FCC Form 473 to the Administrator. The FCC Form 473 shall be signed by an officer of the service provider and shall include that officer's certification under oath that:

* * * * *

(h) *Filing of FCC Form 474.* All service providers seeking reimbursement from the Administrator for eligible services shall submit a completed FCC Form 474 to the Administrator. The FCC Form 474 shall be signed by an officer of the service provider and shall include the officer's certifications under oath that:

(1) This service provider is in compliance with the rules and orders governing the schools and libraries universal service support program and that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of discount funding and/or cancellation of funding commitment.

(2) Failure to comply with the rules and orders governing the schools and libraries universal service support program could result in civil or criminal prosecution by law enforcement authorities.

(3) The service provider is in compliance with state and local procurement laws.

■ 4. Amend § 54.505 by revising paragraphs (b)(1) and (b)(3)(i) and (ii) to read as follows:

§ 54.505 Discounts.

* * * * *

(b) * * *

(1) School districts shall calculate discounts on supported services described in § 54.502(b) by calculating a single discount percentage rate for the entire school district by dividing the total number of students eligible for the National School Lunch Program within the school district by the total number of students within the school district. This single discount percentage rate shall then be applied to the discount matrix to set a discount rate for the supported services purchased by all schools within the school district.

* * * * *

(3) * * *

(i) Schools and libraries whose local code is city, suburb, town-fringe, or rural-fringe, as measured by the U.S. Department of Education's National Center for Education Statistics, shall be designated as urban.

(ii) Schools and libraries whose local code is town-distant, town-remote, rural-distant, or rural-remote, as measured by the U.S. Department of Education's National Center for Education Statistics, shall be designated as rural.

* * * * *

■ 5. Amend § 54.507 by redesignating paragraphs (e) and (f) as paragraphs (f) and (g) and adding new paragraph (e) to read as follows:

§ 54.507 Cap.

* * * * *

(e) *Multi-year contracts.* An eligible school, library or consortium that includes an eligible school or library seeking to receive discounts under this subpart may submit to USAC a single FCC Form 471 covering all the years of a multi-year contract, provided that the term of the contract including extensions, does not exceed three years. An FCC Form 471 covering a multi-year contract must be submitted to USAC before the start of the first funding year covered by the multi-year contract.

* * * * *

■ 6. Amend § 54.511 by redesignating paragraphs (c) and (d) as paragraphs (d) and (e) and adding new paragraph (c) and to read as follows:

§ 54.511 Ordering services.

* * * * *

(c) The service provider must certify on FCC Form 473 and FCC Form 474 that it is charging schools, school districts, libraries, library consortia or consortia including any of these entities, the lowest corresponding price for supported services, unless the Commission, with respect to intrastate prices, had found that the lowest corresponding price is not compensatory.

* * * * *

■ 7. Amend § 54.516 by revising paragraph (a) to read as follows:

§ 54.516 Auditing.

(a) *Record keeping requirements—(1) Schools, libraries and consortia.* Schools, libraries, and any consortium that includes schools and libraries shall retain all documents related to the application for, receipt, and delivery of discounted telecommunications and other supported services for at least 10 years after the last day of the delivery of services or from the end of the applicable funding year, whichever is later. Schools, libraries, and any consortium that include schools or libraries shall also retain any other document necessary to demonstrate compliance with the statutory or regulatory requirements for the schools and libraries mechanism. Schools and libraries shall maintain asset and inventory records of equipment purchased as components of supported internal connections services sufficient to verify the actual location of such equipment for a period of five years after purchase.

(2) *Service providers.* Service providers shall retain documents related to the delivery of discounted telecommunications and other supported services for at least 10 years after the last day of the delivery of services or from the end of the applicable funding year, whichever is later. Service providers shall also retain any other document that demonstrates compliance with the statutory or regulatory requirements for the schools and libraries universal service support mechanism.

* * * * *

[FR Doc. 2013–19491 Filed 8–19–13; 8:45 am]

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FEDERAL REGISTER

Vol. 78 Tuesday,
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Part VIII

The President

Presidential Determination No. 2013–12 of August 9, 2013—Continuation of United States Drug Interdiction Assistance to the Government of Columbia

Federal Register
Vol. 78, No. 161
Tuesday, August 20, 2013

Presidential Documents

Title 3—

The President

Presidential Determination No. 2013–12 of August 9, 2013

Memorandum for the Secretary of State [and] the Secretary of Defense

By the authority vested in me as President by section 1012 of the National Defense Authorization Act for Fiscal Year 1995, as amended (22 U.S.C. 2291–4), I hereby certify, with respect to Colombia, that: (1) interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary, because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (2) Colombia has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with such interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force is directed against the aircraft.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register** and to notify the Congress of this determination.



THE WHITE HOUSE,
Washington, August 9, 2013.

[FR Doc. 2013–20465
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