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DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 1003

[Docket No. EOIR 183; A.G. Order No. 3534–2015]

RIN 1125–AA79

Expanding the Size of the Board of Immigration Appeals

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Department of Justice regulations relating to the organization of the Board of Immigration Appeals (Board) by adding two Board member positions, thereby expanding the Board to 17 members.

DATES: *Effective date:* This rule is effective June 3, 2015. *Comment date:* Written comments must be submitted on or before August 3, 2015. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until midnight eastern time at the end of that day.

ADDRESSES: Please submit written comments to Jean King, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 20530. To ensure proper handling, please reference RIN No. 1125–AA79 or EOIR docket No. 183 on your correspondence. You may submit comments electronically or view an electronic version of this interim rule at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jean King, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 20530, telephone (703) 305–0470 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *www.regulations.gov.* Such information includes personally identifiable information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personally identifiable information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONALLY IDENTIFIABLE INFORMATION'' in the first paragraph of your comment. You must also locate all the personally identifiable information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

Personally identifiable information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

II. Background

The Executive Office for Immigration Review (EOIR) administers the Nation's immigration court system. Generally, cases commence before an immigration judge when the Department of Homeland Security (DHS) files a charging document against an alien with the immigration court. *See* 8 CFR 1003.14(a). EOIR primarily decides whether foreign-born individuals who are charged by DHS with violating immigration law pursuant to the Immigration and Nationality Act (INA) should be ordered removed from the United States, or should be granted relief or protection from removal and be permitted to remain in the United States. EOIR's Office of the Chief Immigration Judge administers these adjudications in immigration courts nationwide.

Decisions of the immigration judges are subject to review by EOIR's appellate body, the Board of Immigration Appeals (Board), which currently comprises 15 permanent Board members. The Board is the highest administrative tribunal for interpreting and applying U.S. immigration law. The Board's decisions can be reviewed by the Attorney General, as provided in 8 CFR 1003.1(g) and (h). Decisions of the Board and the Attorney General are subject to judicial review.

III. Expansion of Number of Board Members

EOIR's mission is to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws. This includes the initial adjudication of aliens' cases in immigration courts nationwide, as well as appellate review by the Board when appeals are timely filed. In order to more efficiently accomplish EOIR's commitment to promptly decide a large volume of cases, as well as review a large quantity of appeals of those cases, this rule amends the Department's regulations relating to the organization of the Board by adding two Board member positions, thereby expanding the Board from 15 to 17 members.[1] This rule revises the third sentence of 8 CFR 1003.1(a)(1), leaving

[1] The Department last expanded the number of Board members—from 11 to 15 members—on December 7, 2006, when it published in the **Federal Register** an interim rule amending 8 CFR 1003.1. *See* 71 FR 70855 (Dec. 7, 2006). On June 16, 2008, the Department published a final rule adopting, without change, the interim rule. *See* 73 FR 33875 (Jun. 16, 2008).

the remainder of paragraph (a)(1) unchanged.

Expanding the number of Board members is necessary at this time for two primary reasons. First, EOIR is currently managing the largest caseload the immigration court system has ever seen. At the end of FY 2014, there were 418,861 total cases pending at the immigration courts, marking an increase of 62,831 cases pending above those at the end of FY 2013. *See* 2014 EOIR Stat. Y.B. W1.[2] This total increase included an increase in the number of pending cases involving detained aliens. The efficient and timely adjudication of cases of detained aliens is the highest priority for EOIR and requires additional resources to handle the increased caseload. As the caseload in the immigration courts increases, the Department anticipates that the corresponding caseload at the Board will also expand.

Second, after the hiring freeze was lifted in fiscal year (FY) 2014, the Department processed and identified for hire 25 immigration judge candidates. Also in FY 2014, the Department advertised for and is now in the process of selecting a substantial number of additional immigration judges. The Department expects that, as these new immigration judges enter on duty, the number of decisions rendered nationwide by immigration judges will increase and, in turn, the number of appeals filed with the Board will also increase.

The current caseload at the Board is burdensome and may become overwhelming in the future for a Board of 15 members. At the same time, if the Board becomes too large, it may have difficulty fulfilling its responsibility of providing coherent direction with respect to the immigration laws. In particular, because the Board currently issues precedent decisions only with the approval of a majority of permanent Board members, a substantial increase in Board members may make the process of issuing such decisions more difficult.

Keeping in mind the goal of maintaining cohesion and the ability to reach consensus, but recognizing the challenges the Board faces in light of its current and anticipated increased caseload, the Department has determined that two members should be added to the Board at this time. These changes are necessary to maintain an efficient system of appellate adjudication in light of the increasing caseload.

[2] EOIR's FY2014 Statistical Year Book, prepared by EOIR's Office of Planning, Analysis, and Technology, is available at *http://www.justice.gov/eoir/statspub/fy14syb.pdf.*

IV. Public Comments

This rule is exempt from the usual requirements of prior notice and comment and a 30-day delay in effective date because, as an internal delegation of authority, it relates to a matter of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b). The Department is nonetheless promulgating this rule as an interim rule, providing the public with opportunity for post-promulgation comment before the Department issues a final rule on these matters.

V. Regulatory Requirements

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), ''[w]henever an agency is required by section 553 of [the RFA], or any other law, to publish general notice of proposed rulemaking for any proposed rule . . . the agency shall prepare and make available for public comment an initial regulatory flexibility analysis.'' 5 U.S.C. 603(a). Such analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). Because this is a rule of internal agency organization and therefore is exempt from notice and comment rulemaking, no RFA analysis under 5 U.S.C. 603 is required for this rule.

B. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

D. Executive Orders 12866 and 13563—Regulatory Planning and Review

The Department has determined that this rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' and the Office of Management and Budget has concurred in this determination. Nevertheless, the Department certifies that this regulation has been drafted in accordance with the principles of Executive Order 12866, section 1(b), and Executive Order 13563, ''Improving Regulation and Regulatory Review.'' Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits, including consideration of potential economic, environmental, public health, and safety effects, distributive impacts, and equity. The benefits of this interim rule include providing the Department with an appropriate means of responding to the increased number of appeals to the Board. The public will benefit from the expansion of the number of Board members because such expansion will help EOIR better accomplish its mission of adjudicating cases in a timely manner. The Department does not foresee any burdens to the public or the Department.

E. Executive Order 13132—Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988—Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this interim rule because there are no new or revised recordkeeping or reporting requirements.

H. Congressional Review Act

This action pertains to agency management and personnel and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (CRA) (Subtitle E of the Small Business Regulatory Enforcement Fairness Act (SBREFA)), 5 U.S.C. 804(3). Therefore, the reports to Congress and the Government Accountability Office specified by 5 U.S.C. 801 are not required.

List of Subjects in 8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal services, Organization and functions (Government agencies).

Accordingly, for the reasons stated in the preamble, the Attorney General is amending part 1003 of chapter V of title 8 of the Code of Federal Regulations as follows:

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

■ 1. The authority citation for Part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub.L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub.L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub.L. 106–554, 114 Stat. 2763A–326 to –328.

■ 2. Amend § 1003.1 by revising the third sentence of paragraph (a)(1) to read as follows:

§ 1003.1 Organization, jurisdiction, and powers of the Board of Immigration Appeals.

(a)(1) * * * The Board shall consist of 17 members.* * *

* * * * *

Dated: May 28, 2015.

Loretta E. Lynch,

Attorney General.

[FR Doc. 2015–13459 Filed 6–2–15; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 4, 5, 7, 14, 24, 32, 34, 100, 116, 143, 144, 145, 146, 150, 152, 159, 160, 161, 162, 163, 174, 192, 193

[Docket ID OCC–2014–0007]

RIN 1557–AD80

Integration of National Bank and Federal Savings Association Regulations: Licensing Rules

Correction

In rule document 2015–11229 beginning on page 28346 in the issue of Monday, May 18, 2015, make the following correction:

Appendix 1 to Part 24 [Corrected]

On pages 28475 through 28477, in Appendix 1 to Part 24, the form should appear as follows:

BILLING CODE 1505–01–D

Section 2 — All Requests

1. **Please indicate how the bank's investment is consistent with Part 24 requirements for public welfare investments, under 12 CFR 24.3.**

   a. Check at least one of the following that applies to the bank's investment:

   The investment primarily benefits low- and moderate-income individuals. ☐

   The investment primarily benefits low- and moderate-income areas. ☐

   The investment primarily benefits other areas targeted by a governmental entity for redevelopment. ☐

   The investment would receive consideration under 12 CFR 25.23 as a "qualified investment" for purposes of the Community Reinvestment Act. ☐

2. **Please indicate how the bank's investment is consistent with Part 24 requirements for investment limits under 12 CFR 24.4 by responding to the following questions.**

   a. Dollar amount of the bank's investment that is the subject of this submission: _____

   b. Percentage of the bank's capital and surplus represented by the bank's investment that is the subject of this submission: _____%.

   c. Percentage of the bank's capital and surplus represented by the aggregate outstanding Part 24 investments and commitments, including this investment: _____%.

   d. Does this investment expose the bank to unlimited liability?

   Yes ☐ (This investment cannot be made under Part 24.)

   No ☐

3. **Please attach a brief description of the bank's investment. (*See* 12 CFR 24.5(a)(3)(i) and (b)(2)(i)). Include the following information in the description.**

   a. The name of the community and economic development entity (CEDE) into which the bank's investment has been (or will be) made.

   b. The type of bank investment (equity, debt, or other).

   c. The activity or activities of the CEDE in which the bank has invested (or will invest). (*See* examples of qualifying investment activities described in 12 CFR 24.6 (a), (b), (c), and (d).)

   d. How the investment is structured so that it does not expose the bank to unlimited liability, such as by describing the structure of the CEDE (*e.g.*, CDC subsidiary, multi-bank CDC, multi-investor CDC, limited partnership, limited liability company, community development bank, community development financial institution, community development entity, community development venture capital fund, community development lending consortia, community development closed-end mutual funds, non-diversified closed-end investment companies, or any other CEDE) and by providing any other relevant information.

   e. The geographic area served by the CEDE.

f. The total funding or other support by community development partners involved in the project (*e.g.*, government or public agencies, nonprofits, other investors), if known.

g. Supplemental information (*e.g.*, prospectus, annual report, Web address that contains information about the CEDE in which the investment is or will be made), if available.

4. Evidence of qualification is readily available for examination purposes.

The bank maintains information concerning this investment in a form readily accessible and available for examination that supports the certifications contained in this form and demonstrates that the investment meets the standards set out in 12 CFR 24.3, including, where applicable, the criteria of 12 CFR 25.23.

Yes ☐ No ☐

5. Certification

The undersigned hereby certifies that the foregoing information in this form is accurate and complete. It is further certified that the undersigned is authorized to file this form on Part 24 investments for the bank.

Name: _____

Title: _____

Signature: _____

Date: _____

[FR Doc. C1–2015–11229 Filed 6–2–15; 8:45 am]
BILLING CODE 1505–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA–2013–C–1008]

Listing of Color Additives Exempt From Certification; Synthetic Iron Oxide; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA or we) is confirming the effective date of April 21, 2015, for the final rule that appeared in the **Federal Register** of March 20, 2015, and that amended the color additive regulations to expand the permitted uses of synthetic iron oxide as a color additive to include use in soft and hard candy, mints, and chewing gum.

DATES: Effective date of final rule published in the **Federal Register** of March 20, 2015 (80 FR 14839) confirmed: April 21, 2015.

FOR FURTHER INFORMATION CONTACT: Laura A. Dye, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1275.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 20, 2015 (80 FR 14839), we amended the color additive regulations in § 73.200 *Synthetic iron oxide* (21 CFR 73.200) to expand the permitted uses of synthetic iron oxide as a color additive to include use in soft and hard candy, mints, and chewing gum.

We gave interested persons until April 20, 2015, to file objections or requests for a hearing. We received no objections or requests for a hearing on the final rule. Therefore, we find that the effective date of the final rule that published in the **Federal Register** of March 20, 2015, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Foods, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e) and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Office of Food Additive Safety, we are giving notice that no objections or requests for a hearing were filed in response to the March 20, 2015, final rule. Accordingly, the amendments issued thereby became effective April 21, 2015.

Dated: May 28, 2015.

Susan Bernard,

Director, Office of Regulations, Policy and Social Sciences, Center for Food Safety and Applied Nutrition.

[FR Doc. 2015–13457 Filed 6–2–15; 8:45 am]
BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0460]

Drawbridge Operation Regulation; Columbia River, Vancouver, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Interstate 5 (I–5) Bridges across the Columbia River, mile 106.5, between Portland, Oregon, and Vancouver, Washington. The deviation is necessary to facilitate the movement of heavier than normal roadway traffic associated with the Independence Day fireworks show near the I–5 Bridges. This deviation allows the bridges to remain in the closed-to-navigation position during the event.

DATES: This deviation is effective from 9 p.m. to 11:59 p.m. on July 4, 2015.

ADDRESSES: The docket for this deviation, [USCG–2015–0460] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Oregon Department of Transportation has requested that the I–5 Bridges across the Columbia River remain closed to vessel traffic to facilitate heavier than normal roadway traffic volume associated with a fireworks show on July 4, 2015 near the bridges. The I–5 Bridges cross the Columbia River at mile 106.5, and provide three designated navigation channels with vertical clearances ranging from 39 to 72 feet above Columbia River Datum 0.0 while the lift spans are in the closed-to-navigation position.

The normal operating schedule for the I–5 Bridges are in accordance with 33 CFR 117.869, which states that the draws shall open on signal except that the draws need not open 6:30 a.m. to 9 a.m. and from 2:30 p.m. to 6 p.m. Monday through Friday, excluding federal holidays.

This deviation period is from 9 p.m. to 11:59 p.m. on July 4, 2015. The deviation allows the lift spans of the I–5 Bridges across the Columbia River, mile 106.5, to remain in the closed-to-navigation position and need not open for maritime traffic from 9 p.m. to 11:59 p.m. on July 4, 2015.

The bridge shall operate in accordance with 33 CFR 117.869 at all other times. Waterway usage on this part of the Columbia River includes vessels ranging from commercial tug and tow vessels to recreational pleasure craft.

Vessels able to pass through the bridge in the closed positions may do so at anytime. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: May 28, 2015.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2015–13411 Filed 6–2–15; 8:45 am]
BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0459]

Drawbridge Operation Regulation; Lake Washington Ship Canal, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs three Seattle Department of Transportation bridges: The Ballard Bridge, mile 1.1, the Fremont Bridge, mile 2.6, and the University Bridge, mile 4.3, all crossing the Lake Washington Ship Canal at Seattle, WA. The deviation is necessary to accommodate heavier than normal roadway traffic associated with a fireworks display over Lake Union. This deviation allows the bridges to remain in the closed-to-navigation position prior to and immediately after the fireworks display.

DATES: This deviation is effective from 9 p.m. on July 4, 2015 to 1 a.m. on July 05, 2015.

ADDRESSES: The docket for this deviation, [USCG–2015–0459] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Seattle Department of Transportation (SDOT) has requested a temporary deviation from the operating schedule for the Ballard Bridge, mile 1.1, the Fremont Bridge, mile 2.6, and the University Bridge, mile 4.3, all crossing the Lake Washington Ship Canal at Seattle, WA. The requested deviation is to accommodate heavier than normal roadway traffic associated with the 4th of July fireworks display over Lake Union, Seattle, WA. The deviation period is from 9 p.m. on July 4, 2015 to 1 a.m. on July 05, 2015. To facilitate this event, the draws of the bridges will be maintained in the closed-to-navigation positions as follows: the Fremont Bridge, mile 2.6, need not open for vessel traffic from 9 p.m. on July 4, 2015 to 12:30 a.m. on July 5, 2015; the Ballard Bridge, mile 1.1, and the University Bridge, mile 4.3, need not open for vessel traffic from 10 p.m. on July 4, 2015 to 1 a.m. July 5, 2015.

The Ballard Bridge, mile 1.1, provides a vertical clearance of 29 feet in the closed position, the Fremont Bridge, mile 2.6, provides a vertical clearance of 14 feet in the closed position, and the University Bridge, mile 4.3, provides a vertical clearance of 30 feet in the closed position; all clearances are referenced to the mean water elevation of Lake Washington. The normal operating schedule for all three bridges is in accordance with 33 CFR 117.1051 stating; all three bridges need not open from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday for vessels less than 1000 tons. The normal operating schedule for these bridges also requires one hour advance notification for bridge openings between 11 p.m. and 7 a.m. daily. Waterway usage on the Lake Washington Ship Canal ranges from commercial tug and barge to small pleasure craft.

Vessels able to pass through the bridge in the closed positions may do so at anytime. The bridge will be able to open for emergency vessel responding to emergencies, and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: May 28, 2015

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2015–13417 Filed 6–2–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0484]

RIN 1625–AA87

Security Zone; Portland Rose Festival on Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Interim final rule.

SUMMARY: The Coast Guard is permanently amending the Portland Rose Festival on Willamette River security zone. This regulation is enforced annually during the Portland, Oregon Rose Festival on the waters of the Willamette River between the Hawthorne and Steel Bridges. This final rule will eliminate inconsistencies between the actual event dates and the enforcement period published in the Code of Federal Regulations. This will serve to better inform the public of the security zone.

DATES: This rule is effective on June 3, 2015. This rule will be enforced on JUNE 3, 2015 through JUNE 8, 2015.

Comments and related material must be received by the Coast Guard on or before July 6, 2015.

Requests for public meetings must be received by the Coast Guard June 10, 2015.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG–2015–0484. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Open Docket Folder'' on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

(2) *Fax:* (202) 493–2251

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m.,

Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ken Lawrenson, Waterways Management Division, MSU Portland, Oregon, Coast Guard; telephone 503–240–9319, email *msupdxwwm@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Public Participation and Request for Comments

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

1. Submitting Comments

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

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

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

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

3. Privacy Act

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

4. Public Meeting

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

B. Regulatory History and Information

The security zone that is the subject of this rulemaking was first established as of June 4, 2003 following the Coast Guard's publication of a final rule in the **Federal Register** on May 29, 2003 (68 FR 31978). On June 8, 2005, the Coast Guard published a final rule in the **Federal Register** revising the enforcement period of the security zone (70 FR 33352). In this action, the Coast Guard is revising the enforcement section of the security zone to eliminate inconsistencies between the actual event dates and the published enforcement period that currently appears in 33 CFR 165.1312. This will serve to better inform the public of the security zone.

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a Notice of Proposed Rulemaking (NPRM) with respect to this rule. Waiting for a 30-day notice period to run would be impracticable because the Coast Guard did not receive the necessary information in time for this regulation to undertake both an NPRM and a 30-day delayed effective date. Additionally, waiting for a 30-day notice period to run would be impracticable, as delayed promulgation may result in injury or damage to persons and vessels from the hazards associated with the Festival. Furthermore, the changes made by this final rule address the enforcement period. As no changes will be made to the regulation in any other aspect, it is unnecessary for the Coast Guard to publish an NPRM with a notice and comment period. As currently published, the security zone enforcement period is not inclusive of the dates for the 2015 event and possible future event dates.

C. Basis and Purpose

The basis for this rule is 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish security zones.

This final rule will eliminate inconsistencies with the actual event dates and the enforcement period that currently appears in 33 CFR 165.1312. This will serve to better inform the public of the security zone.

D. Discussion of the Interim Rule

This rule will revise 33 CFR 165.1312 paragraph (d) to indicate that the regulation will be enforced annually in June for a period of 6 days. Additionally, we note that the specific dates of enforcement will be published

each year in the **Federal Register**. In 2015, the zone will be enforced on Wednesday, June 3, through Monday, June 8.

This change will allow the Coast Guard to more accurately notify the public of the security zone by eliminating the scenarios in which the actual event dates would fall outside the published enforcement period.

E. 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. The Coast Guard bases this finding on the fact that the no changes to the security zone were made beyond clarifying the enforcement period.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities some of which may be small entities: The owners and operators of vessels intending to transit or anchor in the security zone during the times this zone is enforced. This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessels desiring to transit this area of the Willamette River may do so by scheduling their trips in the early morning or evening when the restrictions on general navigation imposed by this section will not be in effect.

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 From Environmental Health Risks

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

revision of the enforcement period in 33 CFR 165.1312(d). This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. 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 AREA.

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

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

■ 2. In § 165.1312 revise paragraph (d) to read as follows:

§ 165.1312 Security Zone; Portland Rose Festival on Willamette River.

* * * * *

(d) *Enforcement period.* This section is enforced annually in June. The event will be 6 days in length and the specific dates of enforcement will be published each year in the **Federal Register**. In 2015, the zone will be enforced on Wednesday, June 3, through Monday, June 8.

Dated: May 11, 2015.

D.J. Travers,

Captain, U.S. Coast Guard, Captain of the Port, Sector Columbia River.

[FR Doc. 2015–13397 Filed 6–2–15; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2004–0505; FRL–9928–25–OAR]

RIN 2060–AS42

Completion of Requirement To Promulgate Emissions Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action the Environmental Protection Agency (EPA) finalizes its proposed determination that the EPA completed its statutory obligation under the Clean Air Act (CAA) to promulgate emissions standards for source categories accounting for not less than 90 percent of the aggregated emissions of each of seven specific hazardous air pollutants (HAP) enumerated in the CAA. On December 16, 2014, the EPA published the proposed determination that stated the basis for the agency's conclusion that it completed this obligation in February of 2011 by identifying the promulgated standards that collectively satisfy this obligation and provided the public an opportunity to comment on the EPA's determination. This action finalizes the EPA's determination.

DATES: This action is effective on June 3, 2015.

ADDRESSES: The EPA has established a docket for this rulemaking under Docket ID Number EPA–HQ–OAR–2004–0505. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this action, contact Mr. Nathan Topham, Office of Air Quality Planning and Standards; Sector Policies and Programs Division, Metals and Inorganic Chemicals Group (D243–02); Environmental Protection Agency; Research Triangle Park, NC 27111; telephone number: (919) 541–0483; fax number: (919) 541–3207; email address: *topham.nathan@epa.gov.*

SUPPLEMENTARY INFORMATION:

Organization of this document. The information presented in this preamble is organized as follows:

I. General Information

A. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action will also be available on the Internet through the EPA's Technology Transfer Network (TTN) Web site, a forum for information and technology exchange in various areas of air pollution control. Following signature by the EPA Administrator, the EPA will post a copy of this final action at: *http://www.epa.gov/ttn/atw/eparules.html.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the rule at this same Web site.

B. Judicial Review

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by August 3, 2015. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements. Section

307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for us to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, EPA WJC West Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

II. Background Information

CAA section 112(c)(6) requires the EPA to take action with respect to the sources of seven specific persistent, bioaccumulative HAP. The section states, ''With respect to alkylated lead compounds, polycyclic organic matter, hexachlorobenzene, mercury, polychlorinated biphenyls, 2,3,7,8-tetrachlorodibenzofurans and 2,3,7,8-tetrachlorodibenzo-p-dioxin, the Administrator shall, not later than 5 years after November 15, 1990, list categories and subcategories of sources assuring that sources accounting for not less than 90 per centum of the aggregate emissions of each such pollutant are subject to standards under subsection (d)(2) or (d)(4) of this section.''

CAA section 112(c)(6) requires the EPA to ensure that source categories responsible for at least 90 percent of the aggregate emissions of each of the seven specified pollutants are subject to standards under CAA sections 112(d)(2) or 112(d)(4). It requires the EPA to list, by November 15, 1995, source categories assuring that sources responsible for 90 percent of the aggregate emissions are subject to emission standards pursuant to CAA section 112(d)(2) or (d)(4), and to promulgate such standards by November 15, 2000. Under CAA section 112(d)(2), the EPA imposes emission standards that require ''the maximum degree of reduction in emissions of the [HAP]'' that the EPA concludes are achievable based on a consideration of factors identified in the statute. CAA section 112(d)(2). These standards are referred to as ''maximum achievable control technology'' or ''MACT'' standards. CAA section 112(d)(4) authorizes the EPA to set a health-based standard for a limited set of HAP for which a health threshold has been established, and that standard must provide for ''an ample margin of safety.'' CAA section 112(d)(4).

On December 16, 2014, the EPA published in the **Federal Register** the proposed determination concluding that the requirements of CAA section 112(c)(6) were fulfilled in February of 2011. 79 FR 74656 (December 16, 2014).[1] The proposed determination provided a detailed summary of the litigation history regarding this action and provided an opportunity for comment on the EPA's proposed determination that it has fulfilled the requirements of CAA section 112(c)(6). The proposed rulemaking explained the basis for the agency's proposed determination by identifying the promulgated CAA section 112(d)(2) or 112(d)(4) standards that collectively satisfy the obligation and describing how the EPA determined which regulations would collectively satisfy the 90 percent requirement under CAA section 112(c)(6) using the updated 1990 baseline inventory of source categories that emit CAA section 112(c)(6) HAP, which was presented in Table 1 of the proposed determination. 79 FR at 74661–74671.

III. How has the EPA satisfied its obligation under CAA section 112(c)(6)?

A. What are the emissions standards that the EPA has promulgated to meet the 90 percent requirement under CAA section 112(c)(6)?

This action finalizes the EPA's proposed determination that the Agency has promulgated emissions standards for source categories pursuant to CAA sections 112(d)(2) and (4) sufficient to satisfy the CAA section 112(c)(6) requirement that sources accounting for not less than 90 percent of the aggregate emissions of seven specific HAP are subject to standards under CAA sections 112(d)(2) or 112(d)(4).[2] Table 2 of the December 2014 proposal provided a list of the emissions standards, including the name of each of the source categories, the name of the emissions standards that apply, and the rule citation for each (*i.e.,* CFR part and subpart). 79 FR 74674–74677, December 16, 2014. Table 3 of the 2014 proposal provided a list of the specific regulations (including CFR citations, part and subpart) that address 90 percent or more of each of the CAA section 112(c)(6) HAP. 79 FR at 74677. After considering and evaluating all public comments received in response to the proposed rule, we finalize our determination that the EPA has satisfied the CAA section 112(c)(6) requirement to establish CAA section 112(d)(2) or (4) standards for source categories that account for not less than 90 percent of the seven HAP listed in CAA section 112(c)(6).

B. What are the surrogate pollutants used by the EPA when establishing CAA section 112(d)(2) standards for the source categories identified in the proposed determination?

As noted in the proposed rule, the emissions standards that collectively satisfy the 90 percent requirement under CAA section 112(c)(6) were set by the EPA under two approaches: (1) Through standards that directly regulated CAA section 112(c)(6) HAP; and (2) through standards that set emission limits for another HAP or compound,[3] which serves as a surrogate for the CAA section 112(c)(6) HAP and other non-112(c)(6) HAP emitted from the source category.

The EPA noted in the proposed determination that, with respect to some of the CAA section 112(d)(2) standards that utilized the surrogacy approach, specifically those promulgated prior to the EPA's development of the baseline emissions inventory for CAA section 112(c)(6) and issuance of the 1998 listing notice, the EPA did not specifically indicate in those rulemaking records that the standards would be counted towards satisfying the 90 percent requirement in CAA section 112(c)(6). For these standards, the 2014 proposed determination explained how the surrogate standards control the CAA section 112(c)(6) HAP along with other HAP from the source categories and ensure that the sources of CAA section 112(c)(6) HAP emissions are ''subject to

[1] The EPA's initial determination was signed on February 21, 2011, and published in the **Federal Register** on March 21, 2011.

[2] In addition to standards issued pursuant to section 112(d)(2) or (4), EPA also includes standards issued pursuant to section 129 as satisfying the 112(c)(6) requirement because section 129(a)(2) requires MACT standards that are virtually identical to the those standards required pursuant to section 112(d)(2). In addition, section 129(h)(3)(A) states that ''the performance standards under subsection (a) of this section and section [111] of this title applicable to a category of solid waste incineration units shall be deemed standards under section [112](d)(2)of this title.''

[3] Some standards used non-HAP compounds (or groups of compounds) as surrogates for HAP.

standards'' for the purposes of CAA section 112(c)(6). The information presented in the proposed determination simply described the actions taken in these prior rulemakings and explained how the surrogate standards control the relevant CAA section 112(c)(6) HAP. The proposed determination did not reopen these prior actions. All those standards were subject to their own notice and comment rulemaking processes consistent with CAA sections 112 and 307(d), and, in several cases, to judicial review as provided by the strict statute of limitations imposed by CAA section 307(b)(1).

Table 1 of this preamble provides a list of the source categories listed under CAA section 112(c)(6), the names of the national standards that apply to those source categories, the **Federal Register** citations and CFR part and subparts for the rules, and the CAA section 112(c)(6) HAP regulated by those standards.

TABLE 1—LIST OF SOURCE CATEGORIES, NATIONAL EMISSIONS STANDARDS, AND THE 112(C)(6) HAP SUBJECT TO THESE STANDARDS, TO FULFILL THE CAA SECTION 112(C)(6) OBLIGATIONS

Section 112(c)(6) source category name	National emissions standard name(s)	CFR part and subpart	Final rule **Federal Register** citation	112(c)(6) Pollutant
Aerospace Industry (Surface Coating).	National Emission Standards for Hazardous Air Pollutants for the Aerospace Industries.	40 CFR part 63 subpart GG.	60 FR 45948, September 1, 1995.	Mercury, POM.
Alkylated Lead Production.	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.	40 CFR part 63 subpart F.	59 FR 19402, April 22, 1994.	Alkylated Lead.
	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	40 CFR part 63 subpart G.	59 FR 19402, April 22, 1994.	Alkylated Lead.
	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.	40 CFR part 63 subpart H.	59 FR 19402, April 22, 1994.	Alkylated Lead.
	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	40 CFR part 63 subpart I.	59 FR 19402, April 22, 1994.	Alkylated Lead.
Asphalt Roofing Production.	National Emission Standards for Hazardous Air Pollutants for Asphalt Processing and Asphalt Roofing Manufacturing.	40 CFR part 63 subpart LLLLL.	68 FR 24562, May 7, 2003.	POM.
Blast Furnace and Steel Mills.	National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities.	40 CFR part 63 subpart FFFFF.	68 FR 27645, May 20, 2003.	POM.
Chemical Manufacturing: Cyclic Crude and Intermediate Production.	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.	40 CFR part 63 subpart F.	59 FR 19402, April 22, 1994.	POM.
	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	40 CFR part 63 subpart G.	59 FR 19402, April 22, 1994.	POM.
	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.	40 CFR part 63 subpart H.	59 FR 19402, April 22, 1994.	POM.
	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	40 CFR part 63 subpart I.	59 FR 19402, April 22, 1994.	POM.
Chlorinated Solvents Production.	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.	40 CFR part 63 subpart F.	59 FR 19402, April 22, 1994.	HCB.
	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	40 CFR part 63 subpart G.	59 FR 19402, April 22, 1994.	HCB.
	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.	40 CFR part 63 subpart H.	59 FR 19402, April 22, 1994.	HCB.

TABLE 1—LIST OF SOURCE CATEGORIES, NATIONAL EMISSIONS STANDARDS, AND THE 112(C)(6) HAP SUBJECT TO THESE STANDARDS, TO FULFILL THE CAA SECTION 112(C)(6) OBLIGATIONS—Continued

Section 112(c)(6) source category name	National emissions standard name(s)	CFR part and subpart	Final rule **Federal Register** citation	112(c)(6) Pollutant
	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	40 CFR part 63 subpart I.	59 FR 19402, April 22, 1994.	HCB.
Coke Ovens: By-Product Recovery Plants.	National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants.	40 CFR part 61 subpart L.	54 FR 38073, September 14, 1989.	POM.
Coke Ovens: Charging, Topside & Door Leaks.	National Emission Standards for Hazardous Air Pollutants for Coke Oven Batteries.	40 CFR part 63 subpart L.	58 FR 57898, October 27, 1993.	POM.
	National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.	40 CFR part 63 subpart CCCCC.	68 FR 18007, April 14, 2003.	POM.
Coke Ovens: Pushing, Quenching & Battery Stacks.	National Emission Standards for Hazardous Air Pollutants for Coke Oven Batteries.	40 CFR part 63 subpart L.	58 FR 57898, October 27, 1993.	POM.
	National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.	40 CFR part 63 subpart CCCCC.	68 FR 18007, April 14, 2003.	POM.
Commercial Printing: Gravure.	National Emission Standards for Hazardous Air Pollutants: Printing and Publishing Industry.	40 CFR part 63 subpart KK.	61 FR 27132, May 30, 1996.	POM.
Electric Arc Furnaces (EAF)—Secondary Steel.	National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities.	40 CFR part 63 subpart YYYYY.	72 FR 74088, December 28, 2007.	Mercury.
Fabricated Metal Products.	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Miscellaneous Metal Parts and Products.	40 CFR part 63 subpart MMMM.	69 FR 129, January 2, 2004.	POM.
Gasoline Distribution (Stage 1).	National Emission Standards for Hazardous Air Pollutants for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).	40 CFR part 63 subpart R.	59 FR 64303, December 14, 1994.	POM.
Gold Mines	National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category.	40 CFR part 63 subpart EEEEEEE.	76 FR 9450, February 17, 2011.	Mercury.
Hazardous Waste Incineration.	National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors.	40 CFR part 63 subpart EEE.	64 FR 52827, September 30, 1999; 70 FR 59402, October 12, 2005.	POM, Mercury, PCB, Dioxins, Furans.
Industrial Organic Chemicals Manufacturing.	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.	40 CFR part 63 subpart F.	59 FR 19402, April 22, 1994.	POM.
	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	40 CFR part 63 subpart G.	59 FR 19402, April 22, 1994.	POM.
	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.	40 CFR part 63 subpart H.	59 FR 19402, April 22, 1994.	POM.
	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	40 CFR part 63 subpart I.	59 FR 19402, April 22, 1994.	POM.
Industrial Stationary IC Engines—Diesel.	National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.	40 CFR part 63 subpart ZZZZ.	69 FR 33473, June 15, 2004.	POM.
Industrial Stationary IC Engines—Natural Gas.	National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.	40 CFR part 63 subpart ZZZZ.	69 FR 33473, June 15, 2004.	POM.

TABLE 1—LIST OF SOURCE CATEGORIES, NATIONAL EMISSIONS STANDARDS, AND THE 112(C)(6) HAP SUBJECT TO THESE STANDARDS, TO FULFILL THE CAA SECTION 112(C)(6) OBLIGATIONS—Continued

Section 112(c)(6) source category name	National emissions standard name(s)	CFR part and subpart	Final rule **Federal Register** citation	112(c)(6) Pollutant
Industrial/Commercial/Institutional Boilers.	National Emission Standards for Hazardous Air Pollutants for Industrial/Commercial/Institutional Boilers and Process Heaters.	40 CFR part 63 subpart DDDDD.	76 FR 15608, March 21, 2011.	POM, Mercury, Dioxins, Furans.
	National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers.	40 CFR part 63 subpart JJJJJJ.	76 FR 15554, March 21, 2011.	POM, Mercury, Dioxins, Furans.
Lightweight Aggregate Kilns.	National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors.	40 CFR part 63 subpart EEE.	64 FR 52827, September 30, 1999; 70 FR 59402, October 12, 2005.	Mercury, Dioxins, Furans.
Medical Waste Incineration.	Standards of Performance and Emissions Guidelines for Hospitals/Medical/Infectious Waste Incinerators.	40 CFR part 60 subpart Ce, Ec; & 40 CFR part 62 subpart HHH.	74 FR 51367, October 6, 2009.	POM, Mercury, PCB, Dioxins, Furans.
Mercury Cell Chlor Alkali Production.	National Emission Standards for Hazardous Air Pollutants: Mercury Emissions from Mercury Cell Chlor Alkali Plants.	40 CFR part 63 subpart IIIII.	68 FR 70903, December 19, 2003.	Mercury.
Municipal Waste Combustion.	Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Large Municipal Waste Combustion Units.	40 CFR part 60 subpart Cb, Ea, Eb; & 40 CFR part 62 subpart FFF.	71 FR 27324, May 10, 2006.	POM, Mercury, PCB, Dioxins, Furans.
	Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Stationary Sources: Small Municipal Waste Combustion Units.	40 CFR part 60 subpart AAAA, BBBB & 40 CFR part 62 subpart JJJ.	65 FR 76349, December 6, 2000; 65 FR 76337, December 6, 2000.	POM, Mercury, PCB, Dioxins, Furans.
Naphthalene Production.	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.	40 CFR part 63 subpart F.	59 FR 19402, April 22, 1994.	POM.
	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	40 CFR part 63 subpart G.	59 FR 19402, April 22, 1994.	POM.
	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.	40 CFR part 63 subpart H.	59 FR 19402, April 22, 1994.	POM.
	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	40 CFR part 63 subpart I.	59 FR 19402, April 22, 1994.	POM.
Paints and Allied Products (Major).	National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing.	40 CFR part 63 subpart FFFF.	68 FR 63851, November 10, 2003.	POM.
Paper Coated and Laminated, Packaging.	National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating.	40 CFR part 63 subpart JJJJ.	67 FR 72329, December 4, 2002.	POM.
Pesticides Manufacture & Agricultural Chemicals.	National Emission Standards for Hazardous Air Pollutants: Pesticide Active Ingredient Production.	40 CFR part 63 subpart MMM.	64 FR 33549, June 23, 1999.	HCB.
	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.	40 CFR part 63 subpart F.	59 FR 19402, April 22, 1994.	HCB.
	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	40 CFR part 63 subpart G.	59 FR 19402, April 22, 1994.	HCB.
	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.	40 CFR part 63 subpart H.	59 FR 19402, April 22, 1994.	HCB.

TABLE 1—LIST OF SOURCE CATEGORIES, NATIONAL EMISSIONS STANDARDS, AND THE 112(C)(6) HAP SUBJECT TO THESE STANDARDS, TO FULFILL THE CAA SECTION 112(C)(6) OBLIGATIONS—Continued

Section 112(c)(6) source category name	National emissions standard name(s)	CFR part and subpart	Final rule **Federal Register** citation	112(c)(6) Pollutant
Petroleum Refining: All Processes.	National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.	40 CFR part 63 subpart CC.	60 FR 43244, August 18, 1995.	POM.
	National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.	40 CFR part 63 subpart UUU.	67 FR 17761, April 11, 2002.	POM.
Phthalic Anhydride Production.	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.	40 CFR part 63 subpart F.	59 FR 19402, April 22, 1994.	POM.
	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	40 CFR part 63 subpart G.	59 FR 19402, April 22, 1994.	POM.
	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.	40 CFR part 63 subpart H.	59 FR 19402, April 22, 1994.	POM.
	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	40 CFR part 63 subpart I.	59 FR 19402, April 22, 1994.	POM.
Plastics Material and Resins Manufacturing.	National Emission Standards for Hazardous Air Pollutants for Group IV Polymers and Resins.	40 CFR part 63 subpart JJJ.	61 FR 48208, September 12, 1996.	POM.
Portland Cement Manufacture: Hazardous Waste Kilns.	National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors.	40 CFR part 63 subpart EEE.	64 FR 52827, September 30, 1999; 70 FR 59402, October 12, 2005.	POM, Mercury, Dioxins, Furans.
Portland Cement Manufacture: Non-Hazardous Waste Kilns.	National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry.	40 CFR part 63 subpart LLL.	75 FR 54970, September 9, 2010.	POM, Mercury, Dioxins, Furans.
Primary Aluminum Production.	National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants.	40 CFR part 63 subpart LL.	62 FR 52384, October 7, 1997.	POM, Mercury, Dioxins, Furans.
Pulp and Paper—Kraft Recovery Furnaces.	National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.	40 CFR part 63 subpart MM.	63 FR 18504, April 15, 1998; 66 FR 3180, January 12, 2001.	POM, Mercury.
Pulp and Paper—Lime Kilns.	National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.	40 CFR part 63 subpart MM.	63 FR 18504, April 15, 1998; 66 FR 3180, January 12, 2001.	POM, Mercury.
Secondary Aluminum Smelting.	National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.	40 CFR part 63 subpart RRR.	65 FR 15689, March 23, 2000.	Dioxins, Furans.
Secondary Lead Smelting.	National Emission Standards for Hazardous Air Pollutants for Secondary Lead Smelting.	40 CFR part 63 subpart X.	60 FR 32587, June 23, 1995; 77 FR 555, January 5, 2012.	POM, Dioxins, Furans.
Sewage Sludge Incineration.	Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units.	40 CFR part 60 subparts LLLL, MMMM.	76 FR 15372, March 21, 2011.	Mercury.
Ship Building and Repair (Surface Coating).	National Emission Standards for Hazardous Air Pollutants for Shipbuilding and Ship Repair (Surface Coating).	40 CFR part 63 subpart II.	60 FR 64330, December 15, 1995.	POM.
Transportation Equipment Manufacturing (SICs Combined).	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Plastic Parts and Products.	40 CFR part 63 subpart PPPP.	69 FR 20967, April 19, 2004; 69 FR 22601, April 26, 2004.	POM.

TABLE 1—LIST OF SOURCE CATEGORIES, NATIONAL EMISSIONS STANDARDS, AND THE 112(C)(6) HAP SUBJECT TO THESE STANDARDS, TO FULFILL THE CAA SECTION 112(C)(6) OBLIGATIONS—Continued

Section 112(c)(6) source category name	National emissions standard name(s)	CFR part and subpart	Final rule **Federal Register** citation	112(c)(6) Pollutant
Wood Household Furniture Manufacturing.	National Emission Standards for Hazardous Air Pollutants from Wood Furniture Manufacturing Operations.	40 CFR part 63 subpart JJ.	60 FR 62930, December 7, 1995.	POM.

IV. Summary of Significant Comments and Responses

During the public comment period for the proposed determination, we received comments from three organizations: the Council of Industrial Boiler Owners (CIBO), the Coalition for Clean Air Implementation (CCAI), and Sierra Club. The CIBO and CCAI submitted comments supporting our proposed determination that we have fulfilled the CAA section 112(c)(6) obligations and agreed with our use of surrogate pollutants. Sierra Club submitted comments claiming that a number of previously promulgated standards identified in the proposed determination are unlawful for purposes of CAA section 112(d)(2) such that those standards may not count toward satisfying the 90 percent requirement in CAA section 112(c)(6). A summary of significant public comments received during the comment period and the EPA's response to those comments are provided below in this section of this preamble. All the remaining public comments received during the comment period and the EPA's responses to those comments are presented in the *Summary of Public Comments and EPA's Responses for the Completion of Requirements to Promulgate Standards Under CAA Section 112(c)(6) 2015 Final Rule* document, which is available in the docket for this action.

A. General/Legal Opposition to the EPA's Surrogacy Determinations

Comment: One commenter states that ''for source categories listed under section [112](c)(6), the EPA must set a MACT standard (*i.e.,* a standard under section [112](d)(2)–(3)) for each section 112(c)(6) pollutant for which the source was listed.'' [4] See *Desert Citizens Against Pollution* v. *EPA,* 699 F.3d 524, 527–528 (D.C. Cir. 2012).[5] Thus, the commenter states, ''to satisfy section 112(d)(2), the EPA must determine the maximum achievable degree of reduction for each hazardous air pollutant that a source category emits.'' The commenter states that the CAA also specifies a ''floor'' for the reduction that the EPA must require for each pollutant. Therefore, the commenter believes that the EPA's claim that it can meet its obligations under section 112(c)(6) by setting a single limit on the aggregate emissions of all HAP from an industrial source category is contrary to the language in CAA and violates the text of sections 112(c)(6) and 112(d), reflecting an unreasonable statutory interpretation.

The commenter states that although the EPA may set surrogate standards for HAP where it is reasonable to do so, see *National Lime,* 233 F.3d at 637, setting surrogate standards instead of direct standards for HAP does not, according to the commenter, excuse the EPA from its clear statutory obligation to assure that each HAP emitted by a source category is reduced to the extent that sections 112(d)(2)–(3) requires. The commenter maintains that the United States Court of Appeals for the District of Columbia Circuit has made clear, a surrogate is reasonable only if it allows the EPA to identify ''the best achieving sources, and what they can achieve'' with respect to the target HAP. *Sierra Club* v. *EPA,* 353 F.3d 976, 985 (D.C. Cir. 2004).

As an example of a reasonable surrogate, the commenter asserts that particulate matter (PM) is a reasonable surrogate for metallic HAP only where the EPA demonstrates that (1) the metallic HAP are ''invariably present'' in the surrogate pollutant such that there is a strong correlation between the two; (2) the control technology used for PM control ''indiscriminately captures'' the metallic HAP along with the PM; and (3) the means by which sources achieve reductions in PM are the only means by which they achieve reductions'' in metallic HAP emissions. *National Lime,* 233 F.3d at 639; *Sierra Club,* 353 F.3d at 984. The commenter maintains that the United States Court of Appeals for the District of Columbia Circuit has held repeatedly that what sources ''achieve'' with respect to a given HAP is not limited to what they achieve intentionally, but also includes lower emission levels achieved through the use of cleaner fuels or raw materials regardless of whether such use reflects any deliberate intent to reduce emissions. *Sierra Club* v. *EPA,* 479 F.3d 875, 883 (D.C. Cir.2007) (citing *National Lime,* 233 F.3d at 640).

The commenter states that the EPA's use of ''total HAP,'' ''total organic HAP,'' and other such aggregate measures as ''surrogates'' for pollutants that fit into those categories is a definition maneuver and not a technical determination. The commenter states that this approach to surrogacy is unlawful because it conflicts with EPA's statutory obligation under sections 112(c)(6) and 112(d), and also the commenter asserts with the EPA's own interpretation of those provisions, see *Desert Citizens,* 699 F.3d at 527–28, which is that the EPA must set MACT standards for each of the section 112(c)(6) pollutants for which each source category was listed. The commenter states there is nothing left of this obligation if the EPA can simply define a category of pollutants (such as total HAP) broad enough to include all the pollutants it must regulate and then set an aggregate limit for the category.

Additionally, the commenter states that saying that POM is a constituent of total HAP, for example, is just a different way of saying it is a HAP—something that Congress already clearly indicated by listing POM as a HAP in section 112(b). The commenter believes that such statements do nothing to demonstrate that emissions of total HAP identify the best performing sources with respect to POM and what sources can achieve with respect to POM. The commenter believes that if the EPA had authority to create surrogates by simply defining a group of pollutants to include all the pollutants it must regulate, it would abrogate the limits that decisions of the United States Court of Appeals for

[4] The commenter notes that section 112(c)(6) also allows the EPA to set standards for these pollutants under section 112(d)(4) if a health threshold has been established for that pollutant. CAA sections 112(c)(6) and (d)(4). This provision is not at issue because the EPA has not established health thresholds for any of the section 112(c)(6) pollutants at issue here.

[5] Accepting as ''reasonable'' the EPA's interpretation of section 112 as requiring it to set section 112(d)(2) standards for the section 112(c)(6) pollutants when it regulates a category of area sources listed pursuant to section 112(c)(6).

the District of Columbia Circuit have formulated to ensure that the EPA's use of surrogates is reasonable. The commenter states that there would be nothing left, for example, of the requirement that the HAP to be regulated be ''invariably present'' in the surrogate pollutant, *National Lime,* 233 F.3d at 639, if the EPA could simply define the surrogate ''pollutant'' as a group of pollutants that includes the regulated pollutant.

The commenter argues that section 112(c)(6) is a provision that specifically addresses seven persistent bioaccumulative toxics that Congress recognized were particularly harmful. The commenter believes that for sources the EPA lists as contributing to 90 percent of the total emissions of one or more of these pollutants, the EPA must set a standard for that pollutant ensuring the maximum emissions reduction. The commenter states that Congress would not have singled out these seven pollutants if it intended for the EPA only to set a single limit for the aggregate of emissions of all the different HAP.

The commenter states that even if it were permissible in general for the EPA to evade its standard-setting obligations by defining the surrogate ''pollutant'' as a group of pollutants, the EPA's surrogacy claims in this rule are unlawful and arbitrary because they lack supporting data or analysis. The commenter argues that the EPA's surrogacy explanations in the proposed determination are standards under section 307(d) because they are first-time claims that the relevant pollutants are subject to standards. The EPA must according to the commenter comply with the requirements of section 307(d) governing CAA rulemakings for all of those previously issued standards. The commenter maintains the EPA has not complied with these requirements because according to the commenter the EPA has not provided documentation, data, or analysis in support of its proposed determination. For this reason, the commenter concludes that the EPA has violated section 307(d) by failing to explain the ''methodology used in obtaining the data and in analyzing the data'' in the proposed determination, by failing to provide opportunity for informed public participation and input, and by unlawfully basing the Agency's conclusions on information or data which has not been made available to the public through the docket. The commenter also believes that the EPA has acted arbitrarily and capriciously by failing to provide substantial record evidence in support of its proposed section 112(c)(6) determination, by failing to consider relevant factors, and by failing to provide a rational connection between the facts found and the conclusion made. *Motor Vehicle Mfrs. Ass'n of U.S., Inc.* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 42–43. The commenter gives examples of specific surrogacy claims for specific source categories and processes that it believes are unlawful and arbitrary. We address the specific claims in the *Summary of Public Comments and EPA's Responses for the Completion of Requirements to Promulgate Standards Under CAA Section 112(c)(6) 2015 Final Rule* document, which is available in the docket for this action.

Response: The commenter misinterprets the CAA, mischaracterizes the EPA's proposed determination, and provides comments challenging the substance of a number of previously issued EPA rules. As explained below, the comments challenging the legitimacy of the standards on which EPA relies to demonstrate it has satisfied its obligations under CAA section 112(c)(6) are far outside the scope of the proposed CAA section 112(c)(6) determination at issue. The EPA, therefore, has no obligation to respond to those comments.

The proposed determination memorializes and provides notice that the EPA has fulfilled, via numerous other previous regulatory actions, its duties under section 112(c)(6) of the CAA. The proposal lists CAA section 112(d)(2) or 112(d)(4) standards previously promulgated by the EPA and proposed the conclusion that the listed standards cover sources that, in the aggregate, emit 90 percent or more of the pollutants specifically identified in CAA section 112(c)(6). The commenter does not challenge that conclusion. In fact, no commenter suggests that the source categories listed did not emit, in the aggregate prior to regulation, 90 percent or more of the specified pollutants or that the source categories are not subject to the CAA section 112(d)(2) standards identified. Instead, the commenter seeks to use the proposed determination to reopen standards that were finalized by the EPA in some cases more than 20 years ago. The commenter argues that the EPA must now demonstrate, for each previously promulgated rule, that each standard reduces HAP ''to the extent that [112] (d)(2)–(3) requires,'' that in each rulemaking the EPA properly identified ''the best performing sources,'' and that the EPA must provide documentation, data and analysis to support the validity of the standards in the previously promulgated rules. CAA section 112(c)(6) imposes no such obligation on the EPA. As explained below, the commenter aims to collaterally attack prior EPA actions. All comments that raise such collateral attacks are outside the scope of the proposed CAA section 112(c)(6) determination. All of the rules relied upon by the EPA in this determination were promulgated through notice and comment rulemaking consistent with CAA section 307(d), and were final agency actions subject to judicial review. CAA section 112(c)(6) does not provide commenters another opportunity to belatedly challenge these prior EPA actions, nor does it mandate that the EPA re-promulgate or otherwise re-open for purposes of section 112(c)(6) standards that were previously promulgated under section 112(d)(2).

As an initial matter, it is important to understand the specific duties that CAA section 112(c)(6) imposes on the EPA, especially since the commenter consistently paraphrases the statutory language to assert there are duties beyond which the CAA requires by its terms. CAA section 112(c)(6) requires the EPA, with respect to seven specified HAP—alkylated lead compounds, polycyclic organic matter, hexachlorobenzene, mercury, polychlorinated biphenyls, 2,3,7,8-tetrachlorodibenzofurans and 2,3,7,8-tetrachlorodibenzo-p-dioxin—to ''list categories and subcategories of sources assuring that sources accounting for not less than 90 per centum of the aggregate emissions of each such pollutant are subject to standards under subsection (d)(2) or (d)(4) of this section.'' The provision requires the listing to be done by November 15, 1995, and requires that sources accounting for not less than 90 percent of aggregate emissions of each of the enumerated pollutants be subject to CAA section 112(d)(2) or (4) standards by November 15, 2000. CAA section 112(c)(6) does not require the EPA to submit a report stating that the agency has subjected those sources to such standards, or establish a deadline for any such report. *Sierra Club* v. *EPA,* 699 F.3d 530, 536 (D.C. Cir. 2012) (Henderson Concurring)(''EPA is under no obligation, statutory or otherwise, to inform anyone that it has satisfied the requirements of section 112(c)(6).''). Moreover, while CAA section 112(c)(6) gives the EPA authority to list source categories, the rules which establish standards for those source categories are promulgated pursuant to separate CAA provisions.

The CAA section 112(d)(2) standards (also referred to as maximum achievable control technology or MACT standards), which commenter seeks to collaterally

attack, regulate HAP emitted from major sources and in some instances area sources and were promulgated in accordance with the following CAA provisions. CAA section 112(c)(1) requires the EPA to list all major sources and authorizes the EPA to list area sources, and section 112(d)(1) requires the EPA to regulate all HAP from major sources pursuant to CAA section 112(d)(2) or (d)(4). CAA section 112(e)(1)(A)-(E) imposes sequential milestones for the EPA to complete issuance of MACT standards, and requires that the final set of such standards be promulgated by November 15, 2000, the same date by which under CAA section 112(c)(6) sources accounting for 90 percent of the enumerated HAP were required to have become subject to CAA section 112(d)(2) or (4) standards. Therefore, for major sources, CAA section 112(c)(6) is redundant with respect to the HAP to be regulated, the type of standards required, and the ultimate timing for completion of issuing such standards. The HAP specifically listed in CAA section 112(c)(6) are also on the CAA section 112(b)(1) list of HAP and, thus, the CAA section 112(d)(1) obligation to set CAA section 112(d)(2) or (d)(4) standards for all HAP from major sources applies equally to the CAA section 112(c)(6) HAP. CAA section 112(c)(6) adds nothing substantive to this requirement. Even the CAA section 112(e)(1) deadlines for promulgating such standards is ultimately identical to the deadline in CAA section 112(c)(6).[6] As such, it is irrelevant whether the EPA mentioned CAA section 112(c)(6) during the rulemaking for any standard for a major source category, including standards where the Agency regulated the area sources in the category at the same time and in the same manner as the major sources (*i.e.* pursuant to CAA section 112(d)(2)).[7]

For all the rules that the commenter seeks to collaterally attack, the public was on notice during each specific rulemaking that the EPA was setting MACT standards for the HAP, including the CAA section 112(c)(6) HAP, emitted by the source category. Parties, including the commenter, could have challenged the adequacy of those standards at the time they were issued if they believed the standards did not sufficiently reduce the HAP emitted by the source category, in whatever manner those standards took with respect to regulating each HAP individually or collectively through a surrogate. See *National Lime Association* v. *EPA,* 33 F.3d 625, 633–34 (D.C. Cir. 2000) (finding that CAA section 112(d)(1) requires the EPA to establish standards for all HAP emitted from major sources). Any challenges to the legitimacy of the standards, including challenges suggesting that certain HAP were not adequately regulated, should have been raised during the rulemaking for the standards. If any issue remained when the standards were finalized, the proper recourse would have been to petition for judicial review pursuant to CAA section 307(b). That provision provides that ''[a] petition for review of action of the [EPA] Administrator in promulgating . . . any emission standard or requirement under section 112 of this title . . . shall be filed within sixty days from the date notice of such promulgation. . . . appears in the **Federal Register**. . . .'' CAA section 307(b)(1). Once the 60-day period has lapsed, a party may not raise arguments that ''were available to them at the time the rule was adopted.'' *Nat'l Mining Ass'n* v. *DOI,* 70 F.3d 1345, 1350 (D.C. Cir. 1995).

For the reasons stated above, because the commenter challenges the sufficiency of the underlying standards as they apply to certain CAA section 112(c)(6) HAP, the commenter should have raised these issues in timely, direct challenges to those rules. CAA section 112(c)(6) does not allow for challenges to the legitimacy of CAA section 112(d) standards adopted in prior rulemakings outside the 60-day window for challenging those standards established in CAA section 307(b)(1). Moreover, in the proposed determination, EPA did not re-opened those previously promulgated standards, either to review their adequacy for controlling any emitted HAP (including section 112(c)(6) HAP) under section 112(d)(2), or for any other purpose. Therefore, this final determination itself cannot provide a new opportunity to challenge those previously promulgated rules under either section 112(d)(2) or section 112(c)(6).

In addition to raising belated comments, the commenter argues that CAA section 112(c)(6) requires the EPA to set a ''specific limit'' for each of the CAA section 112(c)(6) HAP. It is not clear what the commenter means by a ''specific limit.'' The commenter may be arguing that the EPA cannot rely on CAA section 112(d)(2) or (d)(4) standards that use surrogates to demonstrate that it has satisfied its obligation under CAA section 112(c)(6). However, it appears that the commenter is arguing that CAA section 112(c)(6) somehow limits the EPA's discretion to use particular types of surrogates when setting MACT standards. The commenter specifically objects to the EPA's standard for total HAP or total hazardous organic pollutants. There is no statutory support for either argument. Indeed, as other sections of the CAA illustrate, Congress knew how to require pollutant-specific standards. For example, CAA section 129(a)(4) explicitly requires the EPA to set numeric standards ''for the [enumerated] substances or mixtures'' listed in that subsection. That provision expressly requires the EPA to set numerical emissions limitations ''for'' a list of nine substances emitted by solid waste incineration units, and expressly authorizes the regulation of other pollutants through, among other things, surrogate standards. Unlike CAA section 129(a)(4), the terms of CAA section 112(c)(6) do not direct the EPA to set such standards ''for'' the CAA section 112(c)(6) HAP. Congress conspicuously did not take this approach in CAA section 112(c)(6), and, thus, left intact the EPA's discretion to establish surrogate standards.

CAA section 112(c)(6) requires the Agency to assure that ''sources accounting for'' at least 90 percent of the emissions of the listed HAP are ''subject to standards'' under CAA sections 112(d)(2) or (d)(4), without specifying the form of those standards, or how those standards must operate or be applied to those sources. The provision does not expressly state that the EPA can meet CAA section 112(c)(6) only by setting specific standards ''for'' the listed HAP, unlike CAA section 129(a)(4). As the commenter notes, the United States Court of Appeals for the District of Columbia Circuit upheld the

[6] The primary impacts of CAA section 112(c)(6) are to require the EPA to list area sources if major sources do not account for at least 90 percent of each of the seven HAP, and to limit the EPA's discretion to set so-called generally available control technology or GACT standards for area sources. Most relevant here is the limitation on the EPA's authority to establish GACT standards. CAA section 112(d)(5) provides that, for listed area sources, the EPA may set emission standards that ''provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.'' CAA section 112(c)(6) removes the EPA's discretion to establish GACT standards for the seven section 112(c)(6) HAP emitted if an area source category must be regulated pursuant to CAA section 112(d)(2) or (4) to ensure that sources accounting for not less than 90 percent of the seven HAP are subject to CAA section 112 (d)(2) or (d)(4) standards. As shown in this notice, none of the standards applicable to area sources that the EPA listed and relied on to demonstrate that it has met its obligations under CAA section 112(c)(6) were established pursuant to CAA section 112(d)(5).

[7] Several of the rulemakings that the commenter collaterally attacks regulated major and area sources together and the Agency established the same section CAA section 112(d)(2) standard for both the major and the area sources in the categories. The commenter makes no distinction between major and area sources in its comments.

EPA's approach of satisfying its general obligation under CAA section 112 to set standards through surrogates, as long as the choice of the surrogate is itself reasonable. *National Lime Ass'n* v. *EPA,* 233 F.3d 625, 634, 637 (D.C. Cir. 2000); see also, *e.g., Sierra Club* v. *EPA,* 353 F.3d 976, 982–85 (D.C. Cir. 2004). In fact, in the *National Lime* decision, instead of mandating that the EPA set a specific standard for each metallic HAP, the Court held that the EPA's standards for PM as a surrogate for regulating the aggregate metallic HAP was reasonable. 233 F.3d at 639.

Moreover, CAA section 112(c)(6) contains a numeric benchmark only as to source categories responsible for the percentage of aggregate baseline emissions that must be controlled, not the amount of emissions of each enumerated HAP that must be reduced. As this Court explained in *National Lime,* where ''EPA is under no obligation to achieve a particular numerical reduction in HAP . . . emissions,'' but rather only to apply MACT based on the HAP reductions ''achieved'' by certain facilities, ''then the EPA may require . . . control [of a surrogate] without quantifying the reduction in [the target] HAP . . . thus achieved.'' 233 F.3d at 639. The same rationale applies here, where the EPA's only obligation under CAA section 112(c)(6) is to apply the same MACT standard considered in *National Lime* to particular sources accounting for 90 percent of emissions of the CAA section 112(c)(6) HAP. The EPA has set standards pursuant to CAA sections 112(d)(2) or (d)(4) regulating emissions of substances identified as surrogates for the CAA section 112(c)(6) HAP, and those standards reduce the CAA section 112(c)(6) HAP; thus, the EPA has fully met its obligation to set standards assuring that source categories accounting for not less than 90 percent of the aggregate emissions of the CAA section 112(c)(6) pollutants at issue are subject to section 112(d)(2) or (4) standards.

The commenter also contends that the present determination constitutes a separate CAA 307(d) rulemaking with regard to many of the previously and elsewhere promulgated surrogate standards that the EPA credits towards satisfying the requirement in CAA section 112(c)(6) that source categories accounting for 90 percent of the aggregate enumerated HAP be subjected to CAA section 112(d)(2) or (4) standards. The commenter argues that the EPA must demonstrate anew the validity of the prior separate rulemaking actions and provide data and documentation to support specific aspects of those rules to satisfy the general rulemaking requirements of CAA section 307(d) and the requirements of CAA section 112. There is no statutory basis for this argument, which is an attempt to use this non-statutorily required determination that the EPA has satisfied its CAA section 112(c)(6) obligation to reopen numerous rules, many of which were finalized over a decade ago, as a means to force a non-required re-opening of such standards. Moreover, the commenter's assertion that the proposed CAA section 112(c)(6) determination was the first time the EPA provided notice of its claim that the surrogate standards were being credited for controlling the CAA section 112(c)(6) HAP is inaccurate, assuming it is even relevant (nothing in section 112(c)(6), after all, requires EPA to ''provide notice,'' either sequentially or ultimately, that the Agency has finally discharged its duty to set section 112(d)(2) standards for the subject source categories accounting for 90 percent of the aggregate section 112(c)(6) HAP. In any event, contrary to the commenter's assertion, the EPA provided such notice of its expectations to discharge its section 112(c)(6) responsibilities when the Agency published the 1998 listing notice identifying the source categories that, based on the 1990 emissions inventory, are responsible for 90 percent of the aggregate emissions of each of the seven pollutants identified in section 112(c)(6) from stationary, anthropogenic sources (*i.e.,* sources within the scope of CAA sections 112 and/or 129).[8] 63 FR 17838 (April 10, 1998) (''1998 listing notice''). Included on the list were the MACT standards for the source categories at issue in this comment, and most of the specific standards in the comments were promulgated prior to the 1998 listing. The commenter's argument that the proposed determination constitutes the first time notice was given is without merit for any source category listed in the 1998 notice, particularly for those source categories that were regulated after that listing was published in the **Federal Register**. The argument is also without merit for the standards issued prior to the 1998 notice. While the EPA might not have identified at the time some of these standards were issued that the EPA would count the standards towards meeting the 90 percent requirement in CAA section 112(c)(6), such intent was made public in the 1998 notice. Further, as discussed above, the public was on notice at the time the EPA established these MACT standards that the standards would regulate the HAP, including the CAA section 112(c)(6) HAP, emitted from the source categories. If the commenter believed that the prior actions did not sufficiently control the HAP, including the CAA section 112(c)(6) HAP, from those source categories, the commenter had a responsibility to make those assertions at the time the Agency established the CAA section 112(d) standards. This applied equally to the comments questioning the surrogate standards. The commenter should have raised its concerns with the surrogate standards for ''total HAP'' or ''total organic HAP'' at the time the standards were issued if it believed such surrogates are not reasonable or in compliance with the CAA. In any event, the commenter's claim that the proposed determination was the first time notice is refuted by the administrative petitions the commenter filed in 1999, subsequent to the 1998 notice, requesting the EPA to revise some of the standards included in the 1998 notice and addressed in the comments on the proposed CAA section 112(c)(6) determination at issue. In a letter dated January 19, 2001, the EPA denied the petitions, explaining how each of these standards meet the CAA section 112(c)(6) requirement in addressing the HAP enumerated in that section.[9]

Section 112(c)(6) does not require that the EPA take an additional, separate final regulatory action to re-open any previously promulgated standards, and the EPA in fact did not reopen these prior actions in the proposed CAA section 112(c)(6) determination. Therefore, the proposed notice does not support a belated, backdoor attack on rules that were in some cases issued more than 20 years ago. The proposed CAA section 112(c)(6) determination is a simple, discretionary accounting of the EPA's previous regulatory efforts, explaining in mathematical terms that the EPA has previously listed sources

[8] The EPA has updated the 1998 listing several times to remove source categories no longer needed to meet the CAA section 112(c)(6) requirement based on updated information, and to add source categories subsequently determined to be necessary to reach the 90 percent threshold. See, *e.g.,* 76 FR 9450 (February 17, 2011) (adding Gold Mine source category); 73 FR 1916 (January 10, 2008) (finalizing decision not to regulate gasoline distribution area sources under CAA section 112(c)(6)); 72 FR 53814 (September 20, 2007) (adding Electric Arc Furnace Steelmaking Facility area source category); 67 FR 68124 (November 8, 2002) (removing several source categories).

[9] Letter from Browner to Pew, Response to Sierra Club Petition to Revise Regulations for the SOCMI Category, Coke Oven Batteries, Petroleum Refineries, Medical Waste Incinerators, and Municipal Waste Combustors (dated January 25, 1999)(January 19, 2001).

and promulgated HAP standards sufficient to satisfy the requirement that sources needed for meeting the 90 percent requirement for each of the CAA section 112(c)(6) HAP have, in fact, become subject to standards under CAA sections 112(d)(2) or (4). While the proposed determination in some instances clarifies the surrogacy relationship between the established standards and the relevant CAA section 112(c)(6) HAP, the proposal does not discuss or attest to the substance of the standards previously promulgated for each listed category and subcategory because those standards have been subject to their own notice and comment rulemaking processes, and, in several cases, to judicial review as provided by the strict statute of limitations imposed by CAA section 307(b)(1). The proposed determination only provides the mathematical and technical basis for the EPA's calculation that the sources in the categories and subcategories for which it has separately promulgated emission standards account for 90 percent of the baseline emissions of the CAA section 112(c)(6) HAP.

The United States Court of Appeals for the District of Columbia Circuit specified in *Oljato Chapter of Navajo Tribe* v. *Train,* 515 F.2d 654, 666 (D.C. Cir. 1975), a procedure for pursuing claims that new information merits revision of a previous agency regulation: The prospective petitioner must first bring the new information to the Agency's attention in an administrative petition seeking revision of the prior regulation. CAA Section 553(d) of the Administrative Procedure Act (APA) also explicitly allows parties to petition the Agency to amend a rule. A party that identifies new information that it believes undermines the legitimacy of an existing standard may, at any time, petition the Agency to review and revise that standard. Any party that believed an existing MACT standard was deficient because it failed to adequately address one or more HAP emitted by the source category could have submitted a petition asking the EPA to consider the new information and amend the existing rule to cure any alleged deficiency.

In addition, as discussed above, the 1998 listing notice provided sufficient notice that the EPA intended to rely on previously issued MACT standards to satisfy the CAA section 112(c)(6) requirement, to the extent that the public did not recognize that it was already on notice regarding the MACT standards' applicability to all HAP emitted by the source categories at the time those standards were issued. If the commenter believed one or more of the standards listed in that 1998 notice did not adequately address the CAA section 112(c)(6) HAP, it should have filed an administrative petition making the argument that the 1998 notice constituted new information concerning the substance of those previously issued standards and asked the EPA to amend the original rules that established the MACT standards. In fact, as stated above, the commenter filed an administrative petition on several of the rules addressed in its comments and did not challenge the EPA's denial of that 2001 petition. Assuming arguendo that the 1998 notice provided an opportunity to challenge the previously issued MACT standards, any such challenge is now time barred because the commenter should have brought the challenge to those rules within 6 years of the 1998 notice, wherein the EPA included those source categories in the CAA section 112(c)(6) inventory. See 28 U.S.C. 2401(a) (requiring civil actions against the United States to be brought within 6 years after the right of action first accrues). For source categories included in but regulated after the 1998 listing, the commenter was on notice and should have commented directly on surrogacy and other issues at the time the standards were promulgated, even if the EPA did not reiterate in the rulemaking record that the EPA was counting those sources' standards toward the 90 percent requirement.

The commenter's main concern appears to be the EPA's use of ''total HAP'' or ''total organic HAP'' as surrogates for certain CAA section 112(c)(6) HAP. The commenter claims such approach is unlawful under the plain language of CAA section 112(c)(6) because according to the commenter that provision requires the EPA to set a MACT standard ''*for*'' ''each section 112(c)(6) HAP.'' In support, the commenter cites a United States Court of Appeals for the District of Columbia Circuit opinion in a case reviewing the NESHAP for the Gold Mine Ore Processing and Production area source category (''the Gold Mine area source rule''). See *Desert Citizens Against Pollution* v. *EPA,* 699 F.3d 524 (D.C. Cir. 2012). As explained above, the commenter's interpretation of CAA section 112(c)(6) to require a specific MACT standard *for* ''each section 112(c)(6) HAP'' is unsupported by the plain text of the statute. Unlike CAA section 129(a)(4), the terms of CAA section 112(c)(6) do not direct the EPA to set such standards ''for'' the section 112(c)(6) HAP. Further, nothing in the United States Court of Appeals for the District of Columbia Circuit opinion or the Gold Mine area source rule referenced in the comment addresses the issue of surrogacy. This is not surprising considering that rule directly regulates mercury, the only CAA section 112(c)(6) HAP emitted from the Gold Mine area sources. The relevant issue in that case was whether the EPA must also set CAA section 112(d)(2) standards for all of the non-CAA section 112(c)(6) HAP emitted by the Gold Mine area sources. The Court upheld the EPA's interpretation that CAA section 112(c)(6) does not impose such requirement on non-CAA section 112(c)(6) HAP emitted from area sources just because they emit one or more CAA section 112(c)(6) HAP (in this case, just mercury). The commenter also suggests that its claim is supported by the EPA's own interpretation, but does not cite or reference any specific EPA statement. In any event, interpretations and statements the EPA made in support of the Gold Mine area source rule were specific to those area sources and should not be taken out of context.

To the extent the commenter is claiming that a surrogate cannot be a group of HAP (*e.g.,* total organic HAP or total HAP), the commenter's interpretation of CAA section 112(c)(6) contradicts the United States Court of Appeals for the District of Columbia Circuit's decision in *National Lime,* 233 F.3d at 639. In that decision, the Court held that PM, which is itself comprised of a group of pollutants, is a reasonable surrogate for metallic HAP, see *National Lime,* 233 F.3d at 639. Neither PM nor metallic HAP is a single HAP; each has various pollutants as constituents. As the Court holds, the EPA may set surrogate standards for HAP where it is reasonable to do so, see *National Lime,* 233 F.3d at 637. Therefore, a surrogate can be one or multiple pollutants as long as it is reasonable, and the reasonableness of the use of a surrogate can be properly challenged only at the time the standards are promulgated.

For the reasons stated above, the EPA is not required in this action to re-evaluate previously promulgated MACT standards and respond to the belated comments on the substance of these standards, as the commenter claims. Congress deliberately promoted the value of finality of the EPA's standards in requiring parties to challenge rules within 60 days of promulgation under CAA section 307(b)(1), and in precluding opportunities to randomly challenge standards in post-promulgation fora such as civil or criminal enforcement proceedings. See CAA section 307(b)(2). Moreover, nothing in CAA section 112(c)(6) serves as an exception to this emphasis on

finality and regulatory repose, given that CAA section 112(c)(6) itself does not require the EPA to issue any final notice or take any other final action that functions to re-open previously promulgated standards that are credited to meeting the 90 percent requirement. If, in fact, additional control of HAP, including CAA section 112(c)(6) HAP, is appropriate because of remaining risk or newly available control technologies or practices, the CAA addresses that possibility by requiring review of CAA section 112(d)(2) standards pursuant to CAA sections 112(d)(6) and (f)(2). Thus, the commenter has had and will have additional opportunities to address whether additional control of the section 112(c)(6) HAP is warranted.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action does not alter any of the standards discussed in this document.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538 and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications, as specified in Executive Order 13175. This action does not materially alter the stringency of any standards discussed in this document. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because the EPA does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. A health and risk assessment was not performed for this action because it does not alter any of the regulations discussed in this action.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low income or indigenous populations because it does not affect the level of protection provided to human health or the environment. An environmental justice evaluation was not performed for this action because it does not alter any of the regulations discussed in this action.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Dated: May 22, 2015.

Gina McCarthy,

Administrator.

[FR Doc. 2015–13500 Filed 6–2–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0678; FRL–9927–19]

Alkyl ($C_{8–20}$) Polyglucoside Esters; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of D-glucopyranose, oligomeric, 6-(dihydrogen citrates), $C_{8–20}$ branched and linear alkyl glycosides, sodium salts; D-glucopyranose, oligomeric, 6-(hydrogen sulfosuccinates), $C_{8–20}$ branched and linear alkyl glycosides, sodium salts; and D-glucopyranose, oligomeric, lactates, $C_{8–20}$ branched and linear alkyl glycosides when used as an inert ingredients (surfactants) in pesticide formulations applied to growing crops and raw agricultural commodities after harvest. Lamberti USA, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of D-glucopyranose, oligomeric, 6-(dihydrogen citrates), $C_{8–20}$ branched and linear alkyl glycosides, sodium salts: D-glucopyranose, oligomeric, 6-(hydrogen sulfosuccinates), $C_{8–20}$ branched and linear alkyl glycosides, sodium salts; and D-glucopyranose, oligomeric, lactates, $C_{8–20}$ branched and linear alkyl glycosides.

DATES: This regulation is effective June 3, 2015. Objections and requests for hearings must be received on or before August 3, 2015, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0678, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket)

in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0678 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 3, 2015. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2014–0678, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Petition for Exemption

In the **Federal Register** of October 15, 2014 (79 FR 61844) (FRL–9917–24), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–10675) by Lamberti USA, Inc., 161 Washington St., Conshohocken, PA 19428. The petition requested that 40 CFR 180.910 be amended by establishing an exemption from the requirement of a tolerance for residues of D-glucopyranose, oligomeric, 6-(dihydrogen citrates), $C_{8–20}$ branched and linear alkyl glycosides, sodium salts (CAS Reg. No. 1079993–97–7); D-glucopyranose, oligomeric, 6-(hydrogen sulfosuccinates), $C_{8–20}$ branched and linear alkyl glycosides, sodium salts (CAS Reg. No. 1079993–92–2); and D-glucopyranose, oligomeric, lactates, $C_{8–20}$ branched and linear alkyl glycosides (CAS Reg. No. 1079993–94–4) (hereafter referred to in this document as alkyl polyglucoside ($C_{8–20}$) esters or AGEs) when used as inert ingredients (surfactants) in pesticide formulations applied to growing crops and raw agricultural commodities. That document referenced a summary of the petition prepared by Lamberti USA Inc., the petitioner, which is available in the docket, *http://www.regulations.gov.* One comment was received on the notice of filing. EPA's response to this comment is discussed in Unit V.C.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for alkyl polyglucoside ($C_{8–20}$) esters including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with alkyl polyglucoside ($C_{8–20}$) esters follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by alkyl polyglucoside ($C_{8–20}$) esters as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit. Limited toxicity data are available on D-glucopyranose, oligomeric, 6-(dihydrogen citrates), $C_{8–20}$ branched and linear alkyl glycosides, sodium salts); D-glucopyranose, oligomeric, 6-(hydrogen sulfosuccinates), $C_{8–20}$ branched and linear alkyl glycosides, sodium salts; and D-glucopyranose, oligomeric, lactates, $C_{8–20}$ branched and linear alkyl glycosides. The alkylpolyglucoside (C_8–C_{20}) esters are reaction products of glucose and fatty acids in which the alcohol moiety is attached to the polyglucoside by a β-glucosides linkage. The toxicity profile of these substances is based upon data from other, related alkyl polyglucoside esters sharing similar physical and chemical characteristics as well as expected toxicity as well as AGE metabolites lactic acid, citric acid and disodium sulfosuccinate.

AGEs have low acute toxicity via the oral route (oral $LD_{50} > 5{,}000$ milligram/kilogram (mg/kg)). There is no available data regarding acute exposure via the dermal, eye or inhalation routes.

In a combined repeated dose toxicity study with the reproduction/developmental toxicity screening test in rats (OCSPP Guideline 870.3650 study), there were no observed adverse effects for parental systemic or reproductive/developmental toxicity at 1,000 mg/kg/day.

A 2-year chronic oral study in rats treated with citric acid was available for review. Rats were administered 5 percent or 3 percent citric acid (approx. 2,000 or 1,200 mg/kg/day) in the diet. There were no adverse effects observed at 2,000 mg/kg/day. Chronic studies were also available for the rabbit and dog. There were no adverse effects observed in either study at doses up to 1,500 and 1,400 mg/kg/day, respectively.

Neurotoxicity studies with AGEs were not available for review. However, neurotoxicity was not observed in the combined repeated dose toxicity study with the reproduction/developmental toxicity screening test at concentrations as high as 1,000 mg/kg/day (limit dose).

Mutagenicity studies on several surrogate chemicals did not indicate positive response for mutagenic effects. The Agency further evaluated the carcinogenic potential of alkyl polyglucoside ($C_{8–20}$) esters by conducting a knowledge base qualitative structure activity relationship (SAR) database search, DEREK Nexus Version 2.0, to determine if there were structural alerts. No structural alerts were identified including carcinogenicity.

Alkylpolyglycosides are rapidly hydrolyzed in intestine and liver. The cleavage products, sugars and long-chain alcohols, enter the pathways of lipid and carbohydrate metabolism.

Specific information on the studies received and the nature of the adverse effects caused by, can be found at *http://www.regulations.gov* in the document ''PC Codes 911028, 911029, 911030: Alkyl ($C_{8–20}$) polyglucoside Esters (AGEs); Human Health Risk Assessment and Ecological Effects Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations.'' at (6) in docket ID number EPA–HQ–OPP–2014–0678.

B. Toxicological Points of Departure/Levels of Concern

Alkylglycosides are rapidly hydrolyzed in intestine and liver. The cleavage products, sugars, and long-chain alcohols enter the pathways of lipid and carbohydrate metabolism. Based on the low acute toxicity of AGEs, the body's ability to rapidly metabolize these substances, the expected metabolites being fatty acids and carbohydrates (which are normal constituents of the body), and the lack of observed adverse effects for repeat dose studies at the limit dose (1,000 mg/kg/day), no endpoint of concern was identified.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to alkyl polyglucoside ($C_{8–20}$) esters, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from alkyl polyglucoside ($C_{8–20}$) esters in food as follows:

Dietary exposure to AGEs can occur from eating food treated with alkyl polyglucoside ($C_{8–20}$) esters. However, a quantitative assessment was not conducted since an endpoint of concern for risk assessment was not identified.

2. *Dietary exposure from drinking water.* Dietary exposure from drinking water to alkyl polyglucoside ($C_{8–20}$) esters can occur by drinking water that has been contaminated by run-off from a pesticide treated area. Since an endpoint for risk assessment was not identified, a quantitative dietary exposure assessment from drinking water for alkyl polyglucoside ($C_{8–20}$) esters was not conducted.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

Alkyl polyglucoside ($C_{8–20}$) esters have reported uses in personal care products, such as antiperspirants, shampoos, conditioners, and moisturizers. Residential exposure to alkyl polyglucoside ($C_{8–20}$) esters via the oral, dermal, and inhalation route of exposure is also possible as a result of their use as inert ingredients in registered pesticide products that

include residential uses. However, since there is toxicological endpoint identified, it is not necessary to conduct assessments of residential (non-occupational) exposures and risks.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found Alkyl polyglucoside ($C_{8–20}$) esters to share a common mechanism of toxicity with any other substances, and Alkyl polyglucoside ($C_{8–20}$) esters do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that Alkyl polyglucoside ($C_{8–20}$) esters do not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infant and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor. The database is considered adequate for FQPA assessment. Fetal susceptibility was not observed in the combined repeated dose toxicity study with the reproduction/developmental toxicity screening test in the rat. There were no toxic effects observed in either study at the highest doses tested, 1,000 mg/kg/day. Signs of neurotoxicity were not observed in any of the submitted studies. No treatment related effects in a functional observational battery—(FOB) and on motor activity parameters were observed at doses up to 1,000 mg/kg/day; EPA has concluded that a developmental neurotoxicity study is not required. Signs of potential immunotoxicity were not observed in any of the submitted studies. Based on its assessment of available data for AGEs as discussed in Unit IV.A., EPA has concluded that there are no toxicological endpoints of concern for the U.S. population, including infants and children, and has conducted a qualitative assessment. As part of its qualitative assessment, the Agency did not use safety factors for assessing risk, and no additional safety factor is needed for assessing risk to infants and children.

E. Aggregate Risks and Determination of Safety

Taking into consideration all available information on D-qlucopyranose, oligomeric, 6-(dihydrogen citrates), $C_{8–20}$ branched and linear alkyl glycosides, sodium salts; D-glucopyranose, oligomeric, 6-(hydrogen sulfosuccinates), $C_{8–20}$ branched and linear alkyl glycosides, sodium salts; and D-glucopyranose, oligomeric, lactates, $C_{8–20}$ branched and linear alkyl glycosides, EPA has determined that there is a reasonable certainty that no harm to any population subgroup will result from aggregate exposure to D-glucopyranose, oligomeric, 6-(dihydrogen citrated), $C_{8–20}$ branched and linear alkyl glycosides, sodium salts; D-glucopyranose, oligomeric, 6-(hydrogen sulfosuccinates),

$C_{8–20}$ branched and linear alkyl glycosides, sodium salts; and D-glucopyranose, oligomeric, lactates, $C_{8–20}$ branched and linear alkyl glycosides under reasonable foreseeable circumstances. Therefore, the establishment of an exemption from tolerance under 40 CFR 180.910 for residues of D-glucopyranose, oligomeric, 6-(dihydrogen citrates), $C_{8–20}$ branched and linear alkyl glycosides, sodium salts; D-glucopyranose, oligomeric, 6-(hydrogen sulfosuccinated), $C_{8–20}$ branched and linear alkyl glycosides, sodium salts; and D-glucopyranose, oligomeric, lactates, $C_{8–20}$ branched and linear alkyl glycosides when used as inert ingredients in pesticide formulations applied to growing crops and raw agricultural commodities after harvest, is safe under FFDCA section 408.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. Response to Comments

One comment was received in response to the notice of filing. The comment received was from a private citizen who opposed any pesticide product that leaves a residue above 0.00. The Agency understands the commenter's concerns and recognizes that some individuals believe that no residue of pesticides should be allowed. However, under the existing legal framework provided by FFDCA section 408, EPA is authorized to establish pesticide tolerances or exemptions where persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by the statute.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.910 for D-glucopyranose, oligomeric, 6-(dihydrogen citrates), $C_{8–20}$ branched and linear alkyl glycosides, sodium salts (CAS Reg. No. 1079993–97–7); D-glucopyranose, oligomeric, 6-(hydrogen sulfosuccinates), $C_{8–20}$ branched and linear alkyl glycosides, sodium salts (CAS Reg. No. 1079993–92–2); and D-glucopyranose, oligomeric, lactates, $C_{8–20}$ branched and linear alkyl glycosides (CAS Reg. No. 1079993–94–4) esters when used as inert ingredients (surfactants) in pesticide formulations applied to growing crops and raw agricultural commodities after harvest.

VII. Statutory and Executive Order Reviews

This action establishes exemptions from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require

any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemptions in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 18, 2015.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Amend § 180.910 by adding alphabetically the following inert ingredients to the table to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * * * * *		
D-glucopyranose, oligomeric, 6-(dihydrogen citrates), C_{8-20} branched and linear alkyl glycosides, sodium salts (CAS Reg. No. 1079993–97–7).		Surfactant.
D-glucopyranose, oligomeric, 6-(hydrogen sulfosuccinates), C_{8-20} branched and linear alkyl glycosides, sodium salts (CAS Reg. No. 1079993–92–2).		Surfactant.
D-glucopyranose, oligomeric, lactates, C_{8-20} branched and linear alkyl glycosides (CAS Reg. No. 1079993–94–4).		Surfactant.
* * * * * * *		

[FR Doc. 2015–13509 Filed 6–2–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 413

Principles of Reasonable Cost Reimbursement; Payment for End-Stage Renal Disease Services; Optional Prospectively Determined Payment Rates for Skilled Nursing Facilities

CFR Correction

In Title 42 of the Code of Federal Regulations, Parts 1 to 399, revised as of October 1, 2014, make the following two corrections:

■ 1. On page 817, in § 413.89, reinstate paragraph (h)(1)(iii) to read as follows:

§ 413.89 Bad debts, charity, and courtesy allowances.

* * * * *

(h) * * *

(iii) For cost reporting periods beginning during fiscal year 2000, by 45 percent; and

* * * * *

■ 2. On page 876, in § 413.337, reinstate paragraph (e) to read as follows:

§ 413.337 Methodology for calculating the prospective payment rates.

* * * * *

(e) Pursuant to section 101 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) as revised by section 314 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), using the best available data, the Secretary will issue a new regulation with a newly refined case-mix classification system to better account for medically complex patients. Upon issuance of the new regulation, the temporary increases in payment for certain high cost patients will no longer be applicable.

[FR Doc. 2015–13434 Filed 6–2–15; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 031125294–4091–02]

RIN 0648–XD945

Fisheries Off West Coast States; the Highly Migratory Species Fishery; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting fishing with large-mesh drift gillnet (DGN) gear (≥14 inches mesh) off the coast of southern California east of 120° W. meridian from the effective date of this rule through August 31, 2015. This prohibition is based on the Assistant Administrator for Fisheries' (AA) determination that El Niño conditions are occurring off the coast of southern California. This action protects Endangered Species Act (ESA)-listed loggerhead sea turtles (*Caretta caretta*), specifically the endangered North Pacific Ocean Distinct Population Segment.

DATES: Effective 12:01 a.m. Pacific Daylight Time (PDT), May 29, 2015, through 11:59 p.m. PDT, August 31, 2015.

FOR FURTHER INFORMATION CONTACT: Lyle Enriquez, West Coast Region (WCR), NMFS, (562) 980–4025, *lyle.enriquez@noaa.gov*.

SUPPLEMENTARY INFORMATION: The DGN fishery is managed under the Fishery Management Plan (FMP) for U.S. West Coast Fisheries for Highly Migratory Species (HMS) (50 CFR part 660, subpart K). The fishery occurs off the coast of California. The regulations provide that ''No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean east of the 120° W. meridian from June 1 through August 31 during a forecasted, or occurring, El Niño event off the coast of southern California'' (50 CFR 660.713(c)(2)). This area, which falls within the Southern California Bight (SCB), is referred to in the regulations as the ''Pacific loggerhead conservation area.''

Under 50 CFR 660.713(c)(2)(ii), the AA relies on information developed by NOAA offices, such as the Climate Prediction Center (CPC) and the West Coast Office of the Coast Watch program to make the determination that an El Niño event is forecasted or occurring off southern California. The AA uses monthly sea surface temperature (SST) charts to determine whether there are warmer-than-normal SSTs off southern California ''during the months prior to the closure months for years in which an El Niño event has been declared'' by the CPC. Specifically, the AA uses SST data from the third and second months prior to the month of closure.

NMFS published these regulations to protect ESA-listed loggerhead sea turtles in accordance with a reasonable and prudent alternative (RPA) in NMFS's 2000 biological opinion on issuance of an incidental take permit for the DGN fishery under the Marine Mammal Protection Act. The biological opinion concluded that loggerhead bycatch in the DGN fishery was likely to jeopardize the continued existence of loggerhead sea turtles, and recommended adoption of a RPA under which the fishery would be closed in this area during the summer months when El Niño conditions are present to avoid the likelihood of jeopardy.

The CPC forecasts and declares when El Niño conditions exist based on conditions in equatorial waters, but does not forecast or declare when El Niño conditions exist off southern California. The Coast Watch program publishes maps of SST off the California coast through the Environmental Research Division's Data Access Program.

On March 5, 2015, the CPC issued an El Niño advisory, declaring that El Niño conditions were present in equatorial waters. Subsequent CPC updates on April 9, 2015, and May 14, 2015, stated that El Niño conditions remain in these waters. The May 14, 2015, update predicts that there is an approximately 90 percent chance that El Niño will continue through the northern hemisphere summer of 2015, and a greater than 80 percent chance it will last through the end of 2015.

In May 2015, NMFS WCR staff reviewed the SST anomalies in the SCB during March and April of 2015, relying on SST maps available through NOAA's Coast Watch Program (for details see *http://coastwatch.pfeg.noaa.gov/erddap/index.html*). These maps indicated that SSTs were above normal in the SCB. WCR staff concluded that a determination of El Niño conditions off southern California is warranted based on SSTs that are warmer than normal during the third and second months prior to the month of the closure, consistent with regulations at 50 CFR 660.713(c)(2)(ii).

Classification

This action is required by regulations at 50 CFR 660.713 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 time-area closure of the DGN fishery. 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 general requirement for a 30-day delay in effectiveness for this action. This measure is based upon the best available information and is necessary for the conservation of loggerhead sea turtles. The closure period anticipated by the regulation ends, at the latest, on August 31, 2015. A delay in effectiveness may allow the fishery to interact with and injure or kill loggerhead sea turtles that may occur within the SCB during the time period in which the regulation was intended to protect loggerheads.

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

Dated: May 29, 2015.

Samuel D. Rauch III,

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

[FR Doc. 2015–13601 Filed 5–29–15; 4:25 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 80, No. 106
Wednesday, June 3, 2015

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

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2013–BT–TP–0050]

RIN 1904–AD10

Energy Conservation Program: Test Procedures for Ceiling Fans

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: In this supplemental notice of proposed rulemaking (SNOPR), the U.S. Department of Energy (DOE) proposes a number of changes to the proposed test procedure rule published on October 17, 2014. Specifically, DOE proposes to clarify that a ceiling fan is not subject to the test procedure if the plane of rotation of the ceiling fan's blades cannot be within 45 degrees of horizontal, rather than exempt air circulators (or air-circulating fan heads) from the test procedure. DOE also proposes to test high-volume small-diameter ceiling fans according to test procedures based on the current DOE test procedure for ceiling fans, rather than the Air Movement and Control Association International, Inc. (AMCA) 230 test procedure. All ceiling fans larger than seven feet in diameter would still be tested according to a test procedure based on the AMCA 230 test procedure, but all ceiling fans less than seven feet in diameter would be tested according to test procedures based on the current DOE test procedure. DOE also proposes that the test require mounting all ceiling fans with blade spans less than or equal to seven feet to the real ceiling, rather than a false ceiling, during testing. The proposed test method would also increase the number of speeds at which ceiling fans with blade spans greater than seven feet are tested, and clarify the weighting associated with each tested speed in the energy efficiency metric and update the test room dimensions for ceiling fans with blade spans greater than seven feet. Finally, DOE proposes to clarify the effective date corresponding to the NOPR proposal to reinterpret the statutory definition of a ceiling fan to include hugger ceiling fans.

DATES: DOE will accept comments, data, and information regarding this SNOPR until August 17, 2015. See section V, ''Public Participation,'' for details.

ADDRESSES: Any comments submitted must identify the SNOPR for Test Procedures for Ceiling Fans, and provide docket number EERE–2013–BT–TP–0050 and/or regulatory information number (RIN) number 1904–AD10. 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: CF2013TP0050@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–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD. It is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

Docket: The docket is available for review at *regulations.gov*, including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/101.* This Web page will contain a link to the docket for this document on the *regulations.gov* site. The *regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *regulations.gov*.

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:
Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1604. Email: *ceiling_fans@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 586–7796. Email: *elizabeth.kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE intends to incorporate by reference the following industry standard into 10 CFR part 430: ANSI/AMCA 230–12 (''AMCA 230''), Air Movement and Control Association Laboratory Methods of Testing Air Circulating Fans for Rating and Certification. Copies of ANSI/AMCA 230–12 can be obtained from the American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York, NY 10036, 212–642–4900, or go to *http://www.ansi.org.*

Table of Contents

I. Authority and Background

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291, *et seq.*; ''EPCA'' or, ''the Act'') sets forth a variety of provisions designed to improve energy efficiency. (All references to EPCA refer to the statute as amended through the EPS Service Parts Act of 2014, Pub. L. 113–263 (Dec. 18, 2014)). Part B of title III, which for editorial reasons was redesignated as Part A upon incorporation into the U.S. Code (42 U.S.C. 6291–6309), establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.''

Under EPCA, this energy conservation program consists essentially of four parts: (1) Testing; (2) labeling; (3) Federal energy conservation standards; and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA and for making other representations about the efficiency of those products. (42 U.S.C. 6293(c) and 6295(s)) Similarly, DOE must use these test requirements to determine whether the products comply with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

II. Synopsis of the Supplemental Notice of Proposed Rulemaking

After careful consideration of comments received on the NOPR, DOE is issuing this SNOPR to propose that manufacturers are not required to test ceiling fans pursuant to the test procedure if the plane of rotation of the ceiling fan's blades cannot be within 45 degrees of horizontal. This approach replaces that in the proposed rule issued on October 17, 2014 (79 FR 62521) (October 2014 NOPR), where DOE proposed to exempt ceiling fans from the test procedure based on the potentially ambiguous terms ''air circulator'' or ''air-circulating fan head''. DOE also proposes test procedures for high-volume small-diameter ceiling fans based on the current DOE ceiling fan test procedure and require all ceiling fans with blade spans less than or equal to seven feet to be mounted directly to the real ceiling during testing. In addition, for ceiling fans with blade spans greater than seven feet, DOE proposes to increase the number of speeds at which the fans are tested and clarify the weighting associated with each speed in the proposed energy efficiency metric, as well as update the test room dimensions.

This SNOPR summarizes and addresses comments received on the NOPR that are related to the changes proposed in this SNOPR. DOE received comments on the NOPR regarding a number of other topics that are not addressed in this SNOPR; these comments will be addressed in the final rule. The following paragraphs summarize the proposed changes in this SNOPR, with further detail provided in Section III, Discussion.

Ceiling Fans for Which the Plane of Rotation of the Ceiling Fan's Blades Cannot Be Within 45 Degrees of Horizontal Are Not Subject to the Test Procedure

DOE proposes that manufacturers not be required to test a ceiling fan pursuant to the test procedure if the plane of rotation of the ceiling fan's blades cannot be within 45 degrees of horizontal. This proposal would replace DOE's NOPR proposal that the test procedure does not apply to air circulators (or air-circulating fan heads), thereby removing any ambiguity associated with the terms ''air circulator'' or ''air-circulating fan heads.'' This proposal ensures that only those ceiling fans whose performance the test procedure was designed to evaluate will be subject to the test procedure.

Update Test Procedures for High-Volume Small-Diameter Ceiling Fans

DOE proposes to test high-volume small-diameter ceiling fans according to test procedures based on the current DOE test procedure for ceiling fans, rather than the Air Movement and Control Association International, Inc. (AMCA) 230 test procedure. As a result, all ceiling fans with blade spans less than or equal to seven feet would be tested according to the test procedures for low-volume ceiling fans proposed in the NOPR, with the distinction that high-volume small-diameter ceiling fans would be tested only at high speed, whereas low volume ceiling fans would be tested at both high speed and low speed, as proposed in the NOPR.

Mount All Ceiling Fans With Blade Spans Less Than or Equal to Seven Feet to the Real Ceiling for Testing

DOE proposes to test all ceiling fans with blade spans less than or equal to seven feet with the ceiling fan mounted to the real ceiling, rather than a false ceiling, while maintaining the required vertical distance between the air velocity sensor heads and the bottom of the ceiling fan blades. This would provide a better representation of ceiling fan efficiency and would likely incur less test burden than testing with the ceiling fan mounted to a false ceiling.

Test Ceiling Fans With Blade Spans Greater Than Seven Feet at Five Speeds

DOE proposes to test all ceiling fans with blade spans greater than seven feet at five speeds spaced equally over the range of available speeds: 20%, 40%, 60%, 80%, and 100% of the measured maximum speed revolutions per minute (rpm). DOE also proposes to clarify the weighting associated with each tested speed in the energy efficiency metric.

Update Test Room Dimensions for Ceiling Fans With Blade Spans Greater Than Seven Feet

DOE proposes to update the test room dimensions for all ceiling fans with blade spans greater than seven feet. The updates represent potential increases to the required test room dimensions relative to those dimensions proposed in the NOPR for high-volume ceiling fans.

III. Discussion

A. Ceiling Fans for Which the Plane of Rotation of the Ceiling Fan's Blades Cannot Be Within 45 Degrees of Horizontal Are Not Subject to the Test Procedure

In the NOPR, DOE stated that the proposed test procedures would not apply to air circulators (or air-circulating fan heads) that are typically mounted on a pedestal but could also include wall, ceiling, or I-beam mounting brackets. DOE then referenced section 5.1.1 of AMCA 230–12 for the definition of an air circulator. In response, DOE received comments from Fanimation, Matthews Fan Company, and BAS requesting clarification of the definition of the term ''air circulator,'' as

the language in AMCA 230 is ambiguous. (Fanimation, Public Meeting Transcript, No. 83 at p. 21; Matthews Fan Company, Public Meeting Transcript, No. 83 at pp. 22–23; Big Ass Solutions, Public Meeting Transcript, No. 83 at pp. 23–24) ALA further requested that DOE clarify if a fan head assembly consisting of a motor, impeller, and guard mounted on a downrod classified as an air circulator. (American Lighting Association, No. 8 at pp. 4–5)

Per suggestion by BAS to review other sections of AMCA 230 for a clearer definition of an air circulator, DOE reviewed AMCA 230–12 for more specific language, but only found potentially ambiguous language. DOE's intention in excluding air circulators from the test procedure was to ensure that only ceiling fans that could be properly assessed with the test procedure were subject to the test procedure. For example, DOE intended to exclude ceiling fans that only moved air horizontally, rather than primarily downward, as the test procedure is not designed to provide accurate performance data for such fans. In this supplemental proposal, DOE proposes that if the plane of rotation of a ceiling fan's blades cannot be within 45 degrees of horizontal, the ceiling fan is not subject to the test procedure. In this way, DOE is not specifically excluding ''air circulators''; instead, DOE is excluding from the test procedure only ceiling fans that do not have the majority of their airflow directed vertically downward.

B. Update Test Procedures for High-Volume Small-Diameter Ceiling Fans

In the NOPR, DOE proposed different test methods for low-volume ceiling fans and high-volume, small-diameter ceiling fans. Specifically, DOE proposed to test low-volume ceiling fans according to a modified version of the current DOE test procedure, which is based on the ''Energy Star Testing Facility Guidance Manual: Building a Testing Facility and Performing the Solid State Test Method for ENERGY STAR Qualified Ceiling Fans, Version 1.1.'' In contrast, DOE proposed to test all high-volume ceiling fans (including high-volume small-diameter ceiling fans) according to the test procedure set forth in AMCA 230–12, but subject to the proposed test room dimensions set forth in the NOPR. These two test procedures are fundamentally different, as the NOPR low-volume ceiling fan test procedure determines airflow based on air velocity measurements, whereas the NOPR high-volume ceiling fan test procedure determines airflow based on load differential measured using a load cell.

Data presented by Big Ass Solutions (BAS) at the November 19, 2014 public meeting shows that the AMCA 230 test procedure results in a decrease in the measured performance for the same fan as compared to the NOPR test procedure for low-volume ceiling fans. (BAS, Public Meeting Transcript, No. 5 at pp. 63–64).[1] Given this, BAS expressed that there may be instances where a small-diameter fan has a large enough measured airflow under the NOPR low-volume test procedure to move it into the high-volume category, but when tested according to the NOPR high-volume test procedure, the measured airflow would be too low for the fan to qualify for the high-volume category. Id. BAS added that the decrease in rated performance of the high-volume small-diameter fan according to the NOPR test procedure could lead to a consumer selecting a less-efficient product when choosing between a low-volume and high-volume small-diameter ceiling fans based on NOPR test method results. Id. BAS suggested that all ceiling fans with blade spans less than or equal to seven feet be tested according to the same test method, based on DOE's current test procedure for ceiling fans, and ceiling fans with blade spans of more than seven feet be tested according to AMCA 230. (BAS, Public Meeting Transcript, No. 5 at p. 64) Emerson Electric Company (Emerson), Westinghouse Lighting (Westinghouse), Hunter Fan Company (Hunter), Fanimation, and Minka Group all agreed with BAS' suggestion. Furthermore, the American Lighting Association (ALA) stated that manufacturers are more familiar with the ENERGY STAR test procedure and prefer it for measuring the performance of all ceiling fans with blade spans less than or equal to seven feet. (ALA, No. 8 at pp. 7–8) In particular, ALA expressed concern about the repeatability and test burden associated with load-cell testing of high-volume ceiling fans with blade spans less than or equal to seven feet (as required in AMCA 230). (Id.)

DOE recognizes the concerns put forth by BAS *et al.* According to ALA, manufacturers are already accustomed to testing ceiling fans with blade spans less than or equal to seven feet according to the current ENERGY STAR test procedure which, along with the current DOE test procedure and the test procedures proposed in the NOPR for low-volume ceiling fans, is based on ''Energy Star Testing Facility Guidance Manual: Building a Testing Facility and Performing the Solid State Test Method for ENERGY STAR Qualified Ceiling Fans, Version 1.1.'' DOE prefers to harmonize with the accepted industry test procedures where appropriate. Proposing test procedures for high-volume small-diameter ceiling fans based on the test procedures proposed in the NOPR for low-volume ceiling fans is more consistent with this objective.

In the NOPR, DOE proposed a different test procedure for all high-volume ceiling fans (including those with blade spans less than or equal to seven feet) in part because some large-diameter ceiling fans (*i.e.*, those ceiling fans with blade spans greater than seven feet) are too large to be tested in current low-volume ceiling fan test facilities, and testing with a single load cell is more practical than testing with numerous air velocity sensors for large-diameter fans. For ceiling fans with blade spans less than or equal to seven feet, however, these experimental concerns are significantly less compelling. In the NOPR, DOE assumed that high-volume small-diameter and high-volume large-diameter ceiling fans were substitutes for one another (for example an array of high-volume small-diameter ceiling fans substituting for a single high-volume large diameter ceiling fan) and proposed the same test procedure for all high-volume ceiling fans to allow for comparison. Feedback from stakeholders indicates that industry practice is to use an ENERGY STAR style test procedure for high-volume small-diameter ceiling fans and that high-volume small-diameter ceiling fans may be substitutes for low-volume ceiling fans. Consequently, DOE agrees with interested parties that a test procedure for high-volume small-diameter fans based on the NOPR test procedure for low-volume ceiling fans would be more appropriate.

Therefore, DOE proposes to test all ceiling fans with blade spans less than or equal to seven feet according to the low-volume ceiling fan test procedures proposed in the NOPR, except that, as in the NOPR, high-volume small-diameter ceiling fans would be tested at only high speed while low-volume ceiling fans would be tested at both high and low speed. A further modification to the NOPR test procedure for low-volume ceiling fans and high-volume small-diameter ceiling fans is discussed in section III.C. High-volume small-

[1] A notation in this form provides a reference for information that is in the docket of DOE's rulemaking to develop test procedures for ceiling fans (Docket No. EERE–2013–BT–TP–0050), which is maintained at *www.regulations.gov.* This notation indicates that the statement preceding the reference is document number 5 in the docket for the ceiling fan and ceiling fan light kits energy conservation standards rulemaking and appears at pages 63–64 of that document.

diameter ceiling fans would be tested at only high speed because, as discussed in the NOPR, high-volume small-diameter ceiling fans typically do not have discrete speeds so speeds other than high may not be well defined. Additionally, DOE does not have enough information to estimate a distribution of time spent at speeds other than high speed for the efficiency metric for high-volume small diameter ceiling fans.

C. Mount All Ceiling Fans With Blade Spans Less Than or Equal to Seven Feet to the Real Ceiling for Testing

In the NOPR, DOE proposed to mount all low-volume ceiling fans to a false ceiling for testing. Using an adjustable-height false ceiling would allow the air velocity sensor height to remain constant, while the ceiling fan mounting height could be adjusted to obtain the required distance between the bottom of the ceiling fan blades and the air velocity sensors. The NOPR proposal was based on an assumption that mounting the ceiling fans to an adjustable-height false ceiling for testing would be less burdensome than adjusting the height of the air velocity sensors.

In response to the NOPR, at the November 2014 public meeting, BAS presented test results indicating a decrease in measured efficiency performance when a ceiling fan is mounted to a false ceiling rather than a real ceiling. (BAS, Public Meeting Transcript, No. 5 at pp. 125–126) BAS also stated that testing with the ceiling fan mounted to a real ceiling is more representative of actual use, and Fanimation and Minka Group agreed with Big Ass Solution's comments. (Id.; Fanimation, Public Meeting Transcript, No. 5 at p. 129; Minka Group, Public Meeting Transcript, No. 5 at p. 129) In regard to test burden, BAS indicated that keeping the false ceiling level and in correct position during testing is more burdensome than adjusting the height of the air velocity sensors. (BAS, Public Meeting Transcript, No. 5 at p. 131) Hunter Fan Company suggested that their lab uses a different air velocity sensor mounting system, and therefore it could be more burdensome to adjust the height of the air velocity sensors. (Hunter Fan Company, Public Meeting Transcript, No. 5 at p. 131)

DOE agrees with BAS that testing with the ceiling fan mounted to the real ceiling is more representative of actual use. DOE further acknowledges the concerns put forth by BAS—and the potential counterpoint provided by Hunter Fan Company—and has reviewed the proposal to mount all low-volume and high-volume small-diameter ceiling fans to a false ceiling during testing. DOE reviewed the data provided by BAS and noted a decrease in airflow efficiency of approximately 10% across the range of speeds tested when testing with a false ceiling rather than the real ceiling compelling. Additionally, DOE received test cost estimates from two test labs that show that testing with a false ceiling may be more financially burdensome than testing with the ceiling fan mounted to the real ceiling and adjusting the height of the air velocity sensors. The cost estimates received indicate a cost of $600–$1,800 for testing with a false ceiling, as opposed to $725–$1,500 for testing with the real ceiling. The minimum expected cost for testing with a real ceiling is higher than for testing with a false ceiling due to the one-time cost associated with implementing a change to the experimental set up to allow for the adjustment of the height of the air velocity sensors. The average variable test costs for testing with the real ceiling, however, are lower compared to testing with a false ceiling. DOE approximates the fixed costs for the one-time modification to be $2000 or less. DOE expects that test labs will be able to amortize the fixed costs over many tests. Consequently, the total average costs for testing with the real ceiling are lower than testing with a false ceiling.

Therefore, DOE proposes to mount all ceiling fans with blade spans less than or equal to seven feet to the real ceiling, rather than a false ceiling, for testing. DOE also clarifies that with this proposal to mount the ceiling fan to the real ceiling, the height of the air velocity sensors must be adjusted to achieve the specified vertical distance (43 inches) between the bottom of the fan blades and the air velocity sensor heads for each mounting configuration in which the ceiling fan is tested.

D. Test Ceiling Fans With Blade Spans Greater Than Seven Feet at Five Speeds

DOE proposed to test all high-volume ceiling fans—regardless of blade span—at high speed in the NOPR. DOE proposed testing only at a single speed because high-volume ceiling fans are often equipped with a speed controller that is continuously adjustable rather than having discrete speeds (*e.g.,* low, medium, and high). In response to the NOPR proposal, DOE received several comments from stakeholders. MacroAir and the AMCA Committee indicated that an upcoming revision of AMCA 230 would contain a requirement to test at five speeds (20%, 40%, 60%, 80%, and 100% of the maximum achievable speed) and suggested DOE harmonize with this approach. (MacroAir, No. 6 at p. 5; AMCA, No. 84 [2] at pp. 2–3) MacroAir also suggested that the overall efficiency of the ceiling fan should be calculated by taking performance data at each of the five speeds and then calculating a weighted average of those data based on the estimated operating hours at each speed. Id.

DOE believes it is preferable to align the DOE ceiling fan test procedure with the accepted industry test procedures—in this case AMCA 230—as much as possible. DOE also notes that testing at five speeds rather than just at high speed may provide a more holistic representation of a ceiling fan's performance over a range of service levels, which may in turn facilitate easier comparisons for consumers. Finally, MacroAir supported testing at five speeds. (MacroAir, No. 6 at p. 6) Given these points, DOE proposes in this SNOPR to test all ceiling fans with blade spans greater than seven feet at five equally-spaced speeds: 20%, 40%, 60%, 80%, and 100% of the rpm of the maximum achievable speed. DOE clarifies that these speed settings are to be based on actual rpm measurements, and also notes that this proposal has no effect on ceiling fans with blade spans less than or equal to seven feet, as set forth in III.B.

DOE is unaware of any ceiling fan with blade span greater than seven feet in diameter that does not have a speed controller that is continuously adjustable. DOE seeks comment and information on whether there are any ceiling fans with blade spans greater than seven feet for which the proposed test procedure in this SNOPR could not be applied (*i.e.,* any ceiling fans larger than seven feet in diameter that could not achieve the five speeds specified).

The equation and daily operating hours proposed in the NOPR to calculate the efficiency of ceiling fans larger than seven feet in diameter would need to be updated to enable testing these fans at five speeds. In the NOPR, DOE proposed the following efficiency equation for all high-volume ceiling fans to be tested at only high speed:

[2] This document was submitted to the docket of DOE's rulemaking to develop energy conservation standards for ceiling fans (Docket No. EERE–2012–BT–STD–0045).

$$Ceiling\ Fan\ Efficiency\ (CFM/W) = \frac{CFM_H \times OH_A}{W_{Sb} \times OH_{Sb} + W_H \times OH_A}$$

Where:
CFM_H = airflow at high speed,
OH_A = operating hours in active mode,
W_H = power consumptionat high speed.
OH_{Sb} = operating hours in standby mode, and
W_{Sb} = power consumption in standby mode

Based on the proposal to test all ceiling fans with blade spans greater than seven feet at five speed settings, DOE proposes to use the following equation to calculate the weighted ceiling fan efficiency for these ceiling fans:

$$Ceiling\ Fan\ Efficiency\ (CFM/W) = \frac{\sum_i (CFM_i \times OH_i)}{W_{Sb} \times OH_{Sb} + \sum_i (W_i \times OH_i)}$$

Where:
CFM_i = airflow at speed
OH_i = operating hours at speed
W_i = power consumption at speed
OH_{sb} = operating hours in standby mode, and
W_{sb} = power consumption in standby mode.

The daily operating hours at each of the five speeds are an input to this equation. In the NOPR, DOE proposed the following daily operating hours for all high-volume ceiling fans: 12 hours of active mode and 12 hours of non-active mode. In response to the proposed operating hours, MacroAir and BAS separately provided breakdowns of daily operating hours for large-diameter ceiling fans by speed setting (Table 1). (MacroAir, No. 6 at p. 5; BAS, No. 88 [3] at pp. 37, 39).

TABLE 1—MANUFACTURER-SUGGESTED DAILY OPERATING HOURS BY SPEED SETTING FOR LARGE-DIAMETER CEILING FANS

Manufacturer	Daily operation by speed setting (h)						
	100%	80%	60%	40%	25%	20%	Off/Standby
MacroAir	3	4	6	4	.....	1	6
Big Ass Solutions	0.6	3	1.2	.....	7.2	.....	12

In their comments, BAS did not provide this breakdown in daily operating hours explicitly; instead, BAS presented an alternative hours of use analysis in which they presented annual hours of operation at each of four speeds. In this alternative analysis, BAS did not alter DOE's proposed 12 hours of active use per day, so DOE assumes BAS agreed with this value.

To account for both daily operating hours breakdowns, DOE calculated a simple average of the proposed operating hours by speed setting (in calculating this average, DOE mapped the 7.2 h at 25% speed suggested by BAS to the 20% speed setting). Using this simple average, DOE proposes in this SNOPR to use the daily operating hours in Table 2 for all ceiling fans with blade spans greater than seven feet for use in the efficiency calculation.

TABLE 2—DAILY OPERATING HOURS BY SPEED SETTING FOR CEILING FANS WITH BLADE SPANS GREATER THAN SEVEN FEET

Setting	No standby	With standby
100% (Max) Speed	1.8	1.8
80% Speed	3.5	3.5
60% Speed	3.6	3.6
40% Speed	2.0	2.0
20% Speed	4.1	4.1
Standby Mode	0.0	9.0
Off Mode	9.0	0.0

E. Update Test Room Dimensions for Ceiling Fans With Blade Spans Greater Than Seven Feet

In the NOPR, DOE proposed to test all high-volume ceiling fans, including ceiling fans larger than seven feet in diameter, using a test procedure based on AMCA 230–12. Because AMCA 230–12 is only applicable to ceiling fans with blade spans of six feet or less, DOE proposed to modify the specified room dimensions to allow for the testing of larger ceiling fans. The NOPR proposed a test procedure with the following modifications to the room dimensions in AMCA 230–12: (1) The minimum distance between the ceiling and the blades of a ceiling fan being tested is 44 inches for all blade diameters, (2) ceiling fans larger than 6 feet in diameter must have a 20 foot clearance between the floor and the blades of the fan being tested, and (3) for ceiling fans larger than 6 feet in diameter, the minimum distance between the centerline of a ceiling fan being tested and walls and large obstructions all around is half the ceiling fan blade span plus 10 feet.

BAS stated during the public meeting that AMCA 230 is currently being revised and suggested that the test room dimensions proposed by DOE and the updated version of AMCA 230 be harmonized. (BAS, Public Meeting Transcript, No. 5 at pp. 141–142) BAS specifically disagreed with the proposed clearance above the ceiling fan blades. (BAS, Public Meeting Transcript, No. 5 at p. 143) Westinghouse did not comment on the clearance height above the ceiling fan blades, but did express acceptance of the ten feet of lateral clearance from the fan blade tips that DOE proposed. (Westinghouse, Public Meeting Transcript, No. 5 at p. 144)

AMCA has yet to release the updated version of AMCA 230, but the test room

[3] This document was submitted to the docket of DOE's rulemaking to develop energy conservation standards for ceiling fans (Docket No. EERE–2012–BT–STD–0045).

dimensions currently being considered by the AMCA Committee for the updated standard have been made publicly available. The AMCA Committee is currently considering the following test room dimensions for the updated standard: (1) Minimum distance between the ceiling and the blades of a ceiling fan being tested shall be 40% of the ceiling fan blade span; (2) Minimum distance between the floor and the blades of the fan shall be the larger of 80% of the ceiling fan blade span or 15 feet; and (3) Minimum distance between the centerline of a ceiling fan and walls and/or large obstructions is 150% of the ceiling fan blade span. (AMCA, No. 84 [4] at p. 2)

DOE considered whether the room dimension requirements expected to be included in the updated version of AMCA 230 would limit any manufacturers' access to a test facility large enough to meet the proposed test procedure requirements. DOE notes that, for ceiling fans with blade spans greater than or equal to 10 feet, the minimum distance between the ceiling and the top of the blades and the minimum distance between the centerline of the ceiling fan and walls or large obstructions is greater for the dimensions suggested by MacroAir and the AMCA Committee than for the dimensions proposed in the NOPR. However, DOE does not believe that access to test facilities for ceiling fan manufacturers is significantly decreased by the increased test room dimensions proposed in this SNOPR relative to the test room dimensions proposed in the NOPR. Therefore, this SNOPR proposes that the test room dimensions for ceiling fans with blade spans larger than seven feet meet the following criteria: (1) Minimum distance between the ceiling and the blades of a ceiling fan being tested shall be 40% of the ceiling fan blade span; (2) Minimum distance between the floor and the blades of the fan shall be the larger of 80% of the ceiling fan blade span or 15 feet; and (3) Minimum distance between the centerline of a ceiling fan and walls and/or large obstructions is 150% of the ceiling fan blade span. DOE intends to review the final published version of AMCA 230 when it is available. If the test room dimensions specified in the final version are identical in substance to the test procedure test room requirements DOE has proposed for high-volume ceiling fans, DOE will consider incorporating AMCA 230 by reference in the rule. Alternatively, DOE may also decide to incorporate it by reference, but with modifications. DOE notes that in accordance with the proposal in section III.B of this SNOPR, the room dimensions would only apply to ceiling fans with blade spans greater than seven feet.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this regulatory action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a regulatory flexibility analysis (RFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. (68 FR 7990 (Feb. 19, 2003)). 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 this proposed rule under the provisions of the Regulatory Flexibility Act (RFA) and the policies and procedures published on February 19, 2003. The proposed rule prescribes test procedure amendments that would be used to determine compliance with any amended energy conservation standards that DOE may prescribe for ceiling fans. DOE has prepared an initial regulatory flexibility analysis (IRFA) for this rulemaking. The IRFA describes potential impacts on small businesses associated with ceiling fan testing requirements. DOE seeks comment on the discussion below and will develop a final regulatory flexibility analysis (FRFA) for any final test procedures developed in this test procedure rulemaking.

DOE has transmitted a copy of this IRFA to the Chief Counsel for Advocacy of the Small Business Administration for review.

(1) Description of the reasons why action by the agency is being considered.

A description of the reasons why DOE is considering this test procedure is provided elsewhere in the preamble and not repeated here.

(2) Succinct statement of the objectives of, and legal basis for, the proposed rule.

The objectives of and legal basis for the proposed rule are stated elsewhere in the preamble and not repeated here.

(3) Description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

For the manufacturers of the covered ceiling fan products, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 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/Size_Standards_Table.pdf.* Ceiling fan manufacturing is classified under NAICS code 335210, ''Small Electrical Appliance Manufacturing'' or NAICS code 333412, ''Industrial and Commercial Fan and Blower Manufacturing.'' The SBA sets a threshold for NAICS classification for 335210 and 333412 of 750 employees or less and 500 employees or less, respectively.[5] DOE reviewed ALA's list of ceiling fan manufacturers,[6] the ENERGY STAR Product Databases for Ceiling Fans,[7] the California Energy Commission's Appliance Database for Ceiling Fans,[8] and the Federal Trade Commission's Appliance Energy

[4] This document was submitted to the docket of DOE's rulemaking to develop energy conservation standards for ceiling fans (Docket No. EERE–2012–BT–STD–0045).

[5] U.S. Small Business Administration, Table of Small Business Size Standards (August 22, 2008) (Available at: *http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf*).

[6] The American Lighting Association, list of Manufacturers & Representatives (Available at: *http://www.americanlightingassoc.com/Members/Resources/Manufacturers-Representatives.aspx*).

[7] The U.S. Environmental Protection Agency and the U.S. Department of Energy, ENERGY STAR Ceiling Fans—Product Databases for Ceiling Fans (Available at: *http://www.energystar.gov/products/certified-products/detail/ceiling-fans*).

[8] The California Energy Commission, Appliance Database for Ceiling Fans (Available at: *http://www.appliances.energy.ca.gov/QuickSearch.aspx*).

Database for Ceiling Fans.[9] Based on this review, using data on the companies for which DOE was able to obtain information on the numbers of employees, DOE estimates that there are between 25 and 35 small business manufacturers of low-volume ceiling fans. To determine the number of small business manufacturers of high-volume ceiling fans, DOE reviewed SBA's Web site, high-volume ceiling fan manufacturers Web sites, and company reports from Hoovers.com, in addition to speaking with industry experts. Based on this review, DOE estimates that there are between 5 and 10 small business manufacturers of high-volume small-diameter ceiling fans and DOE estimates there are between 10 and 15 small business manufacturers of high-volume large-diameter fans. DOE invites interested parties to comment on the estimated number of small business manufacturers of ceiling fans.

(4) Description of the projected compliance requirements of the proposed rule.

In the test procedure NOPR, DOE proposed to reinterpret the statutory definition of a ceiling fan to include hugger ceiling fans. DOE also proposed that high-volume fans meet the definition of a ceiling fan. The proposed changes in interpretation of the ceiling fan definition discussed above would result in the applicability of the design standards set forth in EPCA at 42 U.S.C. 6295(ff)(1) to the following types of fans 30 days after the publication of any final test procedure adopting such changes in interpretation:

1. Fans suspended from the ceiling using a downrod or other means of suspension such that the fan is not mounted directly to the ceiling;

2. Fans suspended such that they are mounted directly or close to the ceiling;

3. Fans sold with the option of being suspended with or without a downrod; and

4. Fans capable of producing large volumes of airflow.

DOE research indicates that all ceiling fans currently on the market, including hugger ceiling fans and high-volume ceiling fans, appear to meet the EPCA design standards. DOE conducted an analysis of Hansen Wholesale, an online wholesaler that sells over 2000 models of ceiling fans, including a wide variety of ceiling fan brands. Hansen Wholesale provides product specifications on its Web site, including the number of speeds and whether a ceiling fan is reversible. DOE examined all of the ceiling fans that were self-identified as hugger ceiling fans and found that they all had fan controls separate from lighting controls, were capable of being operated at more than one speed, and were capable of being operated in reverse.

For high-volume ceiling fans, DOE searched for product specifications on the Web sites of manufacturers of high-volume large-diameter ceiling fans and from Web sites of retailers of high-volume small-diameter ceiling fans. Only one high-volume ceiling fan model was found with a light kit, and the fan controls were separate from the lighting controls for that fan. All high-volume ceiling fans appeared to be capable of operating at more than one speed (typically with an adjustable speed control). High-volume ceiling fans are primarily sold for industrial purposes and are therefore not subject to the requirement to be capable of operating in reverse.

Based on this research, DOE does not expect any cost of complying with the design requirements for manufacturers of hugger or high-volume ceiling fans.

DOE proposes measures to limit the burden of testing on all manufacturers, including small business manufacturers, while providing a representative measurement of ceiling fan efficiency for consumers. Low-volume ceiling fans (excluding hugger fans) are currently required to test at high speed due to FTC's labeling requirement for ceiling fans. As discussed in more detail in the TP NOPR, DOE proposed to specify that low speed is to be tested as well as high speed to have a test procedure that is representative of typical use. DOE estimates that the cost to test at low speed, in addition to high speed, represents an average additional cost of $87.5 (or $175 per basic model) above the high-speed test cost.

DOE notes that if the concurrent rulemaking regarding energy conservation standards for ceiling fans results in efficiency performance standards, DOE would require testing for certification of two ceiling fans per basic model, the minimum sample size required by 10 CFR 429.11. To determine the potential cost of the proposed test procedure on small ceiling fan manufacturers under a potential energy conservation standard for ceiling fans, DOE estimated the cost of testing two ceiling fans. The cost of testing was then multiplied over the estimated number of basic models produced by a small manufacturer. The estimated cost of testing is discussed in further detail below.

In the test procedure NOPR, DOE proposed to: (1) Reinterpret the statutory definition of a ceiling fan such that it would include hugger ceiling fans; the proposed test method for hugger ceiling fans would be the same as the proposed test method for all other low volume ceiling fans; (2) clarify that low-volume ceiling fans should be tested at low and high speeds; (3) eliminate the requirement to use a test cylinder; and (4) add a test method for power consumption in standby mode.

In this SNOPR, DOE proposes to: (1) Not require testing of a ceiling fan if the plane of rotation of the ceiling fan's blades cannot be within 45 degrees of horizontal; (2) test high-volume small-diameter ceiling fans based on the current DOE ceiling fan test procedure; (3) require all ceiling fans with blade spans less than or equal to seven feet be mounted directly to the real ceiling during testing; (4) increase the number of speeds at which ceiling fans with blade spans greater than seven feet are tested, and also clarify the weighting associated with each speed in the energy efficiency metric; and (5) update the test room dimensions for all ceiling fans with blade spans greater than seven feet.

DOE estimated the cost to test a low-volume ceiling fan based on estimates from third-party testing facilities of the cost to perform the current ENERGY STAR test procedure for ceiling fans, which is similar to DOE's proposed test procedure, and the changes in cost associated with the key differences between the two test procedures. DOE's proposed test procedure for low-volume ceiling fans differs from the current ENERGY STAR test procedure in that it (1) requires testing at only two fan speeds instead of three, (2) requires mounting the ceiling fan to the real ceiling, (3) does not require the use of a test cylinder, (4) requires less warm up time before testing at low speed, (5) requires adjusting the height of the air velocity sensors, and (6) requires standby-mode testing.

In aggregate, DOE estimates that these differences will result in a lower test cost for the proposed DOE test procedure for low-volume ceiling fans when compared to the ENERGY STAR test procedure for ceiling fans. Testing at only two speeds instead of three yields a total test time that is approximately 35 minutes shorter than the ENERGY STAR test procedure. The proposed test procedure would also require mounting ceiling fans to the real ceiling, which would involve a one-time lab cost for a mechanism that allows for the adjustment of the height of the air velocity sensors to keep the distance

[9] The Federal Trade Commission, Appliance Energy Databases for Ceiling Fans (Available at: *http://www.ftc.gov/bcp/conline/edcams/eande/appliances/ceilfan.htm*).

between the bottom of the fan blades and the air velocity sensor heads at a specified vertical distance (43 inches). Based on the materials employed and test quotes from third-party labs, DOE estimates the one-time cost to construct a mechanism to allow for the adjustment of the height of the air velocity sensors is less than $2000. Once the mechanism is constructed, it can be used to test all low-volume ceiling fans, and therefore would not add substantial test cost thereafter.

DOE's proposed test procedure, which would not require use of a test cylinder, also eliminates any potential costs associated with purchasing new test cylinders. If the test procedure required the use of test cylinders, then a new cylinder would be necessary to test any ceiling fan with a diameter that does not correspond to one of the cylinders in a test lab's existing inventory. Based on discussions with third-party testing facilities, DOE estimates that new test cylinders would cost approximately $2000–3000 per cylinder. By not using a cylinder, these costs will be avoided. Not requiring a test cylinder also shortens the test time of DOE's proposed test procedure relative to ENERGY STAR's test procedure for all low-volume ceiling fans, because time is not required to put a test cylinder in place for each test (estimated to take 15 minutes). Additionally, DOE's proposed test procedure only requires 15 minutes of warm up time before testing at low speed compared to 30 minutes in the ENERGY STAR test procedure, further reducing the relative amount of time required for DOE's proposed test procedure by 15 minutes. In total, DOE estimates that the typical time to perform the proposed test procedure will be shorter by 65 minutes compared to ENERGY STAR's test procedure.

The test procedure NOPR proposed to add a requirement for standby-mode testing for ceiling fans with standby functionality. A study performed by Lawrence Berkeley National Laboratory found that 7.4% of low-volume ceiling fans have standby capability.[10] Using the quotes provided by third-party testing facilities, DOE estimates that the standby test for all ceiling fans with standby functionality will cost $200 per basic model.

Based on all of the differences between the test procedure proposed and the ENERGY STAR test procedure, and estimates from third-party testing facilities of the labor costs associated with these differences, DOE estimates that the test procedure proposed for standard, hugger and multi-head ceiling fans will cost $1500 on average per basic model, once the mechanism for the adjustment of the height of the air velocity sensors is constructed. Therefore, DOE estimates that the total weighted average test cost for the proposed test procedure and standby testing for standard, hugger and multi-head ceiling fans will be $1515. For multi-mount ceiling fans, DOE estimates that the test cost will be approximately double the cost for standard, hugger and multi-head ceiling fans.

For the approximately 25–35 small business manufacturers of low-volume ceiling fans that DOE identified, the number of basic models produced per manufacturer varies significantly from one to approximately 80. DOE notes that standard, hugger and multi-head ceiling fans represent about 95% of basic models for low-volume ceiling fans and multi-mount ceiling fans represent about 5% of basic models for low-volume ceiling fans. Therefore, based on the test cost per ceiling fan basic model, the weighted average testing cost in the first year would range from approximately $1515 to $127,243 for small manufacturers of ceiling fans. DOE expects this cost to be lower in subsequent years because only new or redesigned ceiling fan models would need to be tested.

The proposed test method for ceiling fans with blade span less than or equal to seven feet is also applicable to high-volume small-diameter ceiling fans. The key differences between the proposed test method for low-volume ceiling fans and high-volume small-diameter ceiling fans are that high-volume small-diameter ceiling fans require testing at only one fan speed instead of two speeds. DOE estimates that the test costs for high-volume small-diameter fans are reduced by $175 per basic model due to testing at one speed. Therefore a typical test for a single-headed high-volume small-diameter ceiling fan would cost approximately $1325 per basic model. DOE did not find accurate data on the percentage of high-volume small-diameter fans with standby capability, though DOE located some high-volume small-diameter fans without standby capability in web searches. To provide a conservative cost estimate, DOE made the assumption that all high-volume small-diameter fans should be tested for standby power. DOE estimates that the total test cost for the proposed test procedure and standby testing for a single-headed high-volume small-diameter ceiling fans will be $1525.

For the approximately 10–15 small business manufacturers of high-volume small-diameter ceiling fans that DOE identified, the number of basic models produced per manufacturer varies significantly from one to approximately 30. Therefore, based on the test cost per ceiling fan basic model, the testing cost in the first year would range from approximately $1525 to $45,750 for small manufacturers of high-volume small-diameter ceiling fans. DOE expects this cost to be lower in subsequent years because only new or redesigned ceiling fan models would need to be tested.

DOE estimated the cost to test a high-volume large-diameter ceiling fan based on discussions with testing facilities capable of performing the AMCA 230 test procedure as well as cost estimates based on the time and labor costs necessary to perform the proposed test procedure on high-volume large-diameter ceiling fans. DOE estimates that the one-time cost for a lab to buy a load-cell, a fabricated load-cell frame, power meter, and one air velocity sensor is approximately $4500. DOE estimates that the test procedure proposed in this SNOPR for high-volume large-diameter ceiling fans will cost manufacturers on average $7500 per basic model. Hence, DOE estimates that the total test cost for the proposed test procedure and standby testing for a high-volume large-diameter ceiling fans will be $7,700.

For the approximately 5–10 small business manufacturers of high-volume large-diameter ceiling fans that DOE identified, the number of basic models produced per manufacturer varies from one to 30. Therefore, based on the test cost per ceiling fan basic model, the testing cost in the first year would range from approximately $7700 to $231,000 for small manufacturers of high-volume large-diameter ceiling fans. DOE expects this cost to be lower in subsequent years because only new or redesigned ceiling fan models would need to be tested.

DOE used company reports from Hoovers.com, information from manufacturers' Web sites and feedback from manufacturers to estimate the revenue for the small business manufacturers of low and high-volume ceiling fans identified. The median revenue of the small business manufacturers of low-volume ceiling fans is approximately $15M. Relative to the median revenue for a small business manufacturer, the total testing cost ranges from 0.01 percent to 0.85 percent of the median revenue. The median revenue of the small business manufacturers of high-volume small-

[10] Kantner, C. L. S., S. J. Young, S. M. Donovan, and K. Garbesi. *Ceiling Fan and Ceiling Fan Light Kit Use in the U.S.—Results of a Survey on Amazon Mechanical Turk.* 2013. Lawrence Berkeley National Laboratory: Berkeley, CA. Report No. LBNL–6332E. *http://www.escholarship.org/uc/item/3r67c1f9.*

diameter ceiling fans is approximately $11M. Relative to the median revenue for a small business manufacturer of high-volume ceiling fans, the total testing cost ranges from 0.01 percent to 0.42 percent of the median revenue. The median revenue of the small business manufacturers of high-volume large-diameter ceiling fans is approximately $9M. Relative to the median revenue for a small business manufacturer of high-volume ceiling fans, the total testing cost ranges from 0.09 percent to 2.6 percent of the median revenue.

For both low and high-volume ceiling fans, DOE does not expect that small manufacturers would necessarily have fewer basic models than large manufacturers, because ceiling fans are highly customized throughout the industry. A small manufacturer could have the same total cost of testing as a large manufacturer, but this cost would be a higher percentage of a small manufacturer's annual revenues. DOE requests comments on its analysis of burden to small businesses for testing ceiling fans according to the proposed test procedure.

(5) Relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

DOE is not aware of any other Federal rules that would duplicate, overlap or conflict with the rule being proposed.

(6) Description of any significant alternatives to the proposed rule.

DOE considered a number of industry and governmental test procedures that measure the efficiency of ceiling fans to develop the proposed test procedure in this rulemaking. There appear to be two common approaches to testing ceiling fans: An approach based on using air velocity sensors to calculate airflow, such as the current DOE test procedure for ceiling fans, ENERGY STAR's test procedure, and CAN/CSA–C814–10, and an approach based on using a load cell to measure thrust, such as AMCA 230.

In principle, either approach could be used to measure the airflow efficiency of all ceiling fans, but maintaining consistency with industry practice would minimize test burden for all ceiling fan manufacturers. Though a load-cell based approach appears to be a potentially simpler method of estimating airflow efficiency, in industry, low-volume ceiling fans have historically been tested according to the air-velocity sensor based approach. High-volume large-diameter ceiling fans, on the other hand, have historically been tested according to the load-cell based approach. It also appears to be cost-prohibitive to scale up the air-velocity sensor based approach to the high-volume large-diameter ceiling fans currently on the market given the number of sensors that would be required to cover ceiling fans 24 feet in diameter and the cost of constructing an appropriate rotating sensor arm.

DOE seeks comment and information on any alternative test methods that, consistent with EPCA requirements, would reduce the economic impact of the rule on small entities. DOE will consider the feasibility of such alternatives and determine whether they should be incorporated into the final rule.

C. Review Under the Paperwork Reduction Act of 1995

All collections of information from the public by a Federal agency must receive prior approval from OMB. DOE has established regulations for the certification and recordkeeping requirements for covered consumer products and industrial equipment. 10 CFR part 429, subpart B. Currently, the certification requirement for ceiling fans only addresses design standards.[11] In an application to renew the OMB information collection approval for DOE's certification and recordkeeping requirements, DOE included an estimated burden for manufacturers of ceiling fans in case DOE ultimately issues a coverage determination and sets energy conservation standards for these products. OMB has approved the revised information collection for DOE's certification and recordkeeping requirements. 80 FR 5099 (January 30, 2015). DOE estimated that it will take each respondent approximately 30 hours total per company per year to comply with the certification and recordkeeping requirements based on 20 hours of technician/technical work and 10 hours clerical work to actually submit the Compliance and Certification Management System (CCMS) templates. This rulemaking would include recordkeeping requirements on manufacturers that are associated with executing and maintaining the test data for these products. DOE notes that the certification requirements would be established in a final rule establishing energy conservation standards for ceiling fans. DOE recognizes that recordkeeping burden may vary substantially based on company preferences and practices. DOE requests comment on this burden estimate.

[11] DOE collects fan performance information through its Compliance Certification Management System (CCMS) on behalf of the Federal Trade Commission (FTC); however, that data collection is covered under an OMB Control Number issued to FTC.

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for ceiling fans. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would amend the existing test procedures without affecting the amount, quality, or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. (65 FR 13735 (Mar. 14, 2000)). DOE has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE

for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and tentatively determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)). The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. (62 FR 12820 (Mar. 18, 1997)). (This policy is also available at *http://energy.gov/gc/office-general-counsel.*) DOE examined this proposed rule according to UMRA and its statement of policy and has tentatively determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (Mar. 18, 1988), DOE has determined that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action to amend the test procedure for measuring the energy efficiency of ceiling fans is not a significant regulatory action under Executive Order 12866 or any successor order. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects for this rulemaking.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101 *et seq.*), DOE must comply with all laws applicable to the former Federal Energy Administration, including section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must

inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the FTC concerning the impact of the commercial or industry standards on competition.

This proposed rule would incorporate testing methods contained in the following commercial standard: ANSI/AMCA Standard 230–12, ''Laboratory Methods of Testing Air Circulating Fans for Rating and Certification.'' The Department has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA, (*i.e.,* that it was developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairman of the FTC concerning the impact on competition of requiring manufacturers to use the test methods contained in this standard prior to prescribing a final rule.

M. Description of Material Incorporated by Reference

In this SNOPR, DOE proposes to incorporate by reference the test standard published by ANSI/AMCA, titled ''Air Movement and Control Association Laboratory Methods of Testing Air Circulating Fans for Rating and Certification,'' ANSI/AMCA 230–12. ANSI/AMCA 230–12 is an industry accepted test standard that specifies test methods for ceiling fans with blade spans less than six feet (and other air circulating fans) and is applicable to products sold in North America. The test procedures proposed in this SNOPR reference ANSI/AMCA 230–12 for the test apparatus and instructions for testing ceiling fans, as specified in Section 3 (''Units of Measurement''), Section 4 (''Symbols and Subscripts''), Section 5 (''Definitions''), Section 6 (''Instruments and Methods of Measurement''), and Section 7 (''Equipment and Setups'') of ANSI/AMCA 230–12. ANSI/AMCA 230–12 is readily available on AMCA's Web site at *http://www.amca.org/store/.*

DOE also proposes to incorporate by reference the test standard published by IEC, titled ''Household electrical appliances—Measurement of standby power,'' IEC 62301 (Edition 2.0). IEC 62301 is an industry accepted test standard that specifies methods for measuring the standby mode power of electrical products and is applicable to products sold in North America. The test procedures proposed in this SNOPR reference sections of IEC 62301 that address test conditions and procedures for measuring the standby mode power of ceiling fans capable of standby mode operation. IEC 62301 is readily available on IEC's Web site at *http://webstore.iec.ch/.*

V. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this SNOPR.

Submitting comments via regulations.gov. The regulations.gov Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (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.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are written in English, free of any defects or viruses, and not secured. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 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 two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether

and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

B. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. Instead of specifically defining ''air circulator'' and exempting air circulators from the test procedure, DOE proposes to not subject a ceiling fan to the test procedure if the plane of rotation of the ceiling fan's blades cannot be within 45 degrees of horizontal. DOE requests comment on this approach.

2. DOE seeks comment on its proposal to test high-volume small-diameter ceiling fans based on the low-volume ceiling fans test procedures proposed in the NOPR, with the distinction that high-volume small-diameter ceiling fans would be tested at only high speed.

3. DOE seeks comment and any available data on average daily hours of use, fan speeds utilized, and fraction of time spent at each speed for high-volume small-diameter ceiling fans.

4. DOE seeks comment on the percentage of high-volume small diameter ceiling fans that come with standby capability.

5. DOE seeks comment on its proposal to mount all ceiling fans with blade spans less than or equal to seven feet to the real ceiling during testing.

6. DOE seeks comment on its proposal to test all ceiling fans with blade spans greater than seven feet at five equally-spaced speeds, specifically 20%, 40%, 60%, 80% and 100% of maximum speed achievable. DOE also specifically seeks information on whether there are any ceiling fans with blade spans greater than seven feet for which the proposed test procedure in this SNOPR could not be applied (*i.e.,* any ceiling fans larger than seven feet in diameter that could not achieve the five speeds specified).

7. DOE seeks comment on the proposed daily hours of use for ceiling fans larger than seven feet in diameter.

8. DOE seeks comment on its proposal to harmonize the test room dimensions for testing high-volume large-diameter ceiling fans with the dimensions expected to be set forth in an updated version of AMCA 230.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects

10 CFR Part 429

Confidential business information, Energy conservation, Household appliances, Imports, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on May 26, 2015.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to amend parts 429 and 430 of Chapter II, Subchapter D of Title 10, Code of Federal Regulations, as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 429.32 is amended by revising paragraph (a) to read as follows:

§ 429.32 Ceiling fans.

(a) *Determination of represented value.* Manufacturers must determine the represented value, which includes the certified rating, for each basic model of ceiling fan by testing, in conjuction with the following sampling provisions:

(1) The requirements of § 429.11 are applicable to ceiling fans; and

(2) For each basic model of ceiling fan selected for testing, a sample of sufficient size shall be randomly selected and tested to ensure that—

(i) Any represented value of the efficiency or airflow shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

And $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the i^{th} sample; or

(B) The lower 90 percent confidence limit (LCL) of the true mean divided by 0.9, where:

$$LCL = \bar{x} - t_{0.90}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.90}$ is the t statistic for a 90% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A to this subpart); and

(ii) Any represented value of the wattage shall be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

And $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the i^{th} sample; or

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.1, where:

$$UCL = \bar{x} + t_{0.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A to this subpart).

* * * * *

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 3. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 4. Section 430.2 is amended by adding the definitions for ''High-volume ceiling fan,'' ''Hugger ceiling fan,'' ''Low-volume ceiling fan,'' ''Multi-mount ceiling fan,'' and ''Standard ceiling fan'' in alphabetical order to read as follows:

§ 430.2 Definitions.

* * * * *

High-volume ceiling fan means a ceiling fan that:

(1) Is greater than 7 feet in diameter; or

(2) Has a blade thickness of less than 3.2 mm at the edge or a maximum tip speed that exceeds the threshold in the table in the definition of low-volume ceiling fan in this section and has a maximum airflow volume greater than 5,000 CFM.

* * * * *

Hugger ceiling fan means a ceiling fan where the lowest point on the fan blades is no more than ten inches from the ceiling.

* * * * *

Low-volume ceiling fan means a ceiling fan that:

(1) Is less than or equal to 7 feet in diameter; and

(2) Has a blade thickness greater than or equal to 3.2 mm at the edge and a maximum tip speed less than or equal to the limit in the table in this definition, or has a maximum airflow volume less than or equal to 5,000 CFM.

LOW-VOLUME CEILING FANS, 7 FEET OR LESS IN DIAMETER

Airflow direction	Thickness (t) of edges of blades		Maximum speed at tip of blades	
	mm	inch	m/s	feet per minute
Downward-only	4.8 > t ≥ 3.2	3/16 > t ≥ 1/8	16.3	3,200
Downward-only	t ≥ 4.8	t ≥ 3/16	20.3	4,000
Reversible	4.8 > t ≥ 3.2	3/16 > t ≥ 1/8	12.2	2,400
Reversible	t ≥ 4.8	t ≥ 3/16	16.3	3,200

* * * * *

Multi-mount ceiling fan means a ceiling fan that can be mounted in both the standard and hugger ceiling fan configurations.

* * * * *

Standard ceiling fan means a ceiling fan where the lowest point on the fan blades is more than ten inches from the ceiling.

* * * * *

■ 5. Section 430.3 is amended by:

■ a. Adding paragraph (d)(20); and

■ b. Removing in paragraph (p)(4), ''and X to subpart B'' and adding in its place, ''U, and X to subpart B of this part''.

The addition reads as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(d) * * *

(20) ANSI/AMCA 230–12 (''AMCA 230''), Air Movement and Control Association Laboratory Methods of Testing Air Circulating Fans for Rating and Certification, approved February 22, 2012, IBR approved for appendix U to subpart B of this part.

* * * * *

■ 6. Section 430.23 is amended by revising paragraph (w) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(w) *Ceiling fans.* The efficiency of a ceiling fan, expressed in cubic feet per minute per watt (CFM/watt), shall be measured in accordance with sections 2.3, 2.5, 2.6 and 3 of appendix U to this subpart.

* * * * *

■ 7. Appendix U to subpart B of part 430 is revised to read as follows:

Appendix U to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Ceiling Fans

Prior to [DATE 180 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], manufacturers must make any representations with respect to the energy use or efficiency of ceiling fans, except hugger ceiling fans, multi-mount ceiling fans in the hugger configuration, and high-volume ceiling fans, as defined in 10 CFR 430.2 in accordance with the results of testing pursuant to this appendix or the procedures in appendix U as it appeared at 10 CFR part 430, subpart B, appendix U, in the 10 CFR parts 200 to 499 edition revised as of January 1, 2015. On or after [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE], manufacturers of ceiling fans must make any representations with respect to energy use or efficiency in accordance with the results of testing pursuant to this appendix.

1. Definitions:

1.1. *Airflow* means the rate of air movement at a specific fan-speed setting expressed in cubic feet per minute (CFM).

1.2. *Ceiling fan efficiency* means the ratio of the total airflow to the total power consumption, in units of cubic feet per minute per watt (CFM/W).

1.3. *High speed* means the highest available ceiling fan speed.

1.4. *20% speed* means the ceiling fan speed at which the blade revolutions per minute (RPM) are measured to be 20% of the blade RPM measured at high speed.

1.5. *40% speed* means the ceiling fan speed at which the blade RPM are measured to be 40% of the blade RPM measured at high speed.

1.6. *60% speed* means the ceiling fan speed at which the blade RPM are measured to be 60% of the blade RPM measured at high speed.

1.7. *80% speed* means the ceiling fan speed at which the blade RPM are measured to be80% of the blade RPM measured at high speed.

1.8. *Low speed* means the lowest available ceiling fan speed.

1.9. *Multi-head ceiling fan* means a ceiling fan with more than one fan head, *i.e.,* more than one set of rotating fan blades.

1.10. *Total airflow* means the sum of the product of airflow and hours of operation at all tested speeds.

2. General Instructions, Test Apparatus, and Test Measurement:

General instructions apply to characterizing the energy performance of both low-volume and high-volume ceiling fans. The test apparatus and test measurement used to characterize energy performance depend on the ceiling fan's blade span and, if the blade span is less than or equal to seven feet, whether the ceiling fan is low-volume or high-volume. If the plane of rotation of a ceiling fan's blades is not less than or equal to 45 degrees from horizontal, or cannot be adjusted based on the manufacturer's specifications to be less than or equal to 45 degrees from horizontal, the ceiling fan is not subject to these test procedures.

2.1. General instructions

Record measurements at the resolution of the test instrumentation. Round off calculations to the same number of significant digits as the previous step. Round the final ceiling fan efficiency value to the nearest whole number as follows:

2.1.1. A fractional number at or above the midpoint between the two consecutive whole numbers shall be rounded up to the higher of the two whole numbers; or

2.1.2. A fractional number below the midpoint between the two consecutive whole numbers shall be rounded down to the lower of the two whole numbers.

For multi-head ceiling fans, the effective blade span is the blade span of an individual fan head, if all fan heads are the same size. If the fan heads are of varying sizes, the effective blade span is the blade span of the largest fan head.

2.2. Test apparatus for ceiling fans with a blade span less than or equal to seven feet:

All instruments are to have tolerances within ±1% of reading, except for the air velocity sensors, which should have tolerances within ±5% of reading. Equipment is to be calibrated at least once a year to compensate for variation over time.

2.2.1. *Air Delivery Room Requirements*

The air delivery room dimensions are to be 20 ±0.75 ft. × 20 ±0.75 ft. with an 11 ±0.75 ft. high ceiling. The control room shall be constructed external to the air delivery room.

The ceiling shall be constructed of sheet rock or stainless plate. The walls shall be of adequate thickness to maintain the specified temperature and humidity during the test. The paint used on the walls, as well as the wall material, must be of a type that minimizes absorption of humidity and that keeps the temperature of the room constant during the test (*e.g.,* oil-based paint).

The room shall have no ventilation other than an air conditioning and return system used to control the temperature and humidity of the room. The construction of the room must ensure consistent air circulation patterns within the room. Vents must have electronically-operated damper doors controllable from a switch outside of the testing room.

2.2.2. *Equipment Set-Up*

Hang the ceiling fan to be tested directly from the ceiling, according to the manufacturer's installation instructions. All standard and hugger ceiling fans shall be hung in the fan configuration that minimizes the distance between the ceiling and the fan blades. Multi-mount fans shall be hung and tested in two configurations: In the configuration that meets the definition of a standard ceiling fan, while minimizing the distance the ceiling and the lowest part of the fan blades; and in the configuration that meets the definition of a hugger ceiling fan, while minimizing the distance between the ceiling and the lowest part of the fan blades.

With the ceiling fan installed, adjust the height of the air velocity sensors to ensure the vertical distance between the lowest point on the ceiling fan blades and the air velocity sensors is 43 inches.

Either a rotating sensor arm or four fixed sensor arms can be used to take airflow measurements along four axes, labeled A–D. Axes A, B, C, and D are at 0, 90, 180, and 270 degree positions. Axes A–D can be designated either by using the four walls or four corners of the room. See Figure 1 of this appendix.

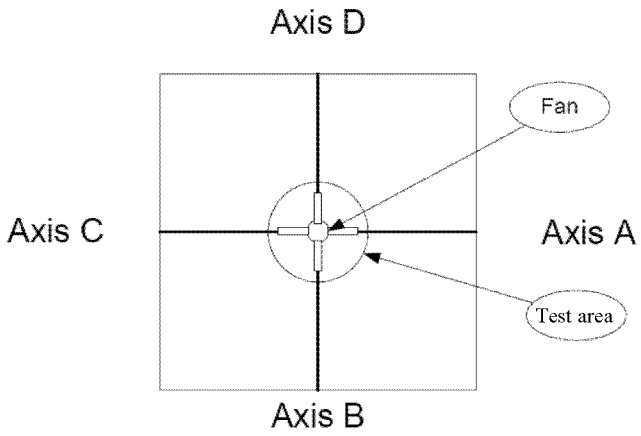

Figure 1 to Appendix U to Subpart B of Part 430: Testing Room and Sensor Arm Axes

The amount of exposed wiring must be minimized. All sensor lead wires must be stored under the floor, if possible.

The sensors shall be placed at exactly 4-inch intervals along a sensor arm, starting with the first sensor at the point where the four axes intersect. Do not touch the actual sensor prior to testing. Enough sensors shall be used to record air delivery within a circle 8 inches larger in diameter than the blade span of the ceiling fan being tested. A proper experimental set-up is shown in Figure 2 of this appendix.

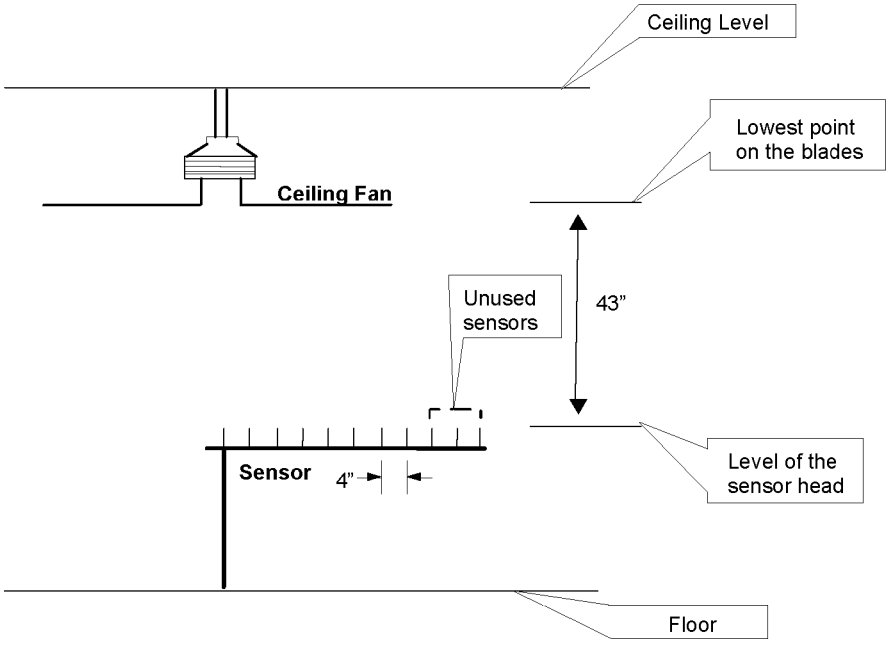

Figure 2 to Appendix U to Subpart B of Part 430: Air Delivery Room Set-Up for Ceiling Fans with Blade Spans Less than or Equal to Seven Feet

Table 1 of this appendix shows the appropriate number of sensors needed per each of four axes (including the first sensor at the intersection of the axes) for each fan size.

TABLE 1 TO APPENDIX U TO SUBPART B OF PART 430: SENSOR SELECTION GUIDE

Fan blade span * (inches)	Number of sensors
36	6
42	7
44	7
48	7
52	8
54	8
56	8
60	9
72	10

* The fan sizes listed are intended simply to be illustrative and do not restrict which ceiling fan sizes can be tested.

An RPM (revolutions per minute) meter, or tachometer, should be installed so that the RPM of the ceiling fan blades can be measured during testing.

Use an RMS sensor capable of measuring power with an accuracy of ±1% to measure ceiling fan power consumption. Prior to testing, the test laboratory must verify the performance of the sensor and sensor software to be used during the test.

2.2.3. *Multi-Head Ceiling Fan Test Set-Up*

Multi-headed ceiling fans are to be hung from the ceiling such that one of the ceiling fan heads is directly over sensor 1 (*i.e.,* at the intersection of axes A, B, C, and D). The distance between the lowest point on the fan blades of the centered fan head and the air velocity sensors is to be such that it is the same as for all other low-volume ceiling fans (see Figure 2 of this appendix). Switching on only the centered fan head, the airflow measurements are to be made in the same manner as for all other ceiling fans with blade spans less than or equal to seven feet. The power consumption measurements are to be made separately, with all fan heads on.

2.2.4. *Test Set-Up for Ceiling Fans with Airflow Not Directly Downward*

For ceiling fans where the airflow is not directly downward, the ceiling fan head is to be adjusted such that the airflow is as vertical as possible prior to testing. The distance between the lowest point on the blades and the air velocity sensors should be the same as for all other low-volume ceiling fans (43 inches). For ceiling fans where a fully vertical orientation of airflow cannot be achieved, the ceiling fan is to be oriented such that any remaining tilt is aligned along one of the four sensor axes. Instead of measuring the air velocity for only those sensors directly beneath the ceiling fan, the air velocity is to be measured at all sensors along that axis, as well as the axis oriented 180 degrees with respect to that axis. For example, if the tilt is oriented along axis A, air velocity measurements are to be taken for all sensors along the A–C axis. No measurements would need to be taken along the B–D axis in this case.

2.3. Active mode test measurement for ceiling fans with blade spans less than or equal to seven feet.

2.3.1. *Test conditions to be followed when testing:*

- The temperature and humidity setting shall be 76 degrees ±2 degrees Fahrenheit and 50% ±5% relative humidity. These shall be held constant during the entire test process.
- Allow the sensors to be turned on and the fan to run for 15 minutes at each fan speed/setting before taking readings.
- If present, the ceiling fan light fixture is to be installed but turned off during testing.
- If present, any heater is to be installed but turned off during testing.
- The tests shall be conducted with the fan connected to a supply circuit with a voltage of (a) 120 V for fans rated on the nameplate from 105 to 125 V; and (b) 240 V for fans rated on the nameplate from 208 to 250 V. The test voltage shall not vary by more than ±1% during the tests.
- The test shall be conducted with the fan connected to a supply circuit at the rated frequency.
- Air conditioning vents shall be closed during testing.

2.3.2. *Airflow and Power Consumption Testing Procedure:*

Measure the airflow (CFM) and power consumption (watt) for low-volume ceiling fans at high and low speed. For high-volume ceiling fans with blade spans less than or equal to seven feet, measure the airflow and power consumption only at high speed.

Step 1: Make sure the transformer power is off. Hang fan and connect wires as directed by manufacturer's wiring instructions. *Note:* Assemble fan prior to the test; lab personnel must follow the instructions provided by the fan manufacturer. The fan blade assembly shall be balanced in accordance with the manufacturer's instructions to avoid excessive vibration of the motor assembly (at any speed) during operation.

Step 2: Adjust the height of the air-velocity sensors such that the lowest point on the fan blades is 43 inches above the height of the sensor heads.

Step 3: Set the first sensor arm (if using four fixed arms) or single sensor arm (if using a single rotating arm) to the 0 degree Position (Axis A). If necessary, use marking as reference. If using a single rotating arm, adjust the sensor arm alignment until it is at the 0 degree position by remotely controlling the antenna rotator.

Step 4: Set software up to read and record air velocity, expressed in feet per minute (FPM) in 1 second intervals. (Temperature does not need to be recorded in 1 second intervals.) Record current barometric pressure.

Step 5: Allow test fan to run 15 minutes at rated voltage and at high speed. Turn off all environmental conditioning equipment entering the chamber (*e.g.,* air conditioning), close all doors and vents, and wait an additional 3 minutes prior to starting test session.

Step 6: Begin recording readings. Take 100 readings (100 seconds run-time) and save these data.

Step 7: Similarly, take 100 readings (100 seconds run-time) for Axes B, C, and D; save these data as well. If using four fixed sensor arms, the readings for all sensor arms should be taken simultaneously.

Step 8: Repeat steps 3 through 7 above on low fan speed for low-volume ceiling fans. Note: Ensure that temperature and humidity readings are held within the required tolerances for the duration of the test (all tested speeds). It may be helpful to turn on environmental conditioning equipment between test sessions to ready the room for the following speed test.

Step 9: If testing a multi-mount ceiling fan, repeat steps 1 through 8 with the ceiling fan hung in the configuration (either hugger or standard) not already tested.

If a multi-head ceiling fan includes more than one type of ceiling fan head, then test at least one of each unique type. A fan head with different construction that could affect air movement or power consumption, such as housing, blade pitch, or motor, would constitute a different type of fan head.

Measure power input at a point that includes all power-consuming components of the ceiling fan (but without any attached light kit or heater energized). Measure power continuously at the rated voltage that represents normal operation over the time period for which the airflow test is conducted for each speed, and record the average value of the power measurement at that speed in watts (W).

Measure ceiling fan power consumption simultaneously with the airflow test, except for multi-head ceiling fans. For multi-head ceiling fans, measure power consumption at each speed continuously for 100 seconds with all fan heads turned on, and record the average value at each speed in watts (W).

2.4. Test apparatus for ceiling fans with blade spans greater than seven feet:

The test apparatus and instructions for testing ceiling fans with blade spans greater than seven feet shall conform to the requirements specified in Section 3 (''Units of Measurement''), Section 4 (''Symbols and Subscripts''), Section 5 (''Definitions''), Section 6 (''Instruments and Methods of Measurement''), and Section 7 (''Equipment and Setups'') of the Air Movement and Control Association (AMCA) International's ''AMCA 230: *Laboratory Methods of Testing Air Circulating Fans for Rating and Certification,''* February 22, 2012 (incorporated by reference, see § 430.3), with the following modifications:

2.4.1. The test procedure is applicable to ceiling fans up to 24 feet in diameter.

2.4.2. A ''ceiling fan'' is defined as in § 430.2.

2.4.3. For all ceiling fans, the minimum distance between the ceiling and the blades of a ceiling fan being tested is 40% of the ceiling fan blade span.

2.4.4. For all ceiling fans, the minimum distance between the floor and the blades of a ceiling fan being tested is the larger of: 1) 80% of the ceiling fan blade span, and 2) 15 feet.

2.4.5. For all ceiling fans, the minimum distance between the centerline of a ceiling fan being tested and walls and/or large obstructions is 150% of the ceiling fan blade span.

2.5. Active mode test measurement for ceiling fans with blade spans greater than seven feet:

Calculate the airflow (CFM) and measure the power consumption (watt) for ceiling fans at high speed, 80% speed, 60% speed, 40% speed, and 20% speed. When testing at speeds other than high speed (*i.e.,* X% speed where X is 80. 60, 40, or 20), ensure the average measured RPM corresponds to X% ± 1% of the average RPM at high speed (*e.g.,* For testing at 80% speed, the average measured RPM should be between 79% and 81% of the average measured RPM during testing at high speed). If the average measured RPM falls outside of this tolerance, adjust the ceiling fan speed and repeat the test. Calculate the airflow and measure the power consumption in accordance with the test requirements specified in Section 8 (''Observations and Conduct of Test'') and Section 9 (''Calculations'') of AMCA 230 (incorporated by reference, see § 430.3), with the following modifications:

2.5.1. Measure power consumption at a point that includes all power-consuming components of the ceiling fan (but without any attached light kit or heater energized).

2.5.2. Measure power consumption continuously at the rated voltage that represents normal operation over the time period for which the load differential test is conducted.

2.6. Test measurement for standby power consumption

Standby power consumption must be measured for all ceiling fans that offer one or more of the following user-oriented or protective functions:

- The ability to facilitate the activation or deactivation of other functions (including active mode) by remote switch (including remote control), internal sensor, or timer.
- Continuous functions, including information or status displays (including clocks), or sensor-based functions.

Standby power consumption must be measured after completion of active mode testing and after the active mode functionality has been switched off (*i.e.,* the rotation of the ceiling fan blades is no longer energized). The ceiling fan must remain connected to the main power supply and be in the same configuration as in active mode (*i.e.,* any ceiling fan light fixture should still be attached). Measure standby power consumption according to IEC 62301 (incorporated by reference, see § 430.3) with the following modifications:

2.6.1. Allow 3 minutes between switching off active mode functionality and beginning the standby power test. (No additional time before measurement is required.)

2.6.2. Measure power consumption continuously for 100 seconds, and record the average value of the standby power measurement in watts (W).

3. Calculation of Ceiling Fan Efficiency from the Test Results:

The efficacy of a ceiling fan is the *ceiling fan efficiency* (as defined in section 1 of this appendix). Two ceiling fan efficiencies will be calculated for low-volume multi-mount ceiling fans: One efficiency will correspond to the ceiling fan being mounted in the hugger configuration, and the other efficiency will correspond to the ceiling fan being mounted in the standard configuration.

Using the airflow and power consumption measurements from section 2 (high and low speed for low-volume ceiling fans, only high speed for high-volume ceiling fans with blade spans less than or equal to seven feet) and section 3 (for all tested settings for ceiling fans with blade spans greater than seven feet) calculate the efficiency for any ceiling fan as follows:

$$Ceiling\ Fan\ Efficiency\ (CFM/W) = \frac{\sum_i (CFM_i \times OH_i)}{W_{Sb} \times OH_{Sb} + \sum_i (W_i \times OH_i)} \qquad \textbf{Eq. 1}$$

Where:

CFM_i = airflow at speed *i*,
OH_i = operating hours at speed *i*,
W_i = power consumption at speed *i*,
OH_{Sb} = operating hours in standby mode, and
W_{Sb} = power consumption in standby mode.

Table 2 of this appendix specifies the daily hours of operation to be used in calculating ceiling fan efficiency:

TABLE 2 TO APPENDIX U TO SUBPART B OF PART 430: DAILY OPERATING HOURS FOR CALCULATING CEILING FAN EFFICIENCY

	No standby	With standby
Daily Operating Hours for Low-Volume Ceiling Fans		
High Speed	4.2	4.2
Low Speed	2.2	2.2
Standby Mode	0.0	17.6
Off Mode	17.6	0.0
Daily Operating Hours for High-Volume Ceiling Fans With Blade Spans Less Than or Equal to Seven Feet		
High Speed	12.0	12.0
Standby Mode	0.0	12.0
Off Mode	12.0	0.0
Daily Operating Hours for Ceiling Fans With Blade Spans Greater Than Seven Feet		
High Speed	1.8	1.8
80% Speed	3.5	3.5
60% Speed	3.6	3.6
40% Speed	2.0	2.0
20% Speed	4.1	4.1
Standby Mode	0.0	9.0
Off Mode	9.0	0.0

The effective area corresponding to each sensor used in the test method for ceiling fans with blade spans less than or equal to seven feet is to be calculated with the following equations:

For sensor 1, the sensor located directly underneath the center of the ceiling fan, the effective width of the circle is 2 inches, and the effective area is:

$$Effective\ Area\ (sq.ft.) = \pi\left(\frac{2}{12}\right)^2 = 0.0873 \qquad \textbf{Eq. 2}$$

For the sensors between sensor 1 and the last sensor used in the measurement, the effective area has a width of 4 inches. If a sensor is a distance *d*, in inches, from sensor 1, then the effective area is:

$$Effective\ Area\ (sq.ft.) = \pi\left(\frac{d+2}{12}\right)^2 - \pi\left(\frac{d-2}{12}\right)^2 \qquad \textbf{Eq. 3}$$

For the last sensor, the width of the effective area depends on the horizontal displacement between the last sensor and the point on the ceiling fan blades furthest radially from the center of the fan. The total area included in an airflow calculation is the area of a circle 8 inches larger in diameter than the ceiling fan blade span.

Therefore, for example, for a 42-inch ceiling fan, the last sensor is 3 inches beyond the end of the ceiling fan blades. Because only the area within 4 inches of the end of the ceiling fan blades is included in the airflow calculation, the effective width of the circle corresponding to the last sensor would be 3 inches. The calculation for the effective area corresponding to the last sensor would then be:

$$Effective\ Area\ (sq.ft.) = \pi\left(\frac{d+1}{12}\right)^2 - \pi\left(\frac{d-2}{12}\right)^2 = \pi\left(\frac{24+1}{12}\right)^2 - \pi\left(\frac{24-2}{12}\right)^2 = 3.076 \qquad \textbf{Eq. 4}$$

For a 46-inch ceiling fan, the effective area of the last sensor would have a width of 5 inches, and the effective area would be:

$$Effective\ Area\ (sq.ft.) = \pi\left(\frac{d+3}{12}\right)^2 - \pi\left(\frac{d-2}{12}\right)^2 = \pi\left(\frac{24+3}{12}\right)^2 - \pi\left(\frac{24-2}{12}\right)^2 = 5.345 \qquad \textbf{Eq. 5}$$

3.1.1. *Ceiling fan efficiency calculations for multi-head ceiling fans*

To determine the airflow at a given speed for a multi-head ceiling fan, measure the airflow for each fan head. Repeat for each fan head. Testing of each fan head is not required if the fan heads are essentially identical (*i.e.,* do not have differences in construction such as housing, blade pitch, or motor could affect air movement or power consumption); instead, the measurements for one fan head can be used for each essentially identical fan head. Sum the measured airflow for each fan head included in the ceiling fan. The power consumption is the measured power consumption with all fan heads on.

Using the airflow and power consumption measurements from section 2 of this appendix, calculate ceiling fan efficiency for a multi-head ceiling fan as follows:

$$Ceiling\ Fan\ Efficiency\ (CFM/W) = \frac{\sum_i (CFM_i \times OH_i)}{W_{Sb} \times OH_{Sb} + \sum_i (W_i \times OH_i)} \qquad \textbf{Eq. 1}$$

Where:

CFM_i = sum of airflow at a given speed for each head,

OH_i = operating hours at a given speed,

W_i = total power consumption at a given speed,

OH_{Sb} = operating hours in standby mode, and

W_{Sb} = power consumption in standby mode.

3.1.2. *Ceiling fan efficiency calculations for ceiling fans with airflow not directly downward*

Using a set of sensors that cover the same diameter as if the airflow were directly downward, the airflow at each speed should be calculated based on the continuous set of sensors with the largest air velocity measurements. This continuous set of sensors should be along the axis that the ceiling fan tilt is directed in (and along the axis that is 180 degrees from the first axis). For example, a 42-inch fan tilted toward axis A may create the pattern of air velocity shown in Figure 3 of this appendix. As shown in Table 1 of this appendix, a 42-inch fan would normally require 7 active sensors. However because the fan is not directed downward, all sensors must record data. In this case, because the set of sensors corresponding to maximum air velocity are centered 3 sensor positions away from the sensor 1 along the A axis, substitute the air velocity at A axis sensor 4 for the average air velocity at sensor 1. Take the average of the air velocity at A axis sensors 3 and 5 as a substitute for the average air velocity at sensor 2, take the average of the air velocity at A axis sensors 2 and 6 as a substitute for the average air velocity at sensor 3, etc. Lastly, take the average of the air velocities at A axis sensor 10 and C axis sensor 4 as a substitute for the average air velocity at sensor 7. Any air velocity measurements made along the B–D axis are not included in the calculation of average air velocity.

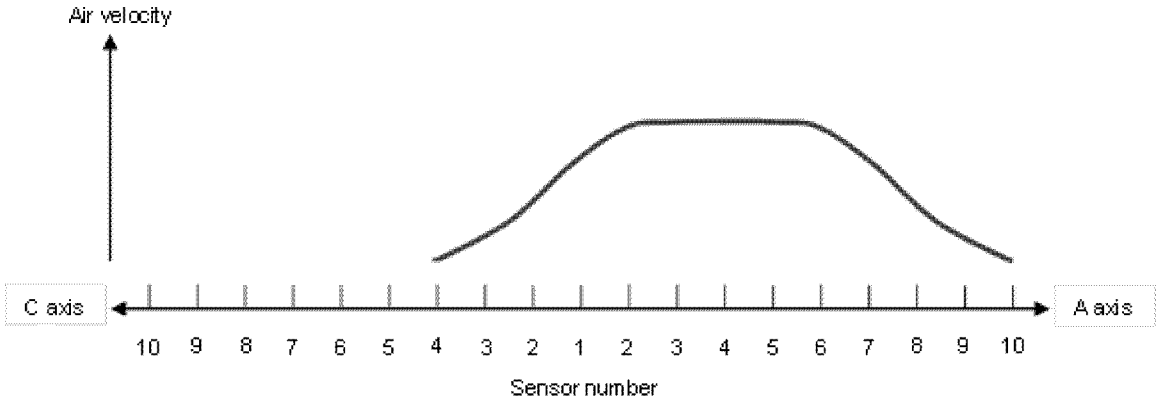

Figure 3: Example Air Velocity Pattern for Airflow Not Directly Downward

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BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 734, 740, 750, 764, and 772

[Docket No. 141016858–5228–01]

RIN 0694–AG32

Revisions to Definitions in the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule.

SUMMARY: This proposed rule is part of the Administration's Export Control Reform Initiative. The Initiative will enhance U.S. national and economic security, facilitate compliance with export controls, update the controls, and reduce unnecessary regulatory burdens on U.S. exporters. As part of this effort, this rulemaking proposes revisions to the Export Administration Regulations (EAR) to include the definitions of ''technology,'' ''required,'' ''peculiarly responsible,'' ''proscribed person,'' ''published,'' results of ''fundamental research,'' ''export,'' ''reexport,'' ''release,'' ''transfer,'' and ''transfer (in-country)'' to enhance clarity and consistency with terms also found on the International Traffic in Arms Regulations (ITAR), which is administered by the Department of State, Directorate of Defense Trade Controls (DDTC). This rulemaking also proposes amendments to the Scope part of the EAR to update and clarify application of controls to electronically transmitted and stored technology and software. DDTC is concurrently publishing comparable proposed amendments to the ITAR's definitions of ''technical data,'' ''required,'' ''peculiarly responsible,'' ''public domain,'' results of ''fundamental research,'' ''export,'' ''reexport,'' ''release,'' and ''retransfer'' for the same reasons. Finally, this rulemaking proposes conforming changes to related provisions.

DATES: Comments must be received by August 3, 2015.

ADDRESSES: Comments may be submitted to the Federal rulemaking portal (*http://www.regulations.gov*). The regulations.gov ID for this proposed rule is: [BIS–2015–0019]. Comments may also be submitted via email to *publiccomments@bis.doc.gov* or on paper to Regulatory Policy Division, Bureau of Industry and Security, Room 2099B, U.S. Department of Commerce, Washington, DC 20230. Please refer to RIN 0694–AG32 in all comments and in the subject line of email comments. All comments (including any personally identifying information) will be made available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT: Hillary Hess, Director, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security at 202–482–2440 or *rpd2@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

This proposed rule is part of the Administration's Export Control Reform (ECR) Initiative. The Initiative will enhance U.S. national and economic security, facilitate compliance with export controls, update the controls, and reduce unnecessary regulatory burdens on U.S. exporters. As part of this effort, this rulemaking proposes revisions to the Export Administration Regulations (EAR) to include the definitions of ''technology,'' ''required,'' ''peculiarly responsible,'' ''proscribed person,'' ''published,'' results of ''fundamental research,'' ''export,'' ''reexport,'' ''release,'' ''transfer,'' and ''transfer (in-country)'' to enhance clarity and ensure consistency with the International Traffic in Arms Regulations (ITAR), which is administered by the Department of State, Directorate of Defense Trade Controls (DDTC). This rulemaking also proposes amendments to the Scope part of the EAR to update and clarify application of controls to electronically transmitted and stored technology and software. The DDTC is concurrently publishing comparable proposed amendments to the ITAR's definitions of ''technical data,'' ''required,'' ''peculiarly responsible,'' ''public domain,'' results of ''fundamental research,'' ''export,'' ''reexport,'' ''release,'' ''transfer,'' and ''transfer (in-country)'' to enhance clarity and ensure consistency with the International Traffic in Arms Regulations (ITAR), which is administered by the Department of State, Directorate of Defense Trade Controls (DDTC). This rulemaking also proposes amendments to the Scope part of the EAR to update and clarify application of controls to electronically transmitted and stored technology and software. The DDTC is concurrently publishing comparable proposed amendments to the ITAR's definitions of ''technical data,'' ''required,'' ''peculiarly responsible,'' ''public domain,'' results of ''fundamental research,'' ''export,'' ''reexport,'' ''release,'' ''transfer,'' and ''transfer (in-country)'' to enhance clarity and ensure consistency with terms also found on the International Traffic in Arms Regulations (ITAR), which is administered by the Department of State, Directorate of Defense Trade Controls (DDTC). This rulemaking also proposes amendments to the Scope part of the EAR to update and clarify application of controls to electronically transmitted and stored technology and software. The DDTC is concurrently publishing comparable proposed amendments to the ITAR's definitions of ''technical data,'' ''required,'' ''peculiarly responsible,'' ''proscribed person,'' ''published,'' results of ''fundamental research,'' ''export,'' ''reexport,'' ''release,'' ''transfer,'' and ''transfer (in-country)'' to enhance clarity and ensure consistency with the International Traffic in Arms Regulations (ITAR), which is administered by the Department of State, Directorate of Defense Trade Controls (DDTC). This rulemaking also proposes amendments to the Scope part of the EAR to update and clarify application of controls to electronically transmitted and stored technology and software. The DDTC is concurrently publishing comparable proposed amendments to the ITAR's definitions of ''technical data,'' ''required,'' ''peculiarly responsible,'' ''public domain,'' results of ''fundamental research,'' ''export,'' ''reexport,'' ''release,'' ''transfer,'' and ''transfer (in-country)'' to enhance clarity and ensure consistency with terms also found on the International Traffic in Arms Regulations (ITAR), which is administered by the Department of State, Directorate of Defense Trade Controls (DDTC). This rulemaking also proposes amendments to the Scope part of the EAR to update and clarify application of controls to electronically transmitted and stored technology and software. DDTC is concurrently publishing comparable proposed amendments to the ITAR's definitions of ''technical data,'' ''required,'' ''peculiarly responsible,'' ''public domain,'' results of ''fundamental research,'' ''export,'' ''reexport,'' ''release,'' and ''retransfer'' for the same reasons. Finally, this rulemaking proposes conforming changes to related provisions.

One aspect of the ECR Initiative includes amending the export control regulations to facilitate enhanced compliance while reducing unnecessary regulatory burdens. For similar national security, foreign policy, including human rights, reasons, the EAR and the ITAR each control, *inter alia,* the export, reexport, and in-country transfer of commodities, products or articles, technology, technical data, software, and services to various destinations, end users, and end uses. The two sets of regulations have been issued pursuant to different statutes, have been administered by different agencies with missions that are distinct from one another in certain respects, and have covered different items (or articles). For those reasons, and because each set of regulations has evolved separately over decades without much coordination between the two agencies regarding

their structure and content, they often use different words, or the same words differently, to accomplish similar regulatory objectives.

Many parties are regulated by both the Commerce Department's EAR and the State Department's ITAR, particularly now that regulatory jurisdiction over many types of military items has been transferred from the ITAR to the EAR. Using common terms and common definitions to regulate the same types of items or actions is intended to facilitate enhanced compliance and reduce unnecessary regulatory burdens. Conversely, if different concerns between the two sets of export control regulations warrant different terms or different controls, then the differences should be clear for the same reason. Such clarity will benefit national security because it will be easier for exporters to know how to comply with the regulations and for prosecutors to be able to prosecute violations of the regulations. Such clarity will also enhance our economic security because it will reduce unnecessary regulatory burdens for exporters when attempting to determine the meaning of key words and phrases across similar sets of regulations. Finally, such harmonization and clarification is a necessary step toward accomplishing one of the ultimate objectives of the ECR initiative, which is the creation of a common export control list and common set of export control regulations.

BIS and DDTC have identified a series of similar terms in the EAR and the ITAR that are defined differently and that warrant either harmonization or the creation of similar structures that would identify more clearly the differences in how similar concepts are treated under the EAR and the ITAR. The proposed revisions to these terms are generally not intended to materially increase or decrease their existing scope. In particular, BIS and DDTC will continue to maintain their long-standing positions that ''published'' (or ''public domain'') information and the results of ''fundamental research'' are excluded from the scope of ''technology'' subject to the EAR and the ITAR's ''technical data.'' Rather, the proposed changes are designed to clarify and update BIS policies and practices with respect to the application of the terms and to allow for their structural harmonization with their counterparts in the ITAR.

Harmonizing definitions does not mean making them identical. For example, under the EAR, technology may be ''subject to'' or ''not subject to the EAR.'' Technical data under the ITAR is subject to those regulations by definition. While the two terms have substantial commonality, they remain different terms used in different ways. This rulemaking proposes that, to the extent possible, similar definitions be harmonized both substantively and structurally. Substantive harmonization will mean using the same words for the same concepts across the two sets of regulations. Structural harmonization will mean setting forth similar definitions in a paragraph order that renders their similarities and differences clearly visible. This structural harmonization may require reserving certain paragraphs in an EAR definition if the corresponding paragraph does not exist in the ITAR definition, or vice versa.

A side-by-side comparison on the regulatory text proposed by both Departments is available on both agencies' Web sites: *www.pmddtc.state.gov* and *www.bis.doc.gov.*

Scope of the Export Administration Regulations

An interim rule entitled ''Export Administration Regulation; Simplification of Export Administration Regulations'' (61 FR 12714) published March 25, 1996, established part 734, Scope of the Export Administration Regulations. The interim rule stated that part 734 ''establishes the rules for determining whether commodities, software, technology, software, and activities of U.S. and foreign persons are subject to the EAR.'' (61 FR at 12716) This rulemaking proposes to streamline and clarify part 734 while retaining its purpose and scope of control.

Items Subject to the EAR

Section 734.2, currently titled ''Important EAR terms and principles,'' contains two sets of important definitions: A definition and description of ''subject to the EAR,'' and definitions of export, reexport, and a number of associated terms. This rulemaking proposes to retitle the section ''Subject to the EAR,'' retain the definition and description of that term, and create separate sections in part 734 to define ''export,'' ''reexport,'' ''release,'' and ''transfer (in-country),'' which will be described in greater detail below. This rulemaking proposes to remove current § 734.2(b)(7) regarding the listing of foreign territories and possessions in the Commerce Country Chart (Supplement No. 1 to part 738) because it duplicates current § 738.3(b).

Items Not Subject to the EAR

Section 734.3(a) describes items (*i.e.,* commodities, software, or technology) subject to the EAR. Paragraph (b) describes items that are not subject to the EAR. This rulemaking proposes minor revisions to paragraph (b)(3), which describes software and technology that is not subject to the EAR, to describe more fully educational and patent information that is not subject to the EAR, and to add a note to make explicit that information that is not ''technology'' as defined in the EAR is *per se* not subject to the EAR. These changes are part of an effort to make more clear throughout the EAR that ''technology'' is a subset of ''information.'' Only information that is within the scope of the definition of ''technology'' is subject to the EAR. If information of any sort is not within the scope of the definition of ''technology,'' then it is not subject to the EAR. This proposed rule makes no changes to the notes to paragraphs (b)(2) and (b)(3) that a printed book or other printed material setting forth encryption source code is not itself subject to the EAR, but that encryption source code in electronic form or media remains subject to the EAR. It also makes no changes to the note that publicly available encryption object code software classified under ECCN 5D002 is not subject to the EAR when the corresponding source code meets the criteria specified in § 740.13(e) of the EAR. (See proposed corresponding revisions to § 120.6(b) of the ITAR.)

Published Technology and Software

Current § 734.7 sets forth that technology and software is ''published'' and thus not subject to the EAR when it becomes generally accessible to the interested public in any form, including through publication, availability at libraries, patents, and distribution or presentation at open gatherings.

This rulemaking proposes a definition of ''published'' with the same scope but a simpler structure. The proposed § 734.7(a) reads: ''Except as set forth in paragraph (b), ''technology'' or ''software'' is ''published'' and is thus not ''technology'' or ''software'' subject to the EAR when it is not classified national security information and has been made available to the public without restrictions upon its further dissemination. This proposed definition is substantially the same as the wording of definitions adopted by the multilateral export control regimes of which the United States is a member: The Wassenaar Arrangement, Nuclear Suppliers Group, Missile Technology Control Regime, and Australia Group. The phrase ''classified national security information'' refers to information that has been classified in accordance with Executive Order 13526, 75 FR 707; 3

CFR 201 Comp., p. 298. The phrasing following the definition quoted above (''such as through'') means that the list that follows consists of representative examples taken from the list of such things that are in both the ITAR and the EAR and merged together. This is not an exhaustive list of published information. Section 734.7(b) keeps certain published encryption software subject to the EAR, a restriction currently found in § 734.7(c). BIS believes that the proposed revised section is easier to read and that the list of examples is easier to update than current text. The relevant restrictions do not include copyright protections or generic property rights in the underlying physical medium. (See proposed corresponding revisions to ''public domain'' in § 120.11 of the ITAR.)

Fundamental Research

The current § 734.8 excludes most information resulting from fundamental research from the scope of the EAR. The section is organized primarily by locus, specifically by the type of organization in which the research takes place. This proposed rule would revise § 734.8, but it is not intended to change the scope of the current § 734.8. The proposed revisions streamline the section by consolidating different provisions that involve the same criteria with respect to prepublication review, removing reference to locus unless it makes a difference to the jurisdictional status, and adding clarifying notes. The proposed revisions also consistently use the description ''arises during or results from fundamental research'' to make clear that technology that arises prior to a final result is subject to the EAR unless it otherwise meets the provisions of § 734.8. Comments regarding whether the streamlined § 734.8 text is narrower or broader in scope than the current text in § 734.8 are encouraged.

Proposed notes clarify that technology initially transferred to researchers, *e.g.,* by sponsors, may be subject to EAR, and that software and commodities are not ''technology resulting from fundamental research.'' Additional notes clarify when technology is ''intended to be published,'' as it must be in order to be not subject to the EAR pursuant to this section.

Issued in 1985, National Security Decision Directive (NSDD)–189 established a definition of ''fundamental research'' that has been incorporated into numerous regulations, internal compliance regimes, and guidance documents. Therefore, in this rulemaking, BIS has proposed a definition of ''fundamental research'' that is identical to that in NSDD–189. However, BIS solicits comment on a simpler definition that is consistent with NSDD–189, but not identical. Specifically, the alternative definition would read: '''Fundamental research' means non-proprietary research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community.'' BIS believes that the scope of this wording is the same as that of the wording in NSDD–189 and seeks comment on whether the final rule should adopt the simpler wording.

The proposed definition of ''fundamental research'' includes references to ''basic'' and ''applied'' research. For clarity, this rulemaking proposes definitions of those terms. The definition of ''basic research'' in proposed § 734.8 is that currently defined in the EAR (§ 772.1), and in the Wassenaar Arrangement's General Technology Note as ''basic scientific research.'' The proposed definition of ''applied research'' was drawn from the Defense Federal Acquisition Regulation Supplement (48 CFR part 31.205–18). A possible alternative definition of applied research is that found in the 2014 Office of Management and Budget Circular A–11: ''Systematic study to gain knowledge or understanding necessary to determine the means by which a recognized and specific need may be met.'' (See proposed corresponding § 120.49 of the ITAR.)

Educational Information

Current § 734.9 states that educational information released by instruction in a catalog course or associated teaching laboratory of an academic institution is not subject to the EAR. This rulemaking proposes moving this exclusion to § 734.3(b) and removing § 734.9. This proposed rule is not intended to change the scope of the current § 734.9.

Patents

This rulemaking proposes to revise current § 734.10, ''Patent applications,'' for clarity. For example, instead of an internal cross-reference to the section of the EAR identifying items not subject to the EAR the revised section directly states that ''technology'' is not ''subject to the EAR'' if it is contained in the patent-related documents described in the section. For the sake of structural consistency with the ITAR's treatment of information in patents, paragraph (a)(1) is added to state that a patent or an open (published) patent application available from or at any patent office is *per se* not subject to EAR. The proposed revisions do not, however, change the scope of current § 734.10. The existing footnote to the current § 734.10 is removed because it would be redundant of the proposed text.

Specific National Security Controls

This rulemaking proposes minor conforming edits to current § 734.11, which describes specific national security controls. The proposed revisions do not change the scope of current § 734.11. As described below, this rulemaking proposes to remove Supplement No. 1 to part 734, ''Questions and Answers—Technology and Software Subject to the EAR.'' Questions and answers are illustrative rather than regulatory and are thus more appropriately posted as Web site guidance than published as regulatory text.

Export

In § 734.2(b) of the current EAR, there are definitions of export, export of technology or software, and export of encryption source code and object code software. Section 772.1 also defines ''export'' as follows: ''Export means an actual shipment or transmission of items out of the United States.'' This rulemaking proposes to consolidate the definitions of ''export'' and ''export of technology and software,'' while moving ''export of encryption source code and object code software'' to a new § 734.13.

Proposed § 734.13(a) would have six paragraphs. Paragraphs (a)(4) and (5) would be reserved. The corresponding paragraphs in the ITAR would contain provisions that are not relevant to the EAR.

Proposed paragraph (a)(1) of the definition of ''export'' uses the EAR terms ''actual shipment or transmission out of the United States,'' combined with the existing ITAR ''sending or taking an item outside the United States in any manner.''

Paragraph (a)(2), specifying the concept of transfer or release of technology to a foreign national in the United States, or ''deemed export,'' reflects the long-standing BIS practice of treating software source code as technology for deemed export purposes.

Paragraph (a)(3) includes in the definition of ''export'' transferring by a person in the United States of registration, control, or ownership (i) of a spacecraft subject to the EAR that is not eligible for export under License Exception STA (*i.e.,* spacecraft that provide space-based logistics, assembly or servicing of any spacecraft) to a person in or a national of any other country, or (ii) of any other spacecraft subject to the EAR to a person in or a national of a Country Group D:5 country.

Paragraphs (a)(4) and (a)(5) remain reserved, reflecting placeholders. The ITAR's parallel proposed provisions would control transfers to embassies within the United States and defense services. Neither topic is relevant to the EAR.

Paragraph (a)(6) defines as an export the release or other transfer of the means of access to encrypted data. This is intended to complement the exclusion of certain encrypted data from the definition of export, specified in proposed § 734.18(a)(4) and discussed below. Logically, providing the means to decrypt or otherwise access controlled technology or software that is encrypted should constitute a controlled event to the same extent as releasing or otherwise transferring the unencrypted controlled technology or software itself. Upon transfer of the means of access to encrypted technology or software, the technology or software would acquire the classification and control status of the underlying technology or software, as specified in proposed § 764.2(l). The meaning of ''clear text'' in the proposed definition is no different than an industry standard definition, *e.g.,* information or software that is readable without any additional processing and is not encrypted. Comments are encouraged regarding whether a specific EAR definition of the term is warranted and, if so, what the definition should be.

Paragraph (a)(6) of export and paragraph (a)(4) of reexport in this proposed rule and the DDTC companion proposed rule present different formulations for this control and the agencies request input from the public on which text more clearly describes the control. The agencies intend, however, that the act of providing physical access to unsecured ''technical data'' (subject to the ITAR) will be a controlled event. The mere act of providing physical access to unsecured ''technology'' (subject to the EAR) will not, however, be a controlled event unless it is done with ''knowledge'' that such provision will cause or permit the transfer of controlled ''technology'' in clear text or ''software'' to a foreign national.

This provision is not confined to the transfer of cryptographic keys. It includes release or other transfer of passwords, network access codes, software or any other information that the exporter ''knows'' would result in the unauthorized transfer of controlled technology. As defined in current § 772.1 of the EAR, ''knowledge'' includes not only positive knowledge that a circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence.

Paragraph (b) of § 734.13 would retain BIS's deemed export rule as set forth in current § 734.2(b). It would also codify a long-standing BIS policy that when technology or source code is released to a foreign national, the export is ''deemed'' to occur to that person's most recent country of citizenship or permanent residency. *See, e.g.,* 71 FR 30840 (May 31, 2006).

Paragraph (c) would state that items that will transit through a country or countries or will be transshipped in a country or countries to a new country, or are intended for reexport to the new country are deemed to be destined to the new country. This provision would be moved without change from current § 734.2(b)(6).

(See proposed corresponding revisions to § 120.17 of the ITAR.)

Reexport

The current definitions of reexport and reexport of technology or software in § 734.2(b) are shipment or transmission of items from one foreign country to another foreign country, and release of technology or source code to a foreign national ''of another country.'' This rulemaking proposes to move the definition of ''reexports'' to new § 734.14. In general, the provisions of the proposed definition of reexport parallel those of the proposed definition of export discussed above, except that reexports occur outside of the United States. Paragraphs (a)(1) and (a)(2) mirror the current definition but divide it into two paragraphs so that one paragraph pertains to actual reexports and another paragraph is specific to deemed reexports. Paragraph (a)(3) expands on the existing reference to transfer of registration or operational control over satellites in the definition of reexport in § 772.1 to include transferring by a person outside the United States of registration, control, or ownership (i) of a spacecraft subject to the EAR that is not eligible for reexport under License Exception STA (*i.e.,* spacecraft that provide space-based logistics, assembly or servicing of any spacecraft) to a person in or a national of any other country, or (ii) of any other spacecraft subject to the EAR to a person in or a national of a Country Group D:5 country. Paragraph (a)(4) mirrors the proposed addition in the definition of ''export'' of the concept that releasing or otherwise transferring, in this case, outside the United States, the means to transfer to a foreign national controlled technology or software in readable form constitutes a ''reexport.'' (See proposed corresponding § 120.19 of the ITAR.)

Release

This provision changes the existing definition of ''release'' in § 734.2(b)(3) and adds it to new § 734.15. Notably, while existing text provides that ''visual inspection'' by itself constitutes a release of technical data or source code, the proposed text provides that such inspection (including other types of inspection in addition to visual, such as aural or tactile) must actually *reveal* controlled technology or source code. Thus, for example, merely seeing an item briefly is not necessarily sufficient to constitute a release of the technology required, for example, to develop or produce it. This rulemaking proposes adding ''written'' to current ''oral exchanges'' as a means of release.

The proposed text also clarifies that the application of ''technology'' and ''software'' is a ''release'' in situations where U.S. persons abroad use personal knowledge or technical experience acquired in the United States in a manner that reveals technology or software to foreign nationals. This clarification makes explicit a long-standing EAR interpretation. This provision complements proposed new § 120.9(a)(5) of the ITAR, which would include in the definition of ''defense service'' the furnishing of assistance (including training) to the government of a country listed in § 126.1 of the ITAR in the development, production, operation, installation, maintenance, repair, overhaul or refurbishing of a defense article or a part, component, accessory or attachment specially designed for a defense article. The proposed definition does not use the existing phrase ''visual inspection by foreign nationals of U.S.-origin equipment and facilities'' because such inspections do not *per se* release ''technology.'' For example, merely seeing equipment does not necessarily mean that the seer is able to glean any technology from it and, in any event, not all visible information pertaining to equipment is necessarily ''technology'' subject to the EAR. (See proposed corresponding § 120.50 of the ITAR.)

Transfer (In-Country)

The current definition of transfer (in-country) is the ''shipment, transmission, or release of items subject to the EAR from one person to another person that occurs outside the United States within a single foreign country'' (§ 772.1). There is no difference between this phrase and the phrase ''in-country transfer'' that is used in the EAR. Variations in the use of the term will be harmonized over time.

This proposed rule would remove the definition from § 772.1 and add a revised definition to new § 734.16. This rulemaking proposes: ''a transfer (in-country) is a change in end use or end user of an item within the same foreign country.'' This revision eliminates any potential ambiguity regarding whether a change in end use or end user within a foreign country is or is not a ''transfer (in-country).'' This new text would parallel the term ''retransfer'' in the ITAR. (See proposed corresponding definition of retransfer in § 120.51 of the ITAR.)

Export of Encryption Source Code and Object Code Software

Proposed new § 734.17, export of encryption source code and object code software, would retain the text of § 734.2(b)(9). It would be moved to this section with only minor conforming and clarifying edits so that it is under the section of the regulations that would define when such an ''export'' occurs rather than under the existing ''important EAR terms and principles.'' Describing when an export occurs in the ''export of encryption source code and object code software'' section of the regulations is more clear than under a general ''important EAR terms and principles'' heading.

Activities That Are Not Exports, Reexports, or Transfers

Proposed new § 734.18 gathers existing EAR exclusions from exports, reexports, and transfers into a single provision, and includes an important new provision pertaining to encrypted technology and software.

Paragraph (a)(1) reflects that by statute, launching a spacecraft, launch vehicle, payload, or other item into space is not an export. *See* 51 U.S.C. 50919(f).

Paragraph (a)(2), based on existing text in § 734.2(b)(2)(ii), would state that the release in the United States of technology or software to U.S. nationals, permanent residents, or protected individuals is not an export.

Paragraph (a)(3) would move from current § 734.2(b)(8) text stating that shipments between or among the states or possessions of the United States are not ''exports'' or ''reexports.'' The word ''moving'' and 'transferring'' were inserted next to ''shipment'' in order to avoid suggesting that the only way movement between or among the states or possessions would not be a controlled event was if they were ''shipped.''

Paragraph (a)(4) establishes a specific carve-out from the definition of ''export'' the transfer of technology and software that is encrypted in a manner described in the proposed section. Encrypted information—*i.e.,* information that is not in ''clear text''—is not readable, and is therefore useless to unauthorized parties unless and until it is decrypted. As a result, its transfer in encrypted form consistent with the requirements of paragraph (a)(4) poses no threat to national security or other reasons for control and does not constitute an ''actual'' transmission of ''technology'' or ''software.'' Currently, neither the EAR nor the ITAR makes any distinction between encrypted and unencrypted transfers of technology or software for control or definitional purposes.

This section specifies the conditions under which this part of the definition would apply. An important requirement is that the technology or software be encrypted ''end-to-end,'' a phrase that is defined in paragraph (b). The intent of this requirement is that relevant technology or software is encrypted by the originator and remains encrypted (and thus not readable) until it is decrypted by its intended recipient. Such technology or software would remain encrypted at every point in transit or in storage after it was encrypted by the originator until it was decrypted by the recipient.

BIS understands that end-to-end encryption is not used in all commercial situations, particularly when encryption is provided by third party digital service providers such as cloud SaaS (software as a service) providers and some email services. However, in many such situations, technology or software may be encrypted and decrypted many times before it is finally decrypted and read by the intended recipient. At these points, it is in clear text and is vulnerable to unauthorized release. BIS considered this an unacceptable risk and therefore specified the use of end-to-end encryption as part of the proposed definition. A key requirement of the end-to-end provision is to ensure that no non-US national employee of a domestic cloud service provider or foreign digital third party or cloud service provider can get access to controlled technology or software in unencrypted form.

Paragraph (a)(4)(iii) describes encryption standards for purposes of the definition. In this proposed rule, use of encryption modules certified under the Federal Information Processing Standard 140–2 (FIPS 140–2), supplemented by appropriate software implementation, cryptographic key management and other procedures or controls that are in accordance with guidance provided in current U.S. National Institute for Standards and Technology publications, would qualify as sufficient security. FIPS 140–2 is a well understood cryptographic standard used for Federal Government procurement in the United States and Canada, as well as for many other uses, both in the United States and abroad. However, BIS understands that companies may use hardware and software that has not been certified by NIST or that does not conform to NIST guidelines (*e.g.,* for internal use or conforming to other standards). To accommodate this, this paragraph allows for use of ''similarly effective cryptographic means,'' meaning that alternative approaches are allowable provided that they work. In such cases, the exporter is responsible for ensuring that they work. In contrast, the corresponding definition proposed by DDTC makes FIPS 140–2 conformity a baseline requirement. Hardware and software modules must be certified by NIST, and NIST key management and other implementation standards must be used. Alternatives are not permitted regardless of effectiveness.

This paragraph also specifically excludes from the definition technology and software stored in countries in Country Group D:5 and Russia for foreign policy reasons in light of the embargoes and policies of presumptive denial now in place with respect to such countries.

Logically, providing keys or other information that would allow access to encrypted technology or software should be subject to the same type of controls as the actual export, reexport, or transfer of the technology or software itself. This is specifically addressed in the proposed § 734.13(a)(6) as part of the definition of ''export.'' In addition, the proposed § 764.2(1) states that for enforcement purposes such an unauthorized release will constitute a violation to the same extent as a violation in connection with the actual export, reexport, or transfer (in-country) of the underlying ''technology'' or ''software.''

Paragraph (c) confirms that the mere ability to access ''technology'' or ''software'' while it is encrypted in a manner that satisfies the requirements in the section does not constitute the release or export of such ''technology'' or ''software.'' This responds to a common industry question on the issue. (See proposed corresponding § 120.52 of the ITAR.)

Activities That Are Not Deemed Reexports

Proposed § 734.20, activities that are not deemed reexports, merely codifies

BIS's interagency-cleared Deemed Reexport Guidance posted on the BIS Web site dated October 31, 2013. This guidance was created so that the provisions regarding possible deemed reexports contained in §§ 124.16 and 126.18 of the ITAR would be available for EAR technology and source code.

Under this guidance and new § 734.20, release of technology or source code by an entity outside the United States to a foreign national of a country other than the foreign country where the release takes place does not constitute a deemed reexport of such technology or source code if the entity is authorized to receive the technology or source code at issue, whether by a license, license exception, or situations where no license is required under the EAR for such technology or source code and the foreign national's most recent country of citizenship or permanent residency is that of a country to which export from the United States of the technology or source code at issue would be authorized by the EAR either under a license exception, or in situations where no license under the EAR would be required.

Release of technology or source code by an entity outside the United States to a foreign national of a country other than the foreign country where the release takes place does not constitute a deemed reexport if: (i) The entity is authorized to receive the technology or source code at issue, whether by a license, license exception, or through situations where no license is required under the EAR; (ii) the foreign national is a *bona fide* regular and permanent employee (who is not a proscribed person under U.S. law) directly employed by the entity; (iii) such employee is a national exclusively of a country in Country Group A:5; and (iv) the release of technology or source code takes place entirely within the physical territory of any such country. This rulemaking also proposes a definition of ''proscribed person'' in § 772.1.

This paragraph corresponds to § 124.16 of the ITAR, but the reference to Country Group A:5 instead of the countries in the corresponding ITAR section varies slightly. This variation is a function of BIS's national security and foreign policy assessment of the application of this proposed rule to the nationals of Country Group A:5 and as part of a general BIS effort to reduce the number of variations in groups of countries identified in the EAR consistent with U.S. national security and foreign policy interests. South Korea and Argentina are in Country Group A:5, but not in ITAR § 124.16. Malta, Albania, and Cyprus are in § 124.16, but not in Country Group A:5.

For nationals other than those of Country Group A:5 countries, which are close military allies of the United States, other criteria may apply. In particular, the section specifies the situations in which the releases would not constitute deemed exports in a manner consistent with § 126.18 of the ITAR. An additional paragraph on scope of technology licenses included in the Web site would not be included in this proposed § 734.20. It would be included in proposed § 750.7, discussed below. For purposes of this section, ''substantive contacts'' would have the same meaning as it has in § 126.18 of the ITAR. The proposed phrase ''permanent and regular employee'' is a combination of BIS's definition of ''permanent employee,'' as set forth in a BIS advisory opinion issued on November 19, 2007, and the ITAR's definition of ''regular employee'' in § 120.39. This proposed rule adds specific text excluding persons proscribed under U.S. law to make clear that § 734.20 does not authorize release of technology to persons proscribed under U.S. law, such as those on the Entity List or the Specially Designated Nationals List, or persons denied export privileges, and defines ''proscribed person'' in § 772.1. The US-UK Exchange of Notes and US-Canadian Exchange of Letters referred to in the existing online guidance can be found on the State Department's Web site. The URL's for the letter are not proposed to be published in the EAR since URL addresses periodically change. Upon implementation of a final rule in this regard, BIS will place the URL references in an ''FAQ'' section of its Web site.

Technology

Like the current definition of ''technology'' in the EAR (§ 772.1), the definition proposed in this rulemaking is based on the Wassenaar Arrangement definition of technology. It continues to rest on the Wassenaar-defined sub-definitions of ''development,'' ''production,'' and ''use,'' which are currently defined in § 772.1 and which this rulemaking does not propose to change. This rulemaking also does not propose to change BIS's long-standing policy that all six activities in the definition of ''use'' (operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing) must be present for an item to be classified under an ECCN paragraph that uses ''use'' to describe the ''technology'' controlled. See 71 FR 30842, May 31, 2006. The proposed definition includes, as does the current EAR definition, the terms ''operation, installation, maintenance, repair, overhaul, or refurbishing (or other terms specified in ECCNs on the CCL that control 'technology') of an item'' because such words are used as to describe technology controlled in multiple ECCNs, often with ''or'' rather than the ''and'' found in ''use.''

This rulemaking proposes to incorporate the definitions of ''technical data'' and ''technical assistance'' into the definition of ''technology'' as illustrative lists. The note in the existing definition of ''technology'' that ''technical assistance'' ''may take the forms such as instruction, skills training, working knowledge, and consulting services'' is not repeated given that the proposed definition and its examples would include any ''technology'' in such circumstances and in a manner that is harmonized with the ITAR's definition of technical data.

This rulemaking proposes to add a note to address a common industry question about modification. This proposed rule also would add three exclusions to clarify the limits of the scope of the definition in a manner consistent with long-standing BIS policy and interpretation of existing scope of ''technology.'' The first two insertions parallel exclusions in the ITAR and the third, the exclusion of telemetry data, mirrors specific exclusions inserted into both the ITAR and the EAR as part of recent changes regarding the scope of U.S. export controls pertaining to satellites and related items. *See* 79 FR 27417 (May 13, 2014). Several paragraphs of this section are held in reserve merely to allow the entire section to mirror the corresponding ITAR provisions that are not relevant to the EAR. (See proposed corresponding revisions to § 120.10 of the ITAR.)

Questions and Answers—Technology and Software Subject to the EAR

This rulemaking proposes to remove Supplement No. 1 to part 734, ''Questions and Answers—Technology and Software Subject to the EAR.'' Because the questions and answers are illustrative rather than regulatory, they are more appropriately posted as Web site guidance than included in the EAR.

Required

This proposed rule retains the existing EAR definition of ''required'' in § 772.1, but proposes adding notes clarifying the application of the term. It removes the references in the existing definition to CCL Categories 4, 5, 6, and 9 to avoid the suggestion that BIS

applies the definition of ''required'' only to the uses of the term in these categories. BIS has never had a separate definition of ''required'' used elsewhere in the EAR and this removal merely eliminates a potential ambiguity and reflects long-standing BIS policy.

To address common questions BIS has received regarding the meaning of the word ''required,'' BIS proposes adding two notes to address the questions. The first states that the references to ''characteristics'' and ''functions'' are not limited to entries on the CCL that use specific technical parameters to describe the scope of what is controlled. The ''characteristics'' and ''functions'' of an item listed are, absent a specific regulatory definition, a standard dictionary's definition of the item. It then includes examples of this point. The second refers to the fact that the ITAR and the EAR often divide within each set of regulations or between each set of regulations (a) controls on parts, components, accessories, attachments, and software and (b) controls on the end items, systems, equipment, or other articles into which those parts, components, accessories, attachments, and software are to be installed or incorporated. Moreover, with the exception of technical data specifically enumerated on the USML, the jurisdictional status of unclassified technical data or ''technology'' is the same as the jurisdictional status of the defense article or item to which it is directly related. Examples of this point are provided. (See proposed corresponding revisions to § 120.46 of the ITAR.)

Peculiarly Responsible

This rulemaking proposes a definition of the currently undefined term ''peculiarly responsible'' in order to respond to common industry questions. The new definition would be modeled on the catch-and-release structure BIS adopted for the definition of ''specially designed.'' Thus, under the proposed definition, an item is ''peculiarly responsible'' for achieving or exceeding any referenced controlled performance levels, characteristics, or functions if it is used in ''development,'' ''production,'' ''use,'' operation, installation, maintenance, repair, overhaul, or refurbishing of an item subject to the EAR *unless* (a) the Department of Commerce has determined otherwise in a commodity classification determination, (b) it is identical to information used in or with a commodity or software that is or was in production and is EAR99 or described in an ECCN controlled only for Anti-Terrorism (AT) reasons, (c) it was or is being developed for use in or with general purpose commodities or software, or (d) it was or is being developed with ''knowledge'' that it would be for use in or with commodities or software described (i) in an ECCN controlled for AT-only reasons and also EAR99 commodities or software or (ii) exclusively for use in or with EAR99 commodities or software.

Export of Technical Data for U.S. Persons Abroad

This rulemaking proposes to amend the temporary export of technology provisions of existing License Exception TMP by revising § 740.9(a)(3) to clarify that the ''U.S. employer'' and ''U.S. persons or their employees'' using this license exception are not foreign subsidiaries. The proposed paragraph streamlines current text without changing the scope. (See proposed corresponding revisions to § 125.4(b)(9) of the ITAR.)

Scope of a License

This proposed revision would implement in the EAR the interagency-agreed boilerplate for all licenses that was posted on the BIS Web site and began appearing on licenses December 8, 2014. It is a slight revision to the existing § 750.7(a), which states that licenses authorize only the transaction(s) described in the license application and the license application support documents. This proposed revision would also codify the existing interpretation that a license authorizing the release of technology to an entity also authorizes the release of the same technology to the entity's foreign nationals who are permanent and regular employees of the entity's facility or facilities authorized on the license, except to the extent a license condition limits or prohibits the release of the technology to nationals of specific countries or country groups.

Release of Protected Information

This rulemaking proposes adding a new paragraph (l) to § 764.2 ''Violations.'' This paragraph would provide that the unauthorized release of decryption keys or other information that would allow access to particular controlled technology or software would, for enforcement purposes, constitute a violation to the same extent as a violation in connection with the export of the underlying controlled ''technology'' or ''software.'' Under these and other related provisions, the decryption keys (or other technology), while subject to the EAR, do not themselves retain the classification of the technology that they could potentially release. This allows them to be secured and transmitted independently of the technology they could be used to release. (See proposed corresponding revisions to § 127.1(b)(4) of the ITAR.)

Removals From and Additions to EAR's List of Definitions in § 772.1

With the changes proposed in this rulemaking, there would be stand-alone sections in the EAR to address the scope and meaning of ''publicly available information,'' ''publicly available technology and software,'' and ''technical data.'' To avoid redundancy, the existing definitions in § 772.1 would be removed. In light of the changes described above, the definitions of ''basic scientific research,'' ''export,'' ''reexport,'' ''required,'' ''technology,'' and ''transfer'' would be revised accordingly. A clarifying note would be added at the bottom of the definition that the use of ''transfer'' does not apply to the unrelated ''transfers of licenses'' provision in § 750.10 or the antiboycott provisions in Supplement No. 8 to part 760 of the EAR. It also states that the term ''transfer'' may also be included on licenses issued by BIS. In that regard, the changes that can be made to a BIS license are the non-material changes described in § 750.7(c). Any other change to a BIS license without authorization is a violation of the EAR. *See* §§ 750.7(c) and 764.2(e). Finally, consistent with the explanations above, definitions for the terms ''applied research,'' ''fundamental research,'' ''peculiarly responsible,'' ''publicly available encryption software,'' ''published,'' and ''release'' would be added to § 772.1.

Public Comments

BIS welcomes comments on any aspects of this proposed rule. With respect to the proposed revisions, BIS would like to receive comments that are as specific and well-supported as possible. Particularly helpful comments will include a description of a problem or concern, available data on cost or economic impact, and a proposed solution. BIS also welcomes comments on aspects of this proposed rule that the public considers effective or well designed.

BIS specifically solicits comment on the following issues:

1. Whether the revisions proposed in this rulemaking create gaps, overlaps, or contradictions between the EAR and the ITAR, or among various provisions within the EAR;

2. Whether the alternative definition of fundamental research suggested in the preamble should be adopted;

3. Whether the alternative definition of applied research suggested in the preamble should be adopted, or whether basic and applied research definitions are needed given that they are subsumed by fundamental research;

4. Whether the questions and answers in existing Supplement No. 1 to part 734 proposed to be removed by this rulemaking have criteria that should be retained in part 734;

5. With respect to end-to-end encryption described in the proposed revision of the definition of ''Activities that are Not Exports, Reexports, or Transfers,'' whether the illustrative standard proposed in the EAR rulemaking also should be adopted in the ITAR rulemaking; whether the safe harbor standard proposed in the ITAR rulemaking also should be adopted in the EAR rulemaking; or whether the two bodies of regulations should have different standards;

6. Whether encryption standards adequately address data storage and transmission issues with respect to export controls; and

7. Whether the proposed definition of ''peculiarly responsible'' effectively explains how items may be ''required'' or ''specially designed'' for particular functions.

8. The public is asked to comment on the effective date of the final rule. Export Control Reform rules that revised categories of the USML and created new 600 series ECCNs have had a six-month delayed effective date to allow for exporters to update the classification of their items. In general, rules effecting export controls have been effective on the date of publication, due to the impact on national security and foreign policy. As this proposed rule, and the companion proposed rule from the Directorate of Defense Trade Controls, revise definitions within the ITAR and the EAR and do not make any changes to the USML or CCL, a 30-day delayed effective date is proposed to allow exporters to ensure continued compliance.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2014, 79 FR 46959 (August 11, 2014), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Regulatory Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, this proposed rule has been reviewed by the Office of Management and Budget (OMB).

2. This proposed rule does not contain information collections subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA). Notwithstanding any other provision of law, no person is required to respond to, nor is 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.

3. This proposed rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. Pursuant to the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.,* BIS has prepared the following initial Regulatory Flexibility Act analysis of the potential impact that this proposed rule, if adopted, would have on small entities.

Description of the Reasons Why Action Is Being Considered

The policy reasons for issuing this proposed rule are discussed in the background section of the preamble of this document, and are not repeated here.

Statement of the Objectives of, and Legal Basis for, the Proposed Rule; Identification of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

The objective of this proposed rule (and a proposed rule being published simultaneously by the Department of State) is to provide greater clarity and precision in the EAR and the ITAR by providing common definitions and common terms to regulate the same types of actions. The proposed rule also seeks to express some concepts more clearly.

The proposed rule would alter definitions in the EAR. It also would update and clarify application of controls to electronically transmitted technology and software.

The legal basis for this proposed rule is 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013); Notice of August 7, 2014, 79 FR 46959 (August 11, 2014); Notice of November 7, 2014, 79 FR 67035 (November 12, 2014).

No other Federal rules duplicate, overlap, or conflict with this proposed rule.

Number and Description of Small Entities Regulated by the Proposed Action

This proposed rule would apply to all persons engaged in the export, reexport, or transfer of commodities, technology or software that is regulated by the EAR. BIS does not maintain data from which it can determine how many of those persons are small entities as identified in the Small Business Administration size standards. Nevertheless, BIS recognizes that some of those persons are likely to be small entities.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

This proposed rule is unlikely to increase the number of transactions that must be reported to BIS because EAR reporting requirements apply only in five specific situations, none of which would change as a result of this proposed rule. Those situations are: Exports that do not require a license of items on the Wassenaar Arrangement Sensitive List; Exports of High Performance Computers; Exports of certain thermal imaging cameras that do not require a license; Certain exports of Conventional Arms; and 600 series major defense equipment.

Because recordkeeping requirements already apply to all transactions that are subject to the EAR, BIS expects that this proposed rule would not expand recordkeeping requirements.

It is possible that some of these changes would increase the number of

licenses that some small entities would have to seek from BIS although BIS is not aware of any specific instance in which additional licenses would be required.

The following discussion describes the changes that would be made by this proposed rule. It is divided into two sections: Changes that BIS believes would not impose any new regulatory obligations; and Changes that are not intended to imposed any new regulatory obligation, but that BIS cannot state with certainty would not do so.

Changes That BIS Believes Would Not Impose Any New Regulatory Burden

This proposed rule would make certain changes to clarify and streamline the definitions of comparable terms, phrases, and concepts between the EAR and the ITAR. Many of these changes are technical in nature and attempt to consolidate and re-phrase the definitions to enhance readability and to parallel the structure of the ITAR's definition of the same term. However, there are a small number of new provisions, but these changes would not impose any new regulatory burdens. Specifically, this proposed rule would make the following changes:

Remove § 734.2(b) which currently defines export, reexport, release, transfer (in country) and export of encryption source code or object code software, because those terms would be defined in separate sections. Section 734.2(b) also states the policy of applying license requirements that apply to a country to its dependencies and possessions; this policy is currently stated elsewhere in the EAR.

Create new separate sections defining export, reexport, release and export of encryption source code or object code software. Those terms would be clarified and presented in a more organized manner, but substantively unchanged from the existing regulatory text.

Create a new section identifying activities that are not exports, reexports, or transfers. This section restates the transactions that are excluded from the definition of export in current regulatory text and adds two additional activities that would be expressly declared not to be exports, rexports or transfers: space launches and sending, taking or storing certain technology or software abroad using specified cryptographic techniques. The former, although not expressly in the current regulatory text, is required by statute (*see* 51 U.S.C. 50919(f)) and consistent with current BIS practice of not treating a space launch as an export, reexport or transfer. The latter is, in fact, new. However, by removing the transactions it describes from the definitions of exports, reexports, or transfers, it removes existing license requirements from those transactions.

Clarify without substantively changing the provisions related to patent applications and add specific text stating that technology contained in a patent available from or at any patent office is not subject to the EAR. The addition reflects BIS' long-standing interpretation. To the extent that it could be characterized as new, its only effect would be to appear to release from the EAR technology that some readers of the EAR might have (erroneously) concluded was subject to the EAR.

Add to License Exception TMP text to emphasize that foreign subsidiaries of U.S. companies are neither U.S. employers nor ''U.S. persons or their employees'' as those terms are used in the license exception. This additional text adds no restriction that is not already imposed by the definition of ''U.S. persons'' that currently appears in the text of License Exception TMP.

Add text codifying in the EAR limits on transactions authorized by a license that currently are imposed by conditions on the license itself.

Add text prohibiting the release or other transfer of information (*e.g.,* decryption keys, passwords or access codes) with knowledge that such release or other transfer will result in an unauthorized export, reexport or transfer of other technology or software. This addition provides specific grounds for bringing charges with respect to one particular type of misconduct. However, existing EAR provisions, including the prohibition on causing, aiding or abetting a violation of the EAR or license, authorization or order could be used to bring charges for that same type of misconduct.

Changes That Are Not Intended To Impose Any Regulatory Obligation, but That BIS Cannot State With Certainty Would Not Do So

This proposed rule would add definitions for two new terms ''applied research,'' and ''peculiarly responsible'' and revise the definitions of two existing terms ''required'' and ''transfer (in-country).'' It also would adopt BIS' interpretative guidance regarding deemed reexports as regulatory text. These changes are not intended to impose any regulatory obligations on regulated entities, but BIS cannot state with certainty that there will be no impact. This proposed rule would make the following changes:

Add to the existing definition of ''fundamental research'' a new definition of ''applied research.'' The information arising from fundamental research is not subject to the EAR. Fundamental research consists of basic and applied research where the results are ordinarily published and shared broadly within the scientific community. This proposed rule would retain the overall concept of fundamental research that is currently in the EAR, but would remove certain limitations based on the type of institution in which the research takes place, relocate the definition of ''basic research'' from the definitions section of the EAR to the section dealing with fundamental research and provide a definition of applied research.

Add to the EAR a definition of the term ''peculiarly responsible.'' That currently undefined term appears in the definitions of ''specially designed'' and of ''required'' in the EAR. This proposed rule would define that term.

Add to the EAR a definition of ''proscribed person.'' This definition does not create any new regulated class. It simply provides a clear, shorthand reference to a person who is already prohibited from receiving items or participating in a transaction that is subject to the EAR without authorization by virtue of U.S. law, such as persons on the Entity List, Specially Designated Nationals, or debarred parties.

Remove from the definition of the term ''required'' references to CCL Categories 4, 5, 6 and 9 to accurately reflect BIS' long-standing interpretation that its definition applies wherever the EAR imposes a license requirement for technology ''required'' for a particular process or activity.

In the definition of ''transfer (in-country),'' replace the phrase ''shipment, transmission, or release of items subject to the EAR from one person to another person that occurs outside the United States within a single foreign country'' with ''a change in end use or end user of an item within the same foreign country.'' This new text would parallel the term ''retransfer'' in the ITAR and would eliminate any potential ambiguity that a change in end use or end user within a foreign country is or is not a ''transfer (in-country).''

Each of the foregoing changes would serve the overall policy goals of reducing uncertainty and harmonizing the requirements of the ITAR and the EAR. In most instances, reduced uncertainty will be beneficial to persons who have to comply with the regulations, particularly persons who engage in transactions subject to both sets of regulations. They would be able to make decisions more quickly and

have less need to contact BIS for advice. Additionally, by making these terms more explicit, the possibility of their being interpreted contrary to BIS' intent is reduced. Such contrary interpretations would have three undesirable effects. First, they would undermine the national security and foreign policy objectives that the EAR are intended to implement. Second, persons who are interpreting the regulations in a less restrictive manner than BIS intends may seek fewer licenses from BIS than their competitors who are interpreting the regulations consistent with BIS' intent or who are obtaining advice from BIS, thereby gaining a commercial advantage to the detriment of the relevant national security or foreign policy interests. Third, unnecessary regulatory complexity and unnecessary differences between the terminology of the ITAR and that of the EAR could discourage small entities from even attempting to export. The beneficial effects of making these terms more explicit justify any economic impact that might be incurred by small entities that would have to change their conduct because their contrary interpretations could no longer be defended given the clearer and more explicit terms in the regulations.

This proposed rule also would add to the EAR a description of activities that are not deemed reexports. This description currently appears as interpretative guidance on BIS' Web site and closely tracks the regulatory text of the ITAR. Deemed reexports are releases of technology or software source code within a single foreign country by a party located outside the United States to a national of a country other than the country in which the releasing party is located. The guidance describes three situations in which that party may release the technology or source code without obtaining a license from BIS.

By adopting this guidance as regulatory text that closely tracks the text governing the same activities in the ITAR, BIS reduces both complexity and unnecessary differences between the two sets of regulations with the salutary effects of faster decision making, reduced need to contact BIS for advice and reduced possibility that small entities would be discouraged from exporting as noted above.

Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

As required by 5 U.S.C. 603(c), BIS' analysis considered significant alternatives. Those alternatives are: (1) The preferred alternative of altering definitions and updating and clarifying application of controls to electronically transmitted technology and software; (2) Maintaining the *status quo* and not revising the definitions or updating and clarifying application of controls to electronically transmitted technology and software; and (3) Establishing a size threshold below which entities would not be subject to the changes proposed by this rulemaking.

By altering definitions and updating and clarifying application of controls to electronically transmitted technology and software as this proposed rule would do, BIS would be reducing uncertainty for all parties engaged in transactions that are subject to the EAR. Potential ambiguities would be reduced; decisions could be made more quickly; the need to contact BIS for advice be reduced; and the possibility of inconsistent interpretations providing one party commercial advantages over others would be reduced. Persons (including small entities) engaged in transactions that are subject to the ITAR and transactions that are subject to the EAR would face fewer actual or apparent inconsistencies that must be addressed in their regulatory compliance programs. Although small entities, along with all other parties, would need to become familiar with the revised terminology, in the long run, compliance costs are likely to be reduced when compared to the present situation where the ITAR and the EAR use different terminology to regulate the same types of activity in the same manner. Therefore, BIS adopted this alternative.

If BIS chose to maintain the *status quo,* small entities and other parties would not have to incur the cost and effort of becoming familiar with the revised regulations and any party who is currently interpreting the regulations that would clearly be precluded by the more explicit interpretations would incur the cost of complying with the regulations consistent with their underlying intent and in the way that BIS believes most regulated parties do. However, the benefits of these proposed changes would be lost. Those benefits, greater clarity, consistency between the ITAR and the EAR, and reduced possibility of inconsistent application of the regulations by similarly situated regulated parties, would be foregone. Therefore, BIS has not adopted this alternative.

If BIS chose to create a size threshold exempting small entities as currently defined by the SBA size standards from the changes imposed by this proposed rule, those entities would face a more complicated regulatory environment than larger entities. The small entities would continue to be subject to the EAR as a whole but without the benefit of the clarifications introduced by this proposed rule. The only way to make a size threshold beneficial to entities falling below the threshold would be to exempt them from all or at least many of the requirements of the EAR. However, doing so would create a major loophole allowing commodities, software, and technology that are controlled for export for national security or foreign policy reasons to go, without restriction, to any party abroad, undermining the interests that the regulations are intended to protect. Therefore, BIS has not adopted this alternative.

List of Subjects

15 CFR Parts 734 and 772

Exports.

15 CFR Parts 740 and 750

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 764

Administrative practice and procedure, Exports, Law enforcement, Penalties.

For the reasons stated in the preamble, parts 734, 740, 750, 764, and 772 of the Export Administration Regulations (15 CFR subchapter C) are proposed to be amended as follows:

PART 734—SCOPE OF THE EXPORT ADMINISTRATION REGULATIONS

■ 1. The authority citation for part 734 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013); Notice of August 7, 2014, 79 FR 46959 (August 11, 2014) ; Notice of November 7, 2014, 79 FR 67035 (November 12, 2014).

§ 734.2—[Amended]

■ 2. Section 734.2 is amended by revising the heading to read as follows and by removing and reserving paragraph (b).

§ 734.2 Subject to the EAR.

■ 3. Section 734.3 is amended by revising paragraph (b) introductory text, paragraph (b)(3), the Note to paragraphs (b)(2) and (b)(3), and the Note to paragraph (b)(3) to read as follows.

§ 734.3 Items subject to the EAR.

* * * * *

(b) The following are not subject to the EAR:

* * * * *

(3) Information and ''software'' that:

(i) Are ''published,'' as described in § 734.7;

(ii) Arise during, or result from, ''fundamental research,'' as described in § 734.8;

(iii) Concern general scientific, mathematical, or engineering principles commonly taught in schools, and released by instruction in a catalog course or associated teaching laboratory of an academic institution; or

(iv) Appear in patents or open (published) patent applications available from or at any patent office, unless covered by an invention secrecy order, or are otherwise patent information as described in § 734.10.

Note to paragraphs (b)(2) and (b)(3): A printed book or other printed material setting forth encryption source code is not itself subject to the EAR (see § 734.3(b)(2)). However, notwithstanding § 734.3(b)(2), encryption source code in electronic form or media (*e.g.,* computer diskette or CD ROM) remains subject to the EAR (see § 734.17)). Publicly available encryption object code software classified under ECCN 5D002 is not subject to the EAR when the corresponding source code meets the criteria specified in § 740.13(e) of the EAR.

Note to paragraph (b)(3): Except as set forth in part 760 of this title, information that is not within the scope of the definition of ''technology'' (see § 772.1 of the EAR) is not subject to the EAR.

* * * * *

■ 4. Section 734.7 is revised to read as follows:

§ 734.7 Published.

(a) Except as set forth in paragraph (b) of this section, unclassified ''technology'' or ''software'' is ''published,'' and is thus not ''technology'' or ''software'' subject to the EAR, when it has been made available to the public without restrictions upon its further dissemination such as through any of the following:

(1) Subscriptions available without restriction to any individual who desires to obtain or purchase the published information;

(2) Libraries or other public collections that are open and available to the public, and from which the public can obtain tangible or intangible documents;

(3) Unlimited distribution at a conference, meeting, seminar, trade show, or exhibition, generally accessible to the interested public;

(4) Public dissemination (*i.e.,* unlimited distribution) in any form (*e.g.,* not necessarily in published form), including posting on the Internet on sites available to the public; or

(5) Submission of a written composition, manuscript or presentation to domestic or foreign co-authors, editors, or reviewers of journals, magazines, newspapers or trade publications, or to organizers of open conferences or other open gatherings, with the intention that the compositions, manuscripts, or publications will be made publicly available if accepted for publication or presentation.

(b) Published encryption software classified under ECCN 5D002 remains subject to the EAR unless it is publicly available encryption object code software classified under ECCN 5D002 and the corresponding source code meets the criteria specified in § 740.13(e) of the EAR.

■ 5. Section 734.8 is revised to read as follows:

§ 734.8 ''Technology'' that arises during, or results from, fundamental research.

(a) ''Technology'' that arises during, or results from, fundamental research and is 'intended to be published' is thus not ''subject to the EAR.''

Note 1 to paragraph (a): The inputs used to conduct fundamental research, such as information, equipment, or software, are not ''technology that arises during or results from fundamental research'' except to the extent that such inputs are ''technology'' that arose during or resulted from earlier fundamental research.

Note 2 to paragraph (a): There are instances in the conduct of research, whether fundamental, basic, or applied, where a researcher, institution or company may decide to restrict or protect the release or publication of ''technology'' contained in research results. Once a decision is made to maintain such ''technology'' as restricted or proprietary, the ''technology,'' if within the scope of § 734.3(a), becomes ''subject to the EAR.''

(b) *Prepublication review.* ''Technology'' that arises during, or results, from fundamental research is ''intended to be published'' to the extent that the researchers are free to publish the technology contained in the research without restriction or delay. ''Technology'' that arises during or results from fundamental research subject to prepublication review is still ''intended to be published'' when:

(1) Prepublication review is conducted solely to ensure that publication would not compromise patent rights, so long as the review causes no more than a temporary delay in publication of the research results;

(2) Prepublication review is conducted by a sponsor of research solely to insure that the publication would not inadvertently divulge proprietary information that the sponsor has furnished to the researchers; or

(3) With respect to research conducted by scientists or engineers working for a Federal agency or a Federally Funded Research and Development Center (FFRDC), within any appropriate system devised by the agency or the FFRDC to control the release of information by such scientists and engineers.

Note 1 to paragraph (b): Although ''technology'' arising during or resulting from fundamental research is not considered ''intended to be published'' if researchers accept restrictions on its publication, such ''technology'' will nonetheless qualify as ''technology'' arising during or resulting from fundamental research once all such restrictions have expired or have been removed.

Note 2 to paragraph (b): Except as provided in § 734.11, ''technology'' that is subject to other publication restrictions, such as U.S. government-imposed access and dissemination controls, is not ''intended to be published.''

(c) *Fundamental research definition.* ''Fundamental research'' means basic or applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community. This is distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.

(1) ''Basic research'' means experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts, not primarily directed towards a specific practical aim or objective.

(2) ''Applied research'' means the effort that:

(i) Normally follows basic research, but may not be severable from the related basic research;

(ii) Attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques; and

(iii) Attempts to advance the state of the art.

§ 734.9 [Removed and Reserved]

■ 6. Section 734.9 is removed and reserved.

■ 7. Section 734.10 is revised to read as follows:

§ 734.10 Patents.

''Technology'' is not ''subject to the EAR'' if it is contained in:

(a) A patent or an open (published) patent application available from or at any patent office;

(b) A published patent or patent application prepared wholly from foreign-origin technology where the application is being sent to the foreign inventor to be executed and returned to the United States for subsequent filing in the U.S. Patent and Trademark Office;

(c) A patent application, or an amendment, modification, supplement or division of an application, and authorized for filing in a foreign country in accordance with the regulations of the Patent and Trademark Office, 37 CFR part 5; or

(d) A patent application when sent to a foreign country before or within six months after the filing of a United States patent application for the purpose of obtaining the signature of an inventor who was in the United States when the invention was made or who is a co-inventor with a person residing in the United States.

■ 8. Section 734.11 is revised to read as follows:

§ 734.11 Government-sponsored research covered by contract controls.

(a) If research is funded by the U.S. Government, and specific national security controls are agreed on to protect information resulting from the research, the provisions of § 734.3(b)(3) will not apply to any export or reexport of such information in violation of such controls. However, any export or reexport of information resulting from the research that is consistent with the specific national security controls may nonetheless be made under this provision.

(b) Examples of ''specific national security controls'' include requirements for prepublication review by the Government, with right to withhold permission for publication; restrictions on prepublication dissemination of information to non-U.S. citizens or other categories of persons; or restrictions on participation of non-U.S. citizens or other categories of persons in the research. A general reference to one or more export control laws or regulations or a general reminder that the Government retains the right to classify is not a ''specific national security control.''

■ 9. Section 734.13 is added to read as follows:

§ 734.13 Export.

(a) Except as set forth in § 734.17, ''export'' means:

(1) An actual shipment or transmission out of the United States, including the sending or taking of an item out of the United States, in any manner;

(2) Releasing or otherwise transferring ''technology'' or ''source code'' (but not ''object code'') to a foreign national in the United States (a ''deemed export'');

(3) Transferring by a person in the United States of registration, control, or ownership of:

(i) A spacecraft subject to the EAR that is not eligible for export under License Exception STA (*i.e.,* spacecraft that provide space-based logistics, assembly or servicing of any spacecraft) to a person in or a national of any other country; or

(ii) Any other spacecraft subject to the EAR to a person in or a national of a Country Group D:5 country; or

(4) [Reserved]

(5) [Reserved]

(6) Releasing or otherwise transferring decryption keys, network access codes, passwords, ''software'' or other information with ''knowledge'' that such provision will cause or permit the transfer of other ''technology'' in clear text or ''software'' to a foreign national.

(b) Any release in the United States of ''technology'' or ''source code'' to a foreign national is a deemed export to the foreign national's most recent country of citizenship or permanent residency.

(c) The export of an item that will transit through a country or countries or will be transshipped in a country or countries to a new country, or are intended for reexport to the new country, is deemed to be an export to the new country.

■ 10. Section 734.14 is added to read as follows:

§ 734.14 Reexport.

(a) Except as set forth in §§ 734.18 and 734.20, ''reexport'' means:

(1) An actual shipment or transmission of an item from one foreign country to another foreign country, including the sending or taking of an item to or from such countries in any manner;

(2) Releasing or otherwise transferring ''technology'' or ''source code'' to a foreign national of a country other than the foreign country where the release or transfer takes place (a ''deemed reexport'');

(3) Transferring by a person outside the United States of registration, control, or ownership of:

(i) A spacecraft subject to the EAR that is not eligible for reexport under License Exception STA (*i.e.,* spacecraft that provide space-based logistics, assembly or servicing of any spacecraft) to a person in or a national of any other country; or

(ii) Any other spacecraft subject to the EAR to a person in or a national of a Country Group D:5 country; or

(4) Releasing or otherwise transferring outside of the United States decryption keys, network access codes, passwords, ''software,'' or other information with ''knowledge'' that such provision will cause or permit the transfer of other ''technology'' in clear text or ''software'' to a foreign national.

(b) Any release outside of the United States of ''technology'' or ''source code'' subject to the EAR to a foreign national of another country is a deemed reexport to the foreign national's most recent country of citizenship or permanent residency, except as described in § 734.20.

(c) The reexport of an item subject to the EAR that will transit through a country or countries or will be transshipped in a country or countries to a new country, or are intended for reexport to the new country, is deemed to be a reexport to the new country.

■ 11. Section 734.15 is added to read as follows:

§ 734.15 Release.

(a) Except as set forth in § 734.18, ''technology'' and ''software'' are ''released'' through:

(1) Visual or other inspection by a foreign national of items that reveals ''technology'' or ''source code'' subject to the EAR to a foreign national;

(2) Oral or written exchanges with a foreign national of ''technology'' in the United States or abroad; or

(3) The application by U.S. persons of ''technology'' or ''software'' to situations abroad using personal knowledge or technical experience acquired in the United States, to the extent that the application reveals to a foreign national ''technology'' or ''source code'' subject to the EAR.

(b) [Reserved]

■ 12. Section 734.16 is added to read as follows:

§ 734.16 Transfer (in-country).

Except as set forth in § 734.18, a transfer (in-country) is a change in end use or end user of an item within the same foreign country. ''Transfer (in-country)'' is synonymous with ''in-country transfer.''

■ 13. Section 734.17 is added to read as follows:

§ 734.17 Export of encryption source code and object code software.

(a) For purposes of the EAR, the export of encryption source code and object code software means:

(1) An actual shipment, transfer, or transmission out of the United States (*see* also paragraph (b) of this section); or

(2) A transfer of such software in the United States to an embassy or affiliate of a foreign country.

(b) The export of encryption source code and object code software controlled for ''EI'' reasons under ECCN 5D002 on the Commerce Control List (see Supplement No. 1 to part 774 of the EAR) includes:

(1) Downloading, or causing the downloading of, such software to locations (including electronic bulletin boards, Internet file transfer protocol, and World Wide Web sites) outside the U.S., or

(2) Making such software available for transfer outside the United States, over wire, cable, radio, electromagnetic, photo optical, photoelectric or other comparable communications facilities accessible to persons outside the United States, including transfers from electronic bulletin boards, Internet file transfer protocol and World Wide Web sites, unless the person making the software available takes precautions adequate to prevent unauthorized transfer of such code. See § 740.13(e) of the EAR for notification requirements for exports or reexports of encryption source code software considered to be publicly available or published consistent with the provisions of § 734.3(b)(3). Publicly available encryption software in object code that corresponds to encryption source code made eligible for License Exception TSU under § 740.13(e) of this subchapter is not subject to the EAR.

(c) Subject to the General Prohibitions described in part 736 of the EAR, such precautions for Internet transfers of products eligible for export under § 740.17(b)(2) of the EAR (encryption software products, certain encryption source code and general purpose encryption toolkits) shall include such measures as:

(1) The access control system, either through automated means or human intervention, checks the address of every system outside of the U.S. or Canada requesting or receiving a transfer and verifies such systems do not have a domain name or Internet address of a foreign government end-user (*e.g.,* ''.gov,'' ''.gouv,'' ''.mil'' or similar addresses);

(2) The access control system provides every requesting or receiving party with notice that the transfer includes or would include cryptographic software subject to export controls under the Export Administration Regulations, and anyone receiving such a transfer cannot export the software without a license or other authorization; and

(3) Every party requesting or receiving a transfer of such software must acknowledge affirmatively that the software is not intended for use by a government end user, as defined in part 772 of the EAR, and he or she understands the cryptographic software is subject to export controls under the Export Administration Regulations and anyone receiving the transfer cannot export the software without a license or other authorization. BIS will consider acknowledgments in electronic form provided they are adequate to assure legal undertakings similar to written acknowledgments.

■ 14. Section 734.18 is added to read as follows:

§ 734.18 Activities that are not exports, reexports, or transfers.

(a) The following activities are not exports, reexports, or transfers:

(1) Launching a spacecraft, launch vehicle, payload, or other item into space.

(2) While in the United States, releasing technology or software to United States citizens, persons lawfully admitted for permanent residence in the United States, or persons who are protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)).

(3) Shipping, moving, or transferring items between or among the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands or any territory, dependency, or possession of the United States as listed in Schedule C, Classification Codes and Descriptions for U.S. Export Statistics, issued by the Bureau of the Census.

(4) Sending, taking, or storing technology or software that is:

(i) Unclassified;

(ii) Secured using end-to-end encryption;

(iii) Secured using cryptographic modules (hardware or software) compliant with Federal Information Processing Standards Publication 140–2 (FIPS 140–2) or its successors, supplemented by software implementation, cryptographic key management and other procedures and controls that are in accordance with guidance provided in current U.S. National Institute for Standards and Technology publications, or other similarly effective cryptographic means; and

(iv) Not stored in a country listed in Country Group D:5 (*see* Supplement No. 1 to part 740 of the EAR) or in the Russian Federation.

(b) *Definitions.* For purposes of this section, 'end-to-end encryption' means the provision of uninterrupted cryptographic protection of data between an originator and an intended recipient, including between an individual and himself or herself. It involves encrypting data by the originating party and keeping that data encrypted except by the intended recipient, where the means to access the data in unencrypted form is not given to any third party, including to any Internet service provider, application service provider or cloud service provider.

(c) The ability to access ''technology'' or ''software'' in encrypted form that satisfies the criteria set forth in paragraph (a)(4) of this section does not constitute the release or export of such ''technology'' or ''software.''

Note to § 734.18: Releasing ''technology'' or ''software'' to any person with knowledge that a violation will occur is prohibited by § 736.2(b)(10) of the EAR.

§ 734.19 [Reserved]

■ 15. Section 734.19 is reserved.

■ 16. Section 734.20 is added to read as follows:

§ 734.20 Activities that are not ''deemed reexports.''

(a) Release of ''technology'' or ''source code'' by an entity outside the United States to a foreign national of a country other than the foreign country where the release takes place does not constitute a deemed reexport of such ''technology'' or ''source code'' if:

(1) The entity is authorized to receive the ''technology'' or ''source code'' at issue, whether by a license, license exception, or situations where no license is required under the EAR for such ''technology'' or ''source code;'' and

(2) The entity is certain that the foreign national's most recent country of citizenship or permanent residency is that of a country to which export from the United States of the ''technology'' or ''source code'' at issue would be authorized by the EAR either under a license exception, or in situations where no license under the EAR would be required.

(b) *Release to A:5 nationals.* Release of ''technology'' or ''source code'' by an entity outside the United States to a foreign national of a country other than the foreign country where the release takes place does not constitute a deemed reexport of such ''technology'' or ''source code'' if:

(1) The entity is authorized to receive the ''technology'' or ''source code'' at issue, whether by a license, license exception, or through situations where no license is required under the EAR;

(2) The foreign national is a *bona fide* regular and permanent employee who is not a proscribed person under U.S. law and is directly employed by the entity;

(3) Such employee is a national exclusively of a country in Country Group A:5; and

(4) The release of ''technology'' or ''source code'' takes place entirely within the physical territory of any such country.

(c) *Release to other than A:5 nationals.* Release of ''technology'' or ''source code'' by an entity outside the United States to a foreign national of a country other than the foreign country where the release takes place does not constitute a deemed reexport of such ''technology'' or ''source code'' if:

(1) The entity is authorized to receive the ''technology'' or ''source code'' at issue, whether by a license, license exception, or situations where no license is required under the EAR;

(2) The foreign national is a *bona fide* regular and permanent employee who is not a proscribed person under U.S. law and is directly employed by the entity;

(3) The release takes place entirely within the physical territory of the country where the entity is located, conducts official business, or operates;

(4) The entity has effective procedures to prevent diversion to destinations, entities, end users, and end uses contrary to the EAR; and

(5) Any one of the following six (*i.e.,* paragraphs (c)(5)(i), (ii), (iii), (iv), (v), or (vi) of this section) situations is applicable:

(i) The foreign national has a security clearance approved by the host nation government of the entity outside the United States;

(ii) The entity outside the United States:

(A) Has in place a process to screen the foreign national employee and to have the employee execute a non-disclosure agreement that provides assurances that the employee will not disclose, transfer, or reexport controlled technology contrary to the EAR;

(B) Screens the employee for substantive contacts with countries listed in Country Group D:5 (see Supplement No. 1 to part 740 of the EAR). Although nationality does not, in and of itself, prohibit access to ''technology'' or ''source code'' subject to the EAR, an employee who has substantive contacts with persons from countries listed in Country Group D:5 shall be presumed to raise a risk of diversion, unless BIS determines otherwise;

(C) Maintains a technology security or clearance plan that includes procedures for screening employees for such substantive contacts;

(D) Maintains records of such screenings for the longer of five years or the duration of the individual's employment with the entity; and

(E) Will make such plans and records available to BIS or its agents for civil and criminal law enforcement purposes upon request;

(iii) The entity is a UK entity implementing § 126.18 of the ITAR (22 CFR 126.18) pursuant to the US–UK Exchange of Notes regarding § 126.18 of the ITAR for which the UK has provided appropriate implementation guidance;

(iv) The entity is a Canadian entity implementing § 126.18 of the ITAR pursuant to the US-Canadian Exchange of Letters regarding § 126.18 of the ITAR for which Canada has provided appropriate implementation guidance;

(v) The entity is an Australian entity implementing the exemption at paragraph 3.7b of the ITAR Agreements Guidelines; or

(vi) The entity is a Dutch entity implementing the exemption at paragraph 3.7c of the ITAR Agreements Guidelines.

(d) *Definitions.* (1) ''Substantive contacts'' includes regular travel to countries in Country Group D:5; recent or continuing contact with agents, brokers, and nationals of such countries; continued demonstrated allegiance to such countries; maintenance of business relationships with persons from such countries; maintenance of a residence in such countries; receiving salary or other continuing monetary compensation from such countries; or acts otherwise indicating a risk of diversion.

(2) *''Permanent and regular employee''* is an individual who:

(a) Is permanently (*i.e.,* for not less than a year) and directly employed by an entity, or

(b) Is a contract employee who:

(i) Is in a long-term contractual relationship with the company where the individual works at the entity's facilities or at locations assigned by the entity (such as a remote site or on travel);

(ii) Works under the entity's direction and control such that the company must determine the individual's work schedule and duties;

(iii) Works full time and exclusively for the entity; and

(iv) Executes a nondisclosure certification for the company that he or she will not disclose confidential information received as part of his or her work for the entity.

Note to paragraph (d)(2): If the contract employee has been seconded to the entity by a staffing agency, then the staffing agency must not have any role in the work the individual performs other than to provide the individual for that work. The staffing agency also must not have access to any controlled ''technology'' or ''source code'' other than that authorized by the applicable regulations or a license.

PART 740—LICENSE EXCEPTIONS

■ 17. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

■ 18. Section 740.9(a)(3) is revised to read as follows:

§ 740.9 Temporary imports, exports, reexports, and transfers (in-country) (TMP).

* * * * *

(a) * * *

(3) ''Technology,'' regardless of media or format, may be exported by or to a U.S. person or a foreign national employee of a U.S. person, traveling or on temporary assignment abroad, subject to the following restrictions:

(i) Foreign nationals may only export or receive such ''technology'' as they are authorized to receive through a license, license exception other than TMP or because no license is required.

(ii) ''Technology'' exported under this authorization may only be possessed or used by a U.S. person or authorized foreign national and sufficient security precautions must be taken to prevent the unauthorized release of the ''technology.'' Such security precautions include encryption of the ''technology,'' the use of secure network connections, such as Virtual Private Networks, the use of passwords or other access restrictions on the electronic device or media on which the ''technology'' is stored, and the use of firewalls and other network security measures to prevent unauthorized access.

(iii) The U.S. person is an employee of the U.S. Government or is directly employed by a U.S. person and not, *e.g.,* by a foreign subsidiary.

(iv) Technology'' authorized under this exception may not be used for foreign production purposes or for technical assistance unless authorized through a license or license exception other than TMP.

(v) The U.S. person employer of foreign nationals must document the use of this exception by foreign national

employees, including the reason that the ''technology'' is needed by the foreign nationals for their temporary business activities abroad on behalf of the U.S. person.

* * * * *

PART 750—APPLICATION PROCESSING, ISSUANCE, AND DENIAL

■ 19. The authority citation for 15 CFR part 750 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013); Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

■ 20. Section 750.7 is amended by revising paragraph (a) to read as follows:

§ 750.7 Issuance of licenses.

(a) *Scope.* Unless limited by a condition set out in a license, the export, reexport, or transfer (in-country) authorized by a license is for the item(s), end-use(s), and parties described in the license application and any letters of explanation. The applicant must inform the other parties identified on the license, such as the ultimate consignees and end users, of the license's scope and of the specific conditions applicable to them. BIS grants licenses in reliance on representations the applicant made in or submitted in connection with the license application, letters of explanation, and other documents submitted. A BIS license authorizing the release of technology to an entity also authorizes the release of the same technology to the entity's foreign nationals who are permanent and regular employees (and who are not proscribed persons under U.S. law) of the entity's facility or facilities authorized on the license, except to the extent a license condition limits or prohibits the release of the technology to nationals of specific countries or country groups.

* * * * *

PART 764—ENFORCEMENT AND PROTECTIVE MEASURES

■ 21. The authority citation for part 764 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

■ 22. Section 764.2 is amended by adding paragraph (l) to read as follows:

§ 764.2 Violations.

* * * * *

(l) No person may ''release'' or otherwise transfer information, such as decryption keys, network access codes, or passwords, that would allow access to other ''technology'' in clear text or ''software'' with ''knowledge'' that the release will result, directly or indirectly, in an unauthorized export, reexport, or transfer of the ''technology'' in clear text or ''software.'' Violation of this provision will constitute a violation to the same extent as a violation in connection with the export of the controlled ''technology'' or ''software.''

PART 772—DEFINITIONS OF TERMS

■ 23. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

■ 24. Section 772.1 is amended by:
■ a. Adding, in alphabetical order, the definition for ''Applied research'';
■ b. Revising the definitions of ''Basic scientific research'' and ''Export'';
■ c. Adding, in alphabetical order, definitions for ''Fundamental research,'' ''Peculiarly responsible,'' ''Proscribed person,'' and ''Publicly available encryption software'';
■ d. Removing the definitions of ''Publicly available information'' and ''Publicly available technology and software'';
■ e. Adding, in alphabetical order, the definition for ''Published'';
■ f. Revising the definitions of ''Reexport'';
■ g. Adding, in alphabetical order, the definition for ''Release'';
■ h. Revising the definition of ''Required'';
■ i. Removing the definition of ''Technical data''; and
■ j. Revising the definitions of ''Technology,'' and ''Transfer.''

The revisions and additions read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Applied research. See § 734.8(c) of the EAR.

* * * * *

Basic scientific research. (GTN)—Experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts, not primarily directed towards a specific practical aim or objective. See also § 734.8(c) of the EAR.

* * * * *

Export. See § 734.13 of the EAR.

* * * * *

Fundamental research. See § 734.8 of the EAR.

* * * * *

Peculiarly responsible. An item is ''peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics or functions'' if it is used in or for use in the ''development,'' ''production,'' ''use,'' operation, installation, maintenance, repair, overhaul, or refurbishing of an item subject to the EAR unless:

(1) The Department of Commerce has determined otherwise in a commodity classification determination;

(2) [Reserved];

(3) It is identical to information used in or with a commodity or software that:

(i) Is or was in production (*i.e.,* not in development); and

(ii) Is EAR99 or described in an ECCN controlled only for Anti-Terrorism (AT) reasons;

(4) It was or is being developed with ''knowledge'' that it would be for use in or with commodities or software:

(i) Described in an ECCN; and

(ii) Also commodities or software either not enumerated on the CCL or the USML (*e.g.,* EAR99 commodities or software) or commodities or software described in an ECCN controlled only for Anti-Terrorism (AT) reasons;

(5) It was or is being developed for use in or with general purpose commodities or software, *i.e.,* with no ''knowledge'' that it would be for use in or with a particular commodity or type of commodity; or

(6) It was or is being developed with ''knowledge'' that it would be for use in or with commodities or software described:

(i) In an ECCN controlled for AT-only reasons and also EAR99 commodities or software; or

(ii) Exclusively for use in or with EAR99 commodities or software.

* * * * *

Proscribed person. A person who is prohibited from receiving the items at issue or participating in a transaction that is subject to the EAR without authorization by virtue of U.S. law, such as persons on the Entity List, Specially Designated Nationals, or debarred parties.

Publicly available encryption software. See § 740.13(e) of the EAR.

Published. See § 734.7 of the EAR.

* * * * *

Reexport. See § 734.14 of the EAR.

Release. See § 734.15 of the EAR.

* * * * *

Required. (General Technology Note)—As applied to ''technology'' or

''software'', refers to only that portion of ''technology'' or ''software'' which is peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics or functions. Such ''required'' ''technology'' or ''software'' may be shared by different products. For example, assume product ''X'' is controlled if it operates at or above 400 MHz and is not controlled if it operates below 400 MHz. If production technologies ''A'', ''B'', and ''C'' allow production at no more than 399 MHz, then technologies ''A'', ''B'', and ''C'' are not ''required'' to produce the controlled product ''X''. If technologies ''A'', ''B'', ''C'', ''D'', and ''E'' are used together, a manufacturer can produce product ''X'' that operates at or above 400 MHz. In this example, technologies ''D'' and ''E'' are ''required'' to make the controlled product and are themselves controlled under the General Technology Note. (See the General Technology Note.)

Note 1 to the definition of *required*: The references to ''characteristics'' and ''functions'' are not limited to entries on the CCL that use specific technical parameters to describe the scope of what is controlled. The ''characteristics'' and ''functions'' of an item listed are, absent a specific regulatory definition, a standard dictionary's definition of the item. For example, ECCN 9A610.a controls ''military aircraft specially designed for a military use that are not enumerated in USML paragraph VIII(a).'' No performance level is identified in the entry, but the control characteristic of the aircraft is that it is specially designed ''for military use.'' Thus, any technology, regardless of significance, peculiar to making an aircraft ''for military use'' as opposed to, for example, an aircraft controlled under ECCN 9A991.a, would be technical data ''required'' for an aircraft specially designed for military use thus controlled under ECCN 9E610.

Note 2 to the definition of *required*: The ITAR and the EAR often divide within each set of regulations or between each set of regulations:

1. Controls on parts, components, accessories, attachments, and software; and

2. Controls on the end items, systems, equipment, or other items into which those parts, components, accessories, attachments, and software are to be installed or incorporated.

Moreover, with the exception of technical data specifically enumerated on the USML, the jurisdictional status of unclassified technical data or ''technology'' is the same as the jurisdictional status of the defense article or ''item subject to the EAR'' to which it is directly related. Thus, if technology is directly related to the production of a 9A610.x aircraft component that is to be integrated or installed in a USML VIII(a) aircraft, then the technology is controlled under ECCN 9E610, not USML VIII(i).

* * * * *

''*Technology''* means:

(a) Except as set forth in paragraph (b) of this definition:

(1) Information necessary for the ''development,'' ''production,'' ''use,'' operation, installation, maintenance, repair, overhaul, or refurbishing (or other terms specified in ECCNs on the CCL that control ''technology'') of an item. ''Technology'' may be in any tangible or intangible form, such as written or oral communications, blueprints, drawings, photographs, plans, diagrams, models, formulae, tables, engineering designs and specifications, computer-aided design files, manuals or documentation, electronic media or information gleaned through visual inspection;

Note to paragraph (a)(1) of this definition: The modification of an existing item creates a new item and technology for the modification is technical data for the development of the new item.

(2) [Reserved];

(3) [Reserved];

(4) [Reserved]; or

(5) Information, such as decryption keys, network access codes, or passwords, that would allow access to other ''technology'' in clear text or ''software.''

(b) ''Technology'' does not include:

(1) Non-proprietary general system descriptions;

(2) Information on basic function or purpose of an item; or

(3) Telemetry data as defined in note 2 to Category 9, Product Group E (see Supplement No. 1 to Part 774 of the EAR).

* * * * *

Transfer. A shipment, transmission, or release of items subject to the EAR either within the United States or outside the United States. *For in-country transfer/transfer (in-country),* see § 734.16 of the EAR.

Note to definition of *transfer*: This definition of ''transfer'' does not apply to § 750.10 of the EAR or Supplement No. 8 to part 760 of the EAR. The term ''transfer'' may also be included on licenses issued by BIS. In that regard, the changes that can be made to a BIS license are the non-material changes described in § 750.7(c) of the EAR. Any other change to a BIS license without authorization is a violation of the EAR. See §§ 750.7(c) and 764.2(e) of the EAR.

* * * * *

Dated: May 18, 2015.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2015–12843 Filed 6–2–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. FDA–2010–N–0155]

Veterinary Feed Directive Regulation Questions and Answers; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Draft revised guidance; availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft revised guidance for industry (GIF) #120 entitled ''Veterinary Feed Directive Regulation Questions and Answers.'' The purpose of this document is to describe the current Veterinary Feed Directive (VFD) requirements for veterinarians, feed manufacturers and other distributors, animal producers, and other parties involved in the distribution or use of medicated feed containing a veterinary feed directive drug (VFD feed). This draft revised guidance reflects changes to the VFD requirements under the VFD final rule.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by August 3, 2015.

ADDRESSES: Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Dragan Momcilovic, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6856, *dragan.momcilovic@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft revised GFI #120 entitled ''Veterinary Feed Directive Regulation Questions and Answers.'' The audience for this draft guidance is comprised of veterinarians issuing VFD orders, feed mills manufacturing VFD feeds and other distributors, animal producers who obtain VFD feeds for use in treating their animals, and others. This draft revised guidance reflects changes to the VFD requirements under the VFD final rule published elsewhere in this edition of the **Federal Register**.

In 1996, Congress enacted the Animal Drug Availability Act (ADAA) to facilitate the approval and marketing of new animal drugs and medicated feeds. In passing the ADAA, Congress created a new regulatory category for certain animal drugs used in animal feed called veterinary feed directive (VFD) drugs. VFD drugs are new animal drugs intended for use in or on animal feed which are limited to use under the professional supervision of a licensed veterinarian. FDA published final regulations implementing the VFD-related provisions of the ADAA in 2000.

Elsewhere in this edition of the **Federal Register**, FDA is publishing a VFD final rule that revises those VFD regulations and introduces clarifying changes to specified definitions. This draft revised guidance includes revisions that are consistent with the requirements in that final rule.

II. Significance of Guidance

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on this topic. It does not establish any rights for or on any person and does is not binding on FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 558.6 have been approved under OMB control number 0910–0363.

IV. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

V. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov.*

Dated: May 28, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–13394 Filed 6–2–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–415]

Schedules of Controlled Substances: Removal of [^{123}I]Ioflupane From Schedule II of the Controlled Substances Act

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration proposes to remove [^{123}I]ioflupane from the schedules of the Controlled Substances Act. This action is pursuant to the Controlled Substances Act which requires that such actions be made on the record after an opportunity for a hearing through formal rulemaking. [^{123}I]Ioflupane is, by definition, a schedule II controlled substance because it is derived from cocaine via ecgonine, both of which are schedule II controlled substances. This action would remove the regulatory controls and administrative, civil, and criminal sanctions applicable to controlled substances, including those specific to schedule II controlled substances, on persons who handle (manufacture, distribute, reverse distribute, dispense, conduct research, import, export, or conduct chemical analysis) or propose to handle [^{123}I]ioflupane.

DATES: Interested persons may file written comments on this proposal in accordance with 21 CFR 1308.43(g). Electronic comments must be submitted, and written comments must be postmarked, on or before July 6, 2015. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Interested persons, defined at 21 CFR 1300.01 as those ''adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811)'', may file a request for hearing or waiver of participation pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.45, 1316.47, 1316.48, or 1316.49, as applicable. Requests for hearing, notices of appearance, and waivers of an opportunity for a hearing or to participate in a hearing must be received on or before July 6, 2015.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–415'' on all correspondence, including any attachments.

- *Electronic comments:* The DEA encourages that all comments be submitted through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the Web page or to attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on Regulations.gov. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.
- *Paper comments:* Paper comments that duplicate an electronic submission are not necessary and are discouraged. Should you wish to mail a comment *in lieu of* submitting a comment online, it should be sent via regular or express mail to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152.
- *Hearing requests:* All requests for hearing must be sent to: DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: John R. Scherbenske, Office of Diversion

Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record. They will, unless reasonable cause is given, be made available by the DEA for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act (FOIA) applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment.

Comments containing personal identifying information and confidential business information identified as directed above will generally be made publicly available in redacted form. If a comment has so much confidential business information or personal identifying information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your online submission that is not identified as directed above as confidential.

An electronic copy of this document and supplemental information to this proposed rule are available at *http://www.regulations.gov* for easy reference.

Request for Hearing, Notice of Appearance at or Waiver of Participation in Hearing

Pursuant to 21 U.S.C. 811(a), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (APA) (5 U.S.C. 551–559). 21 CFR 1308.41–1308.45, and 21 CFR part 1316 subpart D. In accordance with 21 CFR 1308.44 (a)–(c), requests for hearing, notices of appearance, and waivers of an opportunity for a hearing or to participate in a hearing may be submitted only by interested persons, defined as those ''adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811).'' 21 CFR 1300.01. Such requests or notices must conform to the requirements of 21 CFR 1308.44 (a) or (b), and 1316.47 or 1316.48, as applicable, and include a statement of the interest of the person in the proceeding and the objections or issues, if any, concerning which the person desires to be heard. Any waiver must conform to the requirements of 21 CFR 1308.44(c) and 1316.49, including a written statement regarding the interested person's position on the matters of fact and law involved in any hearing.

Legal Authority

The Drug Enforcement Administration (DEA) implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. 21 U.S.C. 801–971. Titles II and III are referred to as the ''Controlled Substances Act'' and the ''Controlled Substances Import and Export Act,'' respectively, but they are collectively referred to as the ''Controlled Substances Act'' or the ''CSA'' for the purposes of this action. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), chapter II. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while ensuring an adequate supply is available for the legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

Under the CSA, each controlled substance is classified into one of five schedules based upon its potential for abuse, its currently accepted medical use in treatment in the United States, and the degree of dependence the drug or other substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances established by Congress are found at 21 U.S.C. 812(c) and the current list of scheduled substances is published at 21 CFR part 1308.

Pursuant to 21 U.S.C. 811(a)(2), the Attorney General may, by rule, ''remove any drug or other substance from the schedules if he [or she] finds that the drug or other substance does not meet the requirements for inclusion in any schedule.'' The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA, 28 CFR 0.100.

The CSA provides that proceedings for the issuance, amendment, or repeal of the scheduling of any drug or other substance may be initiated by the Attorney General (1) on his or her own motion, (2) at the request of the Secretary of the Department of Health and Human Services,[1] or (3) on the petition of any interested party. 21 U.S.C. 811(a). This action was initiated at the request of the Assistant Secretary for Health of the HHS, and is supported by an evaluation of all relevant data by the HHS and the DEA. This action would remove the regulatory controls and administrative, civil, and criminal sanctions applicable to controlled substances, including those specific to schedule II controlled substances, on persons who handle or propose to handle [^{123}I]ioflupane.

Background

DaTscan is a single-dose, injectable diagnostic radiopharmaceutical for use in hospital settings with specialized gamma cameras. It was developed as a diagnostic tool for visualization of dopamine transporters (DAT) by using single photon emission computed tomography (SPECT) brain imaging. The Food and Drug Administration (FDA) approved the New Drug Application (NDA) for DaTscan on January 14, 2011, for the indication of visualizing striatal DATs in the brains of adult patients with suspected Parkinsonian syndromes (PS). [^{123}I]Ioflupane is the active pharmaceutical ingredient (API) in DaTscan and it is a new molecular entity. However, [^{123}I]Ioflupane is, by definition, a schedule II controlled substance because it is derived from cocaine, a schedule II substance, via ecgonine (a schedule II substance). See 21 U.S.C. 812(c), Schedule II, (a)(4).

[1] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

Each vial of DaTscan contains 0.325 micrograms (μg) of [123I]ioflupane per 2.5 milliliters (ml). The average and maximum amounts of non-radioactive ioflupane in each DaTscan vial are estimated to be between 0.21 μg and 0.31 μg. Although ioflupane, the non-radiolabeled API of the drug product DaTscan, binds to DAT and elicits behavioral effects similar to that of cocaine, based upon the available information and DaTscan's unique formulation-specific properties, DaTscan itself presents no practical possibility of abuse, misuse, diversion or clandestine production.

Proposed Determination To Decontrol [123I]Ioflupane

Pursuant to 21 U.S.C. 811(b), (c), and (f), the HHS recommended to the DEA on November 2, 2010, that FDA-approved products containing [123I]ioflupane be removed from schedule II of the CSA. HHS provided to DEA a scientific and medical evaluation document entitled ''Basis for the Recommendation to Remove FDA Approved Products Containing [123I]Ioflupane from Schedule II of the Controlled Substances Act (CSA).'' Pursuant to 21 U.S.C. 811(b), this document contained an eight-factor analysis of FDA-approved products containing [123I]ioflupane, along with the HHS's recommendation to remove FDA-approved products containing [123I]ioflupane from the schedules of the CSA.

In response, the DEA reviewed the scientific and medical evaluation and scheduling recommendation provided by the HHS, and all other relevant data. The DEA and HHS collaborated further regarding the available information. By letter dated February 2, 2015, the HHS provided detailed responses to specific inquiries from the DEA (submitted by letter dated September 16, 2014). Upon further review of all of the available information, the DEA completed its own eight-factor review document on FDA-approved diagnostic products containing [123I]ioflupane (currently, only DaTscan) pursuant to 21 U.S.C. 811(c). The FDA-approved diagnostic product, DaTscan, was used as the basis for the scientific and medical evaluation of FDA-approved diagnostic products containing [123I]ioflupane for both the HHS and DEA eight-factor analysis. Included below is a brief summary of each factor as analyzed by the HHS and the DEA, and as considered by the DEA in this proposed rule to remove [123I]ioflupane from the schedules of the CSA. Please note that both the DEA and HHS analyses and other relevant documents are available in their entirety under ''Supporting and Related Material'' of the public docket for this rule at *http://www.regulations.gov* under docket number DEA–415.

1. The Drug's Actual or Relative Potential for Abuse

According to HHS and the DEA, there are no data demonstrating that individuals are administering quantities of DaTscan sufficient to create a hazard to their health or to the safety of other individuals or to the community. In clinical studies, DaTscan, due to its low concentrations of [123I]ioflupane lacked, central nervous activity (CNS) in humans.

According to HHS review of Sponsor's calculation regarding psychoactive doses of DaTscan, approximately 6,000 vials of DaTscan would be required to produce a subjective ''high'' in humans from exposure to [123I]ioflupane in this product. The volume of 6,000 vials is about 15 liters (L) of fluid, an amount that would be lethal if administered intravenously (i.v.). The short half-life of DaTscan (due to its radioactive decay) will prevent its extended storage for future use at the manufacturing, distributing, or radiopharmacy site; thereby limiting the amount available for diversion. It is highly unlikely that individuals will administer DaTscan on their own initiative since DaTscan has a very dilute and small dose of [123I]ioflupane, and possesses radioactivity. As a result, DaTscan will not have significant capability of creating hazards to the health of the user or to the safety of the community.

2. Scientific Evidence of the Drug's Pharmacological Effects, If Known

DaTscan blocks monoamine transporters, such as DAT and other monoamine transporters such as serotonin transporters. Ioflupane, the active pharmaceutical ingredient in DaTscan, was demonstrated to have an affinity to DAT that was approximately 10- and 100-fold greater than cocaine in rodent brain homogenates or in cells transfected with rat DAT (Neumeyer et al., 1996; Okada et al., 1998; Scheffel et al., 1997). As reported by HHS, non-radiolabeled ioflupane at doses >0.1 mg/kg, i.v. was able to substitute for cocaine in cocaine-trained rats (10 mg/kg, intraperitoneal administration) using a drug discrimination protocol which is predictive of subjective behavioral effects in humans.

HHS reviewed data from eight human clinical trials involving 942 subjects and nine years of post-approval use in Europe and found that there was not any clinical evidence of pharmacological effects resulting from DaTscan administration. The maximum dose of [123I]ioflupane in DaTscan that is administered to the patient prior to undergoing an imaging procedure is 0.325 μg (0.13 μg/ml). HHS extrapolated from the locomotor study and drug discrimination study on non-radiolabeled ioflupane and estimated that the lowest active dose of DaTscan for a 60 kg (132.2 lb) human to achieve a pharmacologic effect would be 288 μg or 886 vials of DaTscan. In addition, the recreational dose of DaTscan is estimated as 1921 μg or 5,910 vials.

Although [123I]ioflupane would be expected to have a pharmacological profile nearly identical to its non-radioactive form, its unique properties (*i.e.,* manufacturing limits and radioactive properties) pose practical barriers to its abuse. Furthermore, according to HHS, the amount of [123I]ioflupane in DaTscan is significantly less than the amounts of ioflupane used to elicit the pharmacological response in preclinical studies with this compound.

3. The State of Current Scientific Knowledge Regarding the Drug or Other Substance

The international non-proprietary name of [123I]ioflupane is methyl(1R, 2S, 3S, 5S)-8-(3-fluoropropyl)-3-(4-[123I]iodophenyl)-8-azabicyclo[3,2,1] octane-2-carboxylate. The molecular formula of [123I]ioflupane is $C_{18}H_{23}F[^{123}I]NO_2$ and the molecular weight is 427.28 g/mol. [123I]Ioflupane is a clear, colorless solution and is only present in a solution of ethanol and sodium acetate buffer. Non-radioactive ioflupane is a white solid with a melting point of 83 °C to 87 °C and soluble in water (less than 0.1 mg/ml), sodium acetate buffer (pH 7.4; 16 mg/ml), and ethanol (27 mg/ml).

HHS states that meaningful extraction of [123I]ioflupane from DaTscan would be impossible due to its limited production and availability and because extraction is technically complex and would require advanced equipment not available to the general public. Importantly, if extraction of ioflupane from [123I]ioflupane is accomplished, the ioflupane would be subject to schedule II controls under the CSA. According to HHS, the retrosynthesis of DaTscan to cocaine and ecgonine would be difficult. Production of DaTscan is technically complex as it requires specialized equipment, facilities, scientific training and expertise, making clandestine manufacturing particularly difficult. HHS indicated that the non-radiolabeled precursors needed for the synthesis of [123I]ioflupane (and

DaTscan) are abusable. In addition, the non-radiolabeled precursors derived from cocaine or ecgonine are also schedule II controlled substances. However, even if an individual obtained the precursors, it is impractical and highly unlikely that they would synthesize the abusable compound into a radiolabeled formulation with a limited storage life that is not desired by drug users.

On January 14, 2011, FDA approved the NDA for DaTscan with the indication of visualizing striatal dopamine transporters in the brains of adult patients with suspected Parkinsonian syndromes using SPECT imaging. As such, any FDA-approved diagnostic product containing [^{123}I]ioflupane has a currently accepted medical use in the United States.

4. Its History and Current Pattern of Abuse

According to HHS, there have been no reports of abuse of [^{123}I]ioflupane. Over 168,000 doses of DaTscan have been administered to patients worldwide, and no pharmacological effects have been noted. Further, according to HHS, no single user has received more than 10 vials of DaTscan in a single day.

5. The Scope, Duration, and Significance of Abuse

There have been no reports of abuse of [^{123}I]ioflupane. According to the National Forensic Laboratory Information System (NFLIS) [2] and the System to Retrieve Information from Drug Evidence (STRIDE) [3], there have been no reports of [^{123}I]ioflupane seizures during the time period January 2010 to February 2015.

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

According to the HHS, because of the limited amounts of manufactured DaTscan, the low concentration of [^{123}I]ioflupane per vial, and the existence of stringent regulatory controls (controls other than those imposed by the CSA and its implementing regulations, including regulation by the United States Nuclear Regulatory Commission under 10 CFR part 35 and/or by states) [4] on the manufacturing and handling of DaTscan, abuse of DaTscan is not possible as a practical matter. Thus, there is little to no practical risk to public health from DaTscan abuse.

7. Its Psychic or Physiological Dependence Liability

As reviewed by HHS, non-radiolabeled ioflupane has cocaine-like properties. In a drug discrimination study in cocaine-trained rats, non-radiolabeled ioflupane produced cocaine-appropriate responding, which suggests that non-radiolabeled ioflupane may produce cocaine-like subjective effects in humans (HHS, 2010).

However, the available evidence suggests that there is no psychic or physiological dependence potential of FDA-approved diagnostic products containing [^{123}I]ioflupane. The psychic or physiological dependence potential of FDA-approved diagnostic products is currently expected to be very limited due to the low exposure concentration of [^{123}I]ioflupane, the aforementioned low potential for abuse (see Factor 1) and the extremely high and lethal quantities needed to achieve a subjective ''high.''

8. Whether the Substance Is an Immediate Precursor of a Substance Already Controlled Under the CSA

[^{123}I]Ioflupane is not an immediate precursor of a substance already controlled under the CSA.

Conclusion

Based on consideration of the scientific and medical evaluation and accompanying recommendation of the HHS and based on the DEA's consideration of its own eight-factor analysis, the DEA finds that the facts and all available and relevant data demonstrate that [^{123}I]ioflupane does not possess abuse or dependence potential. Accordingly, the DEA finds that [^{123}I]ioflupane does not meet the requirements for inclusion in any schedule and should be removed from control under the CSA.

Findings for Schedule Placement Pursuant to 21 U.S.C. 812(b)

The CSA outlines the findings required to place a drug or other substance in any particular schedule (I, II, III, IV, or V). 21 U.S.C. 812(b). The Assistant Secretary for Health of the HHS recommended removal of ''FDA approved products containing [^{123}I]ioflupane from schedule II of the'' CSA. However, because the DEA finds no basis to remove only FDA approved products containing [^{123}I]ioflupane from the schedules, this action proposes to remove the substance [^{123}I]ioflupane from the CSA schedules. Historically, when new molecular entities are removed from control, the substance itself is removed from control rather than the specific FDA-approved drug product (*e.g.,* naloxegol, 80 FR 3468; naloxone, 39 FR 44392). As summarized above, the data currently support removal of substances that contain [^{123}I]ioflupane, primarily because [^{123}I]ioflupane itself has a lethal radioactive barrier, and its manufacturing process is highly regulated and technically complex, thus making abuse highly unlikely.

After consideration of the analyses and recommendation of the Assistant Secretary for Health of the HHS and review of all relevant and available data, the Administrator of the DEA, pursuant to 21 U.S.C. 812(b)(5), finds that:

(1) [^{123}I]Ioflupane has no comparable potential for abuse relative to substances in Schedule V.

(2) [^{123}I]Ioflupane has a currently accepted medical use in treatment in the United States. FDA approved the New Drug Application for DaTscan on January 14, 2011, with the indication of visualizing striatal dopamine transporters in the brains of adult patients with suspected Parkinsonian syndromes using SPECT imaging.

(3) [^{123}I]Ioflupane is not abusable, therefore, its use is not likely to lead to physical or psychological dependence.

Based on these findings, the Administrator of the DEA concludes that [^{123}I]ioflupane does not warrant control under the CSA.

Effect on Other Rulemakings

On November 25, 2014, DEA published an interim final rule waiving the requirement of DEA registration for certain entities that are authorized under other federal or state authorities to administer DaTscan. 79 FR 70085. If finalized, this proposal to remove [^{123}I]ioflupane from the schedules of controlled substances would make such waivers unnecessary. Therefore, if this action is finalized, DEA intends to withdraw the regulations established through that interim final rule.

Regulatory Analyses

Executive Orders 12866 and 15363

In accordance with 21 U.S.C. 811(a), this scheduling action is subject to formal rulemaking procedures done ''on the record after opportunity for a

[2] NFLIS is a program of the DEA that collects drug identification results from drug cases analyzed by other Federal, State, and local forensic laboratories. NFLIS was queried on April 16, 2015.

[3] STRIDE collected the results of drug evidence analyzed at DEA laboratories and reflects evidence submitted by the DEA, other Federal law enforcement agencies, and some local law enforcement agencies. STRIDE data was queried by date submitted to Federal forensic laboratories. On October 1, 2014, STARLiMS replaced STRIDE as the DEA laboratory drug evidence data system of record.

[4] There are Federal and state laws and regulations which limit the public's exposure to radioactivity in radiopharmaceuticals, thus limiting the potential for toxicity imposed on the public.

hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance and for removing a drug or substance from the schedules of controlled substances. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132

This rulemaking does not have federalism implications warranting the application of Executive Order 13132. The rule does not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule does not have tribal implications warranting the application of Executive Order 13175. This rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. The purpose of this rule is to remove [^{123}I]ioflupane from the list of schedules of the CSA. This action will remove regulatory controls and administrative, civil, and criminal sanctions applicable to controlled substances for handlers and proposed handlers of [^{123}I]ioflupane. Accordingly, it has the potential for some economic impact in the form of cost savings.

If finalized, the proposed rule will affect all persons who would handle, or propose to handle, [^{123}I]ioflupane. Due to the wide variety of unidentifiable and unquantifiable variables that potentially could influence the distribution and administration rates of new molecular entities, the DEA is unable to determine the number of entities and small entities which might handle [^{123}I]ioflupane.

Although the DEA does not have a reliable basis to estimate the number of affected entities and quantify the economic impact of this proposed rule, a qualitative analysis indicates that, if finalized, this rule is likely to result in some cost savings for the healthcare industry. The affected entities will continue to meet existing Federal and/or state requirements applicable to those who handle radiopharmaceutical substances, including licensure, security, recordkeeping, and reporting requirements, which in many cases are more stringent than the DEA's requirements. However, the DEA estimates cost savings will be realized from the removal of the administrative, civil, and criminal sanctions for those entities handling or proposing to handle [^{123}I]ioflupane, in the form of saved registration fees, and the elimination of additional physical security, recordkeeping, and reporting requirements.

Because of these facts, this rule will not result in a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

On the basis of information contained in the ''Regulatory Flexibility Act'' section above, the DEA has determined and certifies pursuant to the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501 *et seq.,* that this action would not result in any federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year * * *.'' Therefore, neither a Small Government Agency Plan nor any other action is required under provisions of UMRA.

Paperwork Reduction Act

This action does not impose a new collection of information requirement under the Paperwork Reduction Act, 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects in 21 CFR part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is proposed to be amended to read as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. In § 1308.12, revise paragraph (b)(4) to read as follows:

§ 1308.12 Schedule II.

* * * * *

(b) * * *

(4) Coca leaves (9040) and any salt, compound, derivative or preparation of coca leaves (including cocaine (9041) and ecgonine (9180) and their salts, isomers, derivatives and salts of isomers and derivatives), and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include:

(i) Decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine; or

(ii) [^{123}I]ioflupane.

* * * * *

Dated: May 6, 2015.

Michele M. Leonhart,

Administrator.

[FR Doc. 2015–13455 Filed 6–2–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF STATE

22 CFR Parts 120, 123, 125, and 127

[Public Notice 9149]

RIN 1400–AD70

International Traffic in Arms: Revisions to Definitions of Defense Services, Technical Data, and Public Domain; Definition of Product of Fundamental Research; Electronic Transmission and Storage of Technical Data; and Related Definitions

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: As part of the President's Export Control Reform (ECR) initiative, the Department of State proposes to amend the International Traffic in Arms

Regulations (ITAR) to update the definitions of ''defense article,'' ''defense services,'' ''technical data,'' ''public domain,'' ''export,'' and ''reexport or retransfer'' in order to clarify the scope of activities and information that are covered within these definitions and harmonize the definitions with the Export Administration Regulations (EAR), to the extent appropriate. Additionally, the Department proposes to create definitions of ''required,'' ''technical data that arises during, or results from, fundamental research,'' ''release,'' ''retransfer,'' and ''activities that are not exports, reexports, or retransfers'' in order to clarify and support the interpretation of the revised definitions that are proposed in this rulemaking. The Department proposes to create new sections detailing the scope of licenses, unauthorized releases of information, and the ''release'' of secured information, and revises the sections on ''exports'' of ''technical data'' to U.S. persons abroad. Finally, the Department proposes to address the electronic transmission and storage of unclassified ''technical data'' via foreign communications infrastructure. This rulemaking proposes that the electronic transmission of unclassified ''technical data'' abroad is not an ''export,'' provided that the data is sufficiently secured to prevent access by foreign persons. Additionally, this proposed rule would allow for the electronic storage of unclassified ''technical data'' abroad, provided that the data is secured to prevent access by parties unauthorized to access such data. The revisions contained in this proposed rule are part of the Department of State's retrospective plan under Executive Order 13563 first submitted on August 17, 2011.

DATES: The Department of State will accept comments on this proposed rule until August 3, 2015.

ADDRESSES: Interested parties may submit comments within 60 days of the date of publication by one of the following methods:

- *Email: DDTCPublicComments@state.gov* with the subject line, ''ITAR Amendment—Revisions to Definitions; Data Transmission and Storage.''
- *Internet:* At *www.regulations.gov,* search for this notice by using this rule's RIN (1400–AD70).

Comments received after that date may be considered, but consideration cannot be assured. Those submitting comments should not include any personally identifying information they do not desire to be made public or information for which a claim of confidentiality is asserted because those comments and/or transmittal emails will be made available for public inspection and copying after the close of the comment period via the Directorate of Defense Trade Controls Web site at *www.pmddtc.state.gov.* Parties who wish to comment anonymously may do so by submitting their comments via *www.regulations.gov,* leaving the fields that would identify the commenter blank and including no identifying information in the comment itself. Comments submitted via *www.regulations.gov* are immediately available for public inspection.

FOR FURTHER INFORMATION CONTACT: Mr. C. Edward Peartree, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–1282; email *DDTCResponseTeam@state.gov.* ATTN: ITAR Amendment—Revisions to Definitions; Data Transmission and Storage. The Department of State's full retrospective plan can be accessed at *http://www.state.gov/documents/organization/181028.pdf.*

SUPPLEMENTARY INFORMATION: The Directorate of Defense Trade Controls (DDTC), U.S. Department of State, administers the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130). The items subject to the jurisdiction of the ITAR, *i.e.,* ''defense articles'' and ''defense services,'' are identified on the ITAR's U.S. Munitions List (USML) (22 CFR 121.1). With few exceptions, items not subject to the export control jurisdiction of the ITAR are subject to the jurisdiction of the Export Administration Regulations (''EAR,'' 15 CFR parts 730 through 774, which includes the Commerce Control List (CCL) in Supplement No. 1 to part 774), administered by the Bureau of Industry and Security (BIS), U.S. Department of Commerce. Both the ITAR and the EAR impose license requirements on exports and reexports. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other set of regulations are subject to the EAR.

BIS is concurrently publishing comparable proposed amendments (BIS companion rule) to the definitions of ''technology,'' ''required,'' ''peculiarly responsible,'' ''published,'' results of ''fundamental research,'' ''export,'' ''reexport,'' ''release,'' and ''transfer (in-country)'' in the EAR. A side-by-side comparison on the regulatory text proposed by both Departments is available on both agencies' Web sites: *www.pmddtc.state.gov* and *www.bis.doc.gov.*

1. Revised Definition of Defense Article

The Department proposes to revise the definition of ''defense article'' to clarify the scope of the definition. The current text of § 120.6 is made into a new paragraph (a), into which software is added to the list of things that are a ''defense article'' because software is being removed from the definition of ''technical data.'' This is not a substantive change.

A new § 120.6(b) is added to list those items that the Department has determined should not be a ''defense article,'' even though they would otherwise meet the definition of ''defense article.'' All the items described were formerly excluded from the definition of ''technical data'' in § 120.10. These items are declared to be not subject to the ITAR to parallel the EAR concept of ''not subject to the EAR'' as part of the effort to harmonize the ITAR and the EAR. This does not constitute a change in policy regarding these items or the scope of items that are defense articles.

2. Revised Definition of Technical Data

The Department proposes to revise the definition of ''technical data'' in ITAR § 120.10 in order to update and clarify the scope of information that may be captured within the definition. Paragraph (a)(1) of the revised definition defines ''technical data'' as information ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of a ''defense article,'' which harmonizes with the definition of ''technology'' in the EAR and the Wassenaar Arrangement. This is not a change in the scope of the definition, and additional words describing activities that were in the prior definition are included in parentheticals to assist exporters.

Paragraph (a)(1) also sets forth a broader range of examples of formats that ''technical data'' may take, such as diagrams, models, formulae, tables, engineering designs and specifications, computer-aided design files, manuals or documentation, or electronic media, that may constitute ''technical data.'' Additionally, the revised definition includes certain conforming changes intended to reflect the revised and newly added defined terms proposed elsewhere in this rule.

The proposed revised definition also includes a note clarifying that the modification of the design of an existing item creates a new item and that the ''technical data'' for the modification is ''technical data'' for the new item.

Paragraph (a)(2) of the revised definition defines ''technical data'' as

also including information that is enumerated on the USML. This will be ''technical data'' that is positively described, as opposed to ''technical data'' described in the standard catch-all ''technical data'' control for all ''technical data'' directly related to a ''defense article'' described in the relevant category. The Department intends to enumerate certain controlled ''technical data'' as it continues to move the USML toward a more positive control list.

Paragraph (a)(3) of the revised definition defines ''technical data'' as also including classified information that is for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of a ''defense article'' or a 600 series item subject to the EAR. Paragraph (a)(5) of the revised definition defines ''technical data'' as also including information to access secured ''technical data'' in clear text, such as decryption keys, passwords, or network access codes. In support of the latter change, the Department also proposes to add a new provision to the list of violations in § 127.1(b)(4) to state that any disclosure of these decryption keys or passwords that results in the unauthorized disclosure of the ''technical data'' or software secured by the encryption key or password is a violation and will constitute a violation to the same extent as the ''export'' of the secured information. For example, the ''release'' of a decryption key may result in the unauthorized disclosure of multiple files containing ''technical data'' hosted abroad and could therefore constitute a violation of the ITAR for each piece of ''technical data'' on that server.

Paragraph (b) of the revised definition of ''technical data'' excludes non-proprietary general system descriptions, information on basic function or purpose of an item, and telemetry data as defined in Note 3 to USML Category XV(f) (§ 121.1). Items formerly identified in this paragraph, principles taught in schools and ''public domain'' information, have been moved to the new ITAR § 120.6(b).

The proposed definition removes software from the definition of ''technical data.'' Specific and catch-all controls on software will be added elsewhere throughout the ITAR as warranted, as it will now be defined as a separate type of ''defense article.''

3. Proposed Definition of Required

The Department proposes a definition of ''required'' in a new § 120.46. ''Required'' is used in the definition of ''technical data'' and has, to this point, been an undefined term in the ITAR. The word is also used in the controls on technology in both the EAR and the Wassenaar Arrangement, as a defined term, which the Department is now proposing to adopt:

> . . . [O]nly that portion of [technical data] that is peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics, or functions. Such required [technical data] may be shared by different products.

The proposed definition of ''required'' contains three notes. These notes explain how the definition is to be applied.

Note 1 provides that the definition explicitly includes information for meeting not only controlled performance levels, but also characteristics and functions. All items described on the USML are identified by a characteristic or function. Additionally, some descriptions include a performance level. As an example, USML Category VIII(a)(1) controls aircraft that are ''bombers'' and contains no performance level. The characteristic of the aircraft that is controlled is that it is a bomber, and therefore, any ''technical data'' peculiar to making an aircraft a bomber is ''required.''

Note 2 states that, with the exception of ''technical data'' specifically enumerated on the USML, the jurisdictional status of unclassified ''technical data'' is the same as that of the commodity to which it is directly related. Specifically, it explains that ''technical data'' for a part or component of a ''defense article'' is directly related to that part or component, and if the part or component is subject to the EAR, so is the ''technical data.''

Note 3 establishes a test for determining if information is peculiarly responsible for meeting or achieving the controlled performance levels, characteristics or functions of a ''defense article.'' It uses the same catch-and-release concept that the Department implemented in the definition of ''specially designed.'' It has a similarly broad catch of all information used in or for use in the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of a ''defense article.'' It has four releases that mirror the ''specially designed'' releases, and one reserved paragraph for information that the Department determines is generally insignificant. The first release is for information identified in a commodity jurisdiction determination. The second release is reserved. The third release is for information that is identical to information used in a non-defense article that is in ''production,'' and not otherwise enumerated on the ITAR. The fourth release is for information that was developed with knowledge that it is for both a ''defense article'' and a non-defense article. The fifth release is information that was developed for general purpose commodities.

In the companion rule, BIS proposes to make Note 3 into a stand-alone definition for ''peculiarly responsible'' as it has application outside of the definition of ''required.'' The substance of Note 3 and the BIS definition of ''peculiarly responsible'' are identical. DDTC asks for comments on the placement of this concept.

4. Proposed Definitions of Development and Production

The Department proposes to add § 120.47 for the definition of ''development'' and § 120.48 for the definition of ''production.'' These definitions are currently in Notes 1 and 2 to paragraph (b)(3) in § 120.41, the definition of ''specially designed.'' Because ''technical data'' is now defined, in part, as information ''required'' for the ''development'' or ''production'' of a ''defense article,'' and these words are now used in the definition of a ''defense service,'' it is appropriate to define these terms. The adoption of these definitions is also done for the purpose of harmonization because these definitions are also used in the EAR and by the Wassenaar Arrangement.

5. Revised Definition of Public Domain

The Department proposes to revise the definition of ''public domain'' in ITAR § 120.11 in order to simplify, update, and introduce greater versatility into the definition. The existing version of ITAR § 120.11 relies on an enumerated list of circumstances through which ''public domain'' information might be published. The Department believes that this definition is unnecessarily limiting in scope and insufficiently flexible with respect to the continually evolving array of media, whether physical or electronic, through which information may be disseminated.

The proposed definition is intended to identify the characteristics that are common to all of the enumerated forms of publication identified in the current rule—with the exception of ITAR § 120.11(a)(8), which is addressed in a new definition for ''technical data that arises during, or results from, fundamental research''—and to present those common characteristics in a streamlined definition that does not require enumerated identification

within the ITAR of every current or future qualifying publication scenario. Additionally, the proposed definition incorporates phrases such as ''generally accessible'' and ''without restriction upon its further dissemination'' in order to better align the definition found in the EAR and more closely aligned with the definition in the Wassenaar Arrangement control lists.

The proposed definition requires that information be made available to the public without restrictions on its further dissemination. Any information that meets this definition is ''public domain.'' The definition also retains an exemplary list of information that has been made available to the public without restriction and would be considered ''public domain.'' These include magazines, periodicals and other publications available as subscriptions, publications contained in libraries, information made available at a public conference, meeting, seminar, trade show, or exhibition, and information posted on public Web sites. The final example deems information that is submitted to co-authors, editors, or reviewers or conference organizers for review for publication to be ''public domain,'' even prior to actual publication. The relevant restrictions do not include copyright protections or generic property rights in the underlying physical medium.

Paragraph (b) of the revised definition explicitly sets forth the Department's requirement of authorization to release information into the ''public domain.'' Prior to making available ''technical data'' or software subject to the ITAR, the U.S. government must approve the release through one of the following: (1) The Department; (2) the Department of Defense's Office of Security Review; (3) a relevant U.S. government contracting authority with authority to allow the ''technical data'' or software to be made available to the public, if one exists; or (4) another U.S. government official with authority to allow the ''technical data'' or software to be made available to the public.

The requirements of paragraph (b) are not new. Rather, they are a more explicit statement of the ITAR's requirement that one must seek and receive a license or other authorization from the Department or other cognizant U.S. government authority to release ITAR controlled ''technical data,'' as defined in § 120.10. A release of ''technical data'' may occur by disseminating ''technical data'' at a public conference or trade show, publishing ''technical data'' in a book or journal article, or posting ''technical data'' to the Internet. This proposed provision will enhance compliance with the ITAR by clarifying that ''technical data'' may not be made available to the public without authorization. Persons who intend to discuss ''technical data'' at a conference or trade show, or to publish it, must ensure that they obtain the appropriate authorization.

Information that is excluded from the definition of ''defense article'' in the new § 120.6(b) is not ''technical data'' and therefore does not require authorization prior to release into the ''public domain.'' This includes information that arises during or results from ''fundamental research,'' as described in the new § 120.49; general scientific, mathematical, or engineering principles commonly taught in schools, and information that is contained in patents.

The Department also proposes to add a new provision to § 127.1 in paragraph (a)(6) to state explicitly that the further dissemination of ''technical data'' or software that was made available to the public without authorization is a violation of the ITAR, if, and only if, it is done with knowledge that the ''technical data'' or software was made publicly available without an authorization described in ITAR § 120.11(b)(2). Dissemination of publicly available ''technical data'' or software is not an export-controlled event, and does not require authorization from the Department, in the absence of knowledge that it was made publicly available without authorization.

''Technical data'' and software that is made publicly available without proper authorization remains ''technical data'' or software and therefore remains subject to the ITAR. As such, the U.S. government may advise a person that the original release of the ''technical data'' or software was unauthorized and put that person on notice that further dissemination would violate the ITAR.

6. Proposed Definition of Technical Data That Arises During, or Results From, Fundamental Research

The Department proposes to move ''fundamental research'' from the definition of ''public domain'' in ITAR § 120.11(a)(8) and define ''technical data that arises during, or results from, fundamental research'' in a new ITAR § 120.49. The Department believes that information that arises during, or results from fundamental research is conceptually distinguishable from the information that would be captured in the revised definition of ''public domain'' that is proposed in this rule. Accordingly, the Department proposes to address this concept with its own definition. The new definition of ''technical data that arises during, or results from, fundamental research'' is consistent with the prior ITAR § 120.11(a)(8), except that the Department has expanded the scope of eligible research to include research that is funded, in whole or in part, by the U.S. government.

7. Revised Definition of Export

The Department proposes to revise the definition of ''export'' in ITAR § 120.17 to better align with the EAR's revised definition of the term and to remove activities associated with a defense article's further movement or release outside the United States, which will now fall within the definition of ''reexport'' in § 120.19. The definition is revised to explicitly identify that ITAR §§ 126.16 and 126.17 (exemptions pursuant to the Australia and UK Defense Trade Cooperation Treaties) have their own definitions of ''export,'' which apply exclusively to those exemptions. It also explicitly references the new § 120.49, ''Activities that are Not Exports, Reexports, or Retransfers,'' which excludes from ITAR control certain transactions identified therein.

Paragraph (a)(1) is revised to parallel the definition of ''export'' in proposed paragraph (a)(1) of § 734.13 of the EAR. Although the wording has changed, the scope of the control is the same. The provision excepting travel outside of the United States by persons whose personal knowledge includes ''technical data'' is removed, but the central concept is unchanged. The ''release'' of ''technical data'' to a foreign person while in the United States or while travelling remains a controlled event.

Paragraph (a)(2) includes the control listed in the current § 120.17(a)(4) (transfer of technical data to a foreign person). The proposed revisions replace the word ''disclosing'' with ''releasing,'' and the paragraph is otherwise revised to parallel proposed paragraph (a)(2) of § 734.13 of the EAR. ''Release'' is a newly defined concept in § 120.50 that encompasses the previously undefined term ''disclose.''

Paragraph (a)(3) includes the control listed in the current § 120.17(a)(2) (transfer of registration, control, or ownership to a foreign person of an aircraft, vessel, or satellite). It is revised to parallel proposed paragraph (a)(3) of § 734.13 of the EAR.

Paragraph (a)(4) includes the control listed in the current § 120.17(a)(3) (transfer in the United States to foreign embassies).

Paragraph (a)(5) maintains the control on performing a ''defense service.''

Paragraph (a)(6) is added for the ''release'' or transfer of decryption keys,

passwords, and other items identified in the new paragraph (a)(5) of the revised definition of ''technical data'' in § 120.10. This paragraph makes ''release'' or transfer of information securing ''technical data'' an ''export.'' Making the release of decryption keys and other information securing technical data in an inaccessible or unreadable format an export allows the Department to propose that providing someone with encrypted ''technical data'' would not be an ''export,'' under certain circumstances. Provision of a decryption key or other information securing ''technical data'' is an ''export'' regardless of whether the foreign person has already obtained access to the secured ''technical data.'' Paragraph (a)(6) of the definitions of export and reexport in this rule and the BIS companion rule present different formulations for this control and the agencies request input from the public on which language more clearly describes the control. The agencies intend, however, that the act of providing physical access to unsecured ''technical data'' (subject to the ITAR) will be a controlled event. The mere act of providing access to unsecured technology (subject to the EAR) will not, however, be a controlled event unless it is done with ''knowledge'' that such provision will cause or permit the transfer of controlled ''technology'' in clear text or ''software'' to a foreign national.

Paragraph (a)(7) is added for the release of information to a public network, such as the Internet. This makes more explicit the existing control in (a)(4), which includes the publication of ''technical data'' to the Internet due to its inherent accessibility by foreign persons. This means that before posting information to the Internet, you should determine whether the information is ''technical data.'' You should review the USML, and if there is doubt about whether the information is ''technical data,'' you may request a commodity jurisdiction determination from the Department. If so, a license or other authorization, as described in § 120.11(b), will generally be required to post such ''technical data'' to the Internet. Posting ''technical data'' to the Internet without a Department or other authorization is a violation of the ITAR even absent specific knowledge that a foreign national will read the ''technical data.''

Paragraph (b)(1) is added to clarify existing ITAR controls to explicitly state that disclosing ''technical data'' to a foreign person is deemed to be an ''export'' to all countries in which the foreign person has held citizenship or holds permanent residency.

8. Revised Definition of Reexport

The Department proposes to revise the definition of ''reexport'' in ITAR § 120.19 to better align with the EAR's revised definition and describe transfers of items subject to the jurisdiction of the ITAR between two foreign countries. The activities identified are the same as those in paragraphs (a)(1) through (4) of the revised definition of ''export,'' except that the shipment, release or transfer is between two foreign countries or is to a third country national foreign person outside of the United States.

9. Proposed Definition of Release

The Department proposes to add § 120.50, the definition of ''release.'' This term is added to harmonize with the EAR, which has long used the term to cover activities that disclose information to foreign persons. ''Release'' includes the activities encompassed within the undefined term ''disclose.'' The activities that are captured include allowing a foreign person to inspect a ''defense article'' in a way that reveals ''technical data'' to the foreign persons and oral or written exchanges of ''technical data'' with a foreign person. The adoption of the definition of ''release'' does not change the scope of activities that constitute an ''export'' and other controlled transactions under the ITAR.

10. Proposed Definition of Retransfer

The Department proposes to add § 120.51, the definition of ''retransfer.'' ''Retransfer'' is moved out of the definition of ''reexport'' in § 120.19 to better harmonize with the EAR, which controls ''exports,'' ''reexports'' and ''transfers (in country)'' as discrete events. Under this new definition, a ''retransfer'' occurs with a change of end use or end user within the same foreign territory. Certain activities may fit within the definition of ''reexport'' and ''retransfer,'' such as the disclosure of ''technical data'' to a third country national abroad. Requests for both ''reexports'' and ''retransfers'' of ''defense articles'' will generally be processed through a General Correspondence or an exemption.

11. Proposed Activities That Are Not Exports, Reexports, or Retransfers

The Department proposes to add § 120.52 to describe those ''activities that are not exports, reexports, or retransfers'' and do not require authorization from the Department. It is not an ''export'' to launch items into space, provide ''technical data'' or software to U.S. persons while in the United States, or move a ''defense article'' between the states, possessions, and territories of the United States. The Department also proposes to add a new provision excluding from ITAR licensing requirements the transmission and storage of encrypted ''technical data'' and software.

The Department recognizes that ITAR-controlled ''technical data'' may be electronically routed through foreign servers unbeknownst to the original sender. This presents a risk of unauthorized access and creates a potential for inadvertent ITAR violations. For example, email containing ''technical data'' may, without the knowledge of the sender, transit a foreign country's Internet service infrastructure en route to its intended and authorized final destination. Any access to this data by a foreign person would constitute an unauthorized ''export'' under ITAR § 120.17. Another example is the use of mass data storage (*i.e.,* ''cloud storage''). In this case, ''technical data'' intended to be resident in cloud storage may, without the knowledge of the sender, be physically stored on a server or servers located in a foreign country or multiple countries. Any access to this data, even if unintended by the sender, would constitute an ''export'' under ITAR § 120.17.

The intent of the proposed ITAR § 120.52(a)(4) is to clarify that when unclassified ''technical data'' transits through a foreign country's Internet service infrastructure, a license or other approval is not mandated when such ''technical data'' is encrypted prior to leaving the sender's facilities and remains encrypted until received by the intended recipient or retrieved by the sender, as in the case of remote storage. The encryption must be accomplished in a manner that is certified by the U.S. National Institute for Standards and Technology (NIST) as compliant with the Federal Information Processing Standards Publication 140–2 (FIPS 140–2). Additionally, the Department proposes that the electronic storage abroad of ''technical data'' that has been similarly encrypted would not require an authorization, so long as it is not stored in a § 126.1 country or in the Russian Federation. This will allow for cloud storage of encrypted data in foreign countries, so long as the ''technical data'' remains continuously encrypted while outside of the United States.

12. Revised Exemption for the Export of Technical Data for U.S. Persons Abroad

The Department proposes to revise § 125.4(b)(9) to better harmonize controls on the ''release'' of controlled information to U.S. persons abroad and to update the provisions. The most significant update is that foreign persons authorized to receive ''technical data'' in the United States will be eligible to receive that same ''technical data'' abroad, when on temporary assignment on behalf of their employer. The proposed revisions clarify that a person going abroad may use this exemption to ''export'' ''technical data'' for their own use abroad. The proposed revisions also clarify that the ''technical data'' must be secured while abroad to prevent unauthorized ''release.'' It has been long-standing Department practice to hold U.S. persons responsible for the ''release'' of ''technical data'' in their possession while abroad. However, given the nature of ''technical data'' and the proposed exception from licensing for transmission of secured ''technical data,'' the Department has determined it is necessary to implement an affirmative obligation to secure data while abroad.

13. Proposed Scope of License

The Department proposes to add § 123.28 to clarify the scope of a license, in the absence of a proviso, and to state that authorizations are granted based on the information provided by the applicant. This means that while providing false information to the U.S. government as part of the application process for the ''export,'' ''reexport,'' or ''retransfer'' of a ''defense article'' is a violation of the ITAR, it also may void the license.

14. Revised Definition of Defense Service

Proposed revisions of the ''defense service'' definition were published on April 13, 2011, RIN 1400–AC80 (*see* ''International Traffic in Arms Regulations: Defense Services,'' 76 FR 20590) and May 24, 2013 (*see* 78 FR 31444, RIN 1400–AC80). In those rules, the Department explained its determination that the scope of the current definition is overly broad, capturing certain forms of assistance or services that no longer warrant ITAR control.

The Department reviewed comments on that first proposed definition and, when the recommended changes added to the clarity of the regulation, the Department accepted them. For the Department's evaluation of those public comments and recommendations regarding the April 13, 2011, proposed rule (the first revision), *see* 78 FR 31444, May 24, 2013. The Department's evaluation of the written comments and recommendations in response to the May 24, 2013 proposed rule (the second revision) follows.

Parties commenting on the second revision expressed concern that the definition of ''defense service'' in paragraph (a)(1) was premised on the use of ''other than public domain information.'' The observation was made that with the intent of removing from the definition of a ''defense service'' the furnishing of assistance using ''public domain'' information, but not basing the assistance on the use of ''technical data,'' the Department was continuing to require the licensing of activities akin to those that were based on the use of ''public domain'' information. The Department has fully revised paragraph (a)(1) to remove the use of the ''other than public domain information'' or ''technical data'' from the determination of whether an activity is a ''defense service.'' Furthermore, the Department has added a new provision declaring that the activities described in paragraph (a)(1) are not a ''defense service'' if performed by a U.S. person or foreign person in the United States who does not have knowledge of U.S.-origin ''technical data'' directly related to the ''defense article'' that is the subject of the assistance or training or another ''defense article'' described in the same USML paragraph prior to performing the service. A note is added to clarify that a person will be deemed to have knowledge of U.S.-origin ''technical data'' if the person previously participated in the ''development'' of a ''defense article'' described in the same USML paragraph, or accessed (physically or electronically) that ''technical data.'' A note is also added to clarify that those U.S. persons abroad who only received U.S.-origin ''technical data'' as a result of their activities on behalf of a foreign person are not included within the scope of paragraph (a)(1). A third note is added to clarify that DDTC-authorized foreign person employees in the United States who provide ''defense services'' on behalf of their U.S. employer are considered to be included with the U.S. employer's authorization, and need not be listed on the U.S. employer's technical assistance agreement or receive a separate authorization for those services. The Department also removed the activities of design, development, and engineering from paragraph (a)(1) and moved them to paragraph (a)(2).

Commenting parties recommended revising paragraph (a)(1) to remove the provision of ''technical data'' as a ''defense service,'' because there are already licensing requirements for the ''export'' of ''technical data.'' The Department confirms that it eliminated from the definition of a ''defense service'' the act of furnishing ''technical data'' to a foreign person. Such activity still constitutes an ''export'' and would require an ITAR authorization. New paragraph (a)(1) is concerned with the furnishing of assistance, whereas the ''export'' of ''technical data'' alone, without the furnishing of assistance, is not a ''defense service.'' The ''export'' of ''technical data'' requires an authorization (Department of State form DSP–5 or DSP–85) or the use of an applicable exemption.

Commenting parties recommended the definition be revised to explicitly state that it applies to the furnishing of assistance by U.S. persons, or by foreign persons in the United States. The Department partially accepted this recommendation. However, the Department notes that ITAR § 120.1(c) provides that only U.S. persons and foreign governmental entities in the United States may be granted a license or other approval pursuant to the ITAR, and that foreign persons may only receive a ''reexport'' or ''retransfer'' approval or approval for brokering activities. Therefore, approval for the performance of a defense service in the United States by a foreign person must be obtained by a U.S. person, such as an employer, on behalf of the foreign person. Regarding a related recommendation, the Department also notes that the furnishing of a type of assistance described by the definition of a ''defense service'' is not an activity within the Department's jurisdiction when it is provided by a foreign person outside the United States to another foreign person outside the United States on a foreign ''defense article'' using foreign-origin ''technical data.''

In response to commenting parties, the Department specified that the examples it provided for activities that are not ''defense services'' are not exhaustive. Rather, they are provided to answer the more frequent questions the Department receives on the matter. The Department removed these examples from paragraph (b) and included them as a note to paragraph (a).

A commenting party recommended that paragraphs (a)(5) and (a)(6), regarding the furnishing of assistance in the integration of a spacecraft to a launch vehicle and in the launch failure analysis of a spacecraft or launch vehicle, respectively, be removed, and that those activities be described in the USML categories covering spacecraft

and launch vehicles, on the basis that a general definition should not have such program-specific clauses. As discussed in the May 13, 2014 interim final rule revising USML Category XV (79 FR 27180), the Department accepted this recommendation and revised paragraph (f) of USML Category XV and paragraph (i) of USML Category IV accordingly. The revision includes the recommendation of commenting parties to specifically provide that the service must be provided to a foreign person in order for it to be a licensable activity.

Commenting parties recommended the Department define the term ''tactical employment,'' so as to clarify what services would be captured by paragraph (a)(3). The Department determined that employment of a ''defense article'' should remain a controlled event, due to the nature of items now controlled in the revised USML categories. After ECR, those items that remain ''defense articles'' are the most sensitive and militarily critical equipment that have a significant national security or intelligence application. Allowing training and other services to foreign nationals in the employment of these ''defense articles'' without a license would not be appropriate. Therefore, the Department removed the word ''tactical'' and converted the existing exemption for basic operation of a ''defense article,'' authorized by the U.S. government for ''export'' to the same recipient, into an exclusion from paragraph (a)(3).

A commenting party recommended the Department address the instance of the integration or installation of a ''defense article'' into an item, much as it addressed the instance of the integration or installation of an item into a ''defense article.'' Previously, the Department indicated this would be the subject of a separate rule, and addressed the ''export'' of such items in a proposed rule (*see* 76 FR 13928), but upon review the Department accepted this recommendation, and revised paragraph (a)(2), the note to paragraph (a)(2), and the note to paragraph (a) accordingly. In addition, the Department has changed certain terminology used in the paragraph: instead of referring to the ''transfer'' of ''technical data,'' the paragraph is premised on the ''use'' of ''technical data.'' This change is consistent with removing from the definition of a ''defense service'' the furnishing of ''technical data'' to a foreign person when there is not also the furnishing of assistance related to that ''technical data.''

A commenting party requested clarification of the rationale behind selectively excepting from the ''defense services'' definition the furnishing of services using ''public domain'' information. The Department did so in paragraph (a)(1), and now excludes those services performed by U.S. persons who have not previously had access to any U.S. origin ''technical data'' on the ''defense article'' being serviced. In contrast, the Department did not do so in paragraphs (a)(2) and (a)(3) and former paragraphs (a)(5) and (a)(6). In the case of paragraph (a)(2), the rationale for not doing so is that the activities involved in the development of a ''defense article,'' or in integrating a ''defense article'' with another item, inherently involve the advancement of the military capacity of another country and therefore constitute activities over which the U.S. government has significant national security and foreign policy concerns. To the extent that an activity listed in paragraph (a)(1), such as modification or testing, is done in the ''development'' of a ''defense article,'' such activities constitute ''development'' and are within the scope of paragraph (a)(2). With regard to paragraph (a)(3), the furnishing of assistance (including training) in the employment of a ''defense article'' is a type of activity that the Department believes warrants control as a ''defense service,'' due to the inherently military nature of providing training and other services in the employment of a ''defense article'' (changes to paragraph (a)(3) are described above). The services described in former paragraphs (a)(5) and (a)(6) (and now in USML Categories IV(i) and XV(f)) are pursuant to Public Law 105–261.

A commenting party recommended limiting paragraph (a)(2) to the integration of ECCN 9A515 and 600 series items into defense articles, saying that the regulations should focus on items subject to the EAR with a military or space focus. The Department's focus with this provision is in fact the ''defense article.'' Items that are to be integrated with a ''defense article,'' which may not themselves be defense articles, may be beyond the authority of the Department to regulate. The Department did not accept this recommendation.

A commenting party recommended limiting the definition of integration to changes in the function of the ''defense article,'' and to exclude modifications in fit. For the purposes of illustration, this commenting party used one of the examples provided by the Department in the note to paragraph (a)(2): The manufacturer of the military vehicle will need to know the dimensions and electrical requirements of the dashboard radio when designing the vehicle. In this instance, paragraph (a)(2) would not apply, as this example addresses the manufacture of a ''defense article,'' which is covered by paragraph (a)(1). If the radio to be installed in this vehicle is subject to the EAR, the provision to the manufacturer of information regarding the radio is not within the Department's licensing jurisdiction. In an instance of a service entailing the integration of an item with a ''defense article,'' where there would be modification to any of the items, the Department believes such assistance would inherently require the use of ''technical data.'' Therefore, this exclusion would be unacceptably broad. However, the Department has accepted the recommendation to clarify the definition and exclude changes to fit to any of the items involved in the integration activity, provided that such services do not entail the use of ''technical data'' directly related to the ''defense article.'' Upon review, changes to fit are not an aspect of integration, which is the ''engineering analysis needed to unite a 'defense article' and one or more items,'' and therefore are not captured in paragraph (a)(2). The modifications of the ''defense article'' to accommodate the fit of the item to be integrated, which are within the activity covered by installation, are only those modifications to the ''defense article'' that allow the item to be placed in its predetermined location. Any modifications to the design of a ''defense article'' are beyond the scope of installation. Additionally, while minor modifications may be made to a ''defense article'' without the activity being controlled under (a)(2) as an integration activity, all modifications of defense articles, regardless of sophistication, are activities controlled under (a)(1) if performed by someone with prior knowledge of U.S.-origin ''technical data.'' ''Fit'' is defined in ITAR § 120.41: ''The fit of a commodity is defined by its ability to physically interface or connect with or become an integral part of another commodity'' (*see,* Note 4 to paragraph (b)(3)).

Commenting parties recommended revising paragraph (a)(2) to provide that such assistance described therein would be a ''defense service'' only if U.S.-origin ''technical data'' is exported. The law and regulations do not mandate this limitation. Section 38 of the Arms Export Control Act provides that the President is authorized to control the ''export'' of defense articles and defense services. The ITAR, in defining ''defense article,'' ''technical data,'' and ''export,'' does not provide the qualifier ''U.S.-

origin'' (*see* ITAR §§ 120.6, 120.10, and 120.17, respectively). In the instance described by the commenting party, of the integration of a commercial item into a foreign-origin ''defense article,'' the Department retains jurisdiction when the service is provided by a U.S. person.

A commenting party recommended revising paragraph (a)(2) so that the paragraph (a)(1) exception of the furnishing of assistance using ''public domain'' information is not nullified by paragraph (a)(2), as most of the activities described in paragraph (a)(1) involve integration as defined in the note to paragraph (a)(2). The Department believes each of the activities described in paragraphs (a)(1) and (a)(2) are sufficiently well defined to distinguish them one from the other. Therefore, the Department does not agree that paragraph (a)(2) nullifies the intention of paragraph (a)(1), and does not accept this recommendation.

A commenting party requested clarification that providing an item subject to the EAR for the purposes of integration into a ''defense article'' is not a ''defense service.'' The provision of the item in this instance, unaccompanied by assistance in the integration of the item into a ''defense article,'' is not within the scope of ''the furnishing of assistance,'' and therefore is not a defense service.

Commenting parties recommended clarification on whether the servicing of an item subject to the EAR that has been integrated with a ''defense article'' would be a ''defense service.'' The Department notes that such activity is not a ''defense service,'' provides it as an example of what is not a ''defense service'' in the note to paragraph (a), and also notes that it would be incumbent on the applicant to ensure that in providing this service, ''technical data'' directly related to the ''defense article'' is not used.

Commenting parties expressed concern over the potential negative effect of paragraph (a)(2) and the definition in general on university-based educational activities and scientific communication, and recommended clarification of the relationship between the definition of ''defense services'' and the exemption for the ''export'' of ''technical data'' at ITAR § 125.4(b)(10). Disclosures of ''technical data'' to foreign persons who are bona-fide and full time regular employees of universities continue to be exports for which ITAR § 125.4(b)(10) is one licensing exemption. The Department believes that, in most cases, the normal duties of a university employee do not encompass the furnishing of assistance to a foreign person, in the activities described in paragraph (a). Therefore, in the context of employment with the university, the Department does not perceive that the foreign person's use of the ''technical data'' would be described by ITAR § 120.9(a)(2), or any part of paragraph (a).

In response to the recommendation of one commenting party, the Department added a note clarifying that the installation of an item into a ''defense article'' is not a ''defense service,'' provided no ''technical data'' is used in the rendering of the service.

A commenting party recommended clarification of the licensing process for the ''export'' of an EAR 600 series item that is to be integrated into a ''defense article.'' The Department of Commerce has ''export'' authority over the 600 series item, and the exporter must obtain a license from the Department of Commerce, if necessary. The exporter must also obtain an approval from the Department of State to provide any ''defense service,'' including integration assistance pursuant to paragraph (a)(2).

A commenting party recommended removing ''testing'' as a type of ''defense service,'' stating it was not included in the definition of ''organizational-level maintenance.'' In including testing as part of the former definition but not of the latter, the Department does not perceive an inconsistency or conflict. To the extent that certain testing is within the definition of organization-level maintenance, that testing is explicitly excluded, as organizational-level maintenance is not covered under the definition of a ''defense service.'' However, all other testing remains a ''defense service.'' The Department intends for the furnishing of assistance to a foreign person, whether in the United States or abroad, in the testing of defense articles to be an activity requiring Department approval under the conditions of paragraph (a)(1). The Department did not accept this recommendation.

Commenting parties provided recommendations for revising the definitions of ''public domain'' information and ''technical data.'' Those definitions are proposed in this rule as well. To the extent that evaluation of the proposed changes to ''defense services'' hinges on these terms, the Department invites commenting parties to submit analyses of the impact of these revised definitions on the revised ''defense service'' definition in this proposed rule.

Commenting parties recommended clarification of the regulation regarding the furnishing of assistance and training in organizational-level (basic-level) maintenance. The Department harmonized paragraph (a)(1) and the example regarding organizational-level maintenance by revising the Note to Paragraph (a), which sets forth activities that are not ''defense services,'' so that it specifically provides that ''the furnishing of assistance (including training) in organizational-level (basic-level) maintenance of a defense article'' is an example of an activity that is not a defense service.

In response to commenting parties, the Department clarifies that the example of employment by a foreign person of a natural U.S. person as not constituting a ''defense service'' is meant to address, among other scenarios, the instance where such a person is employed by a foreign defense manufacturer, but whose employment in fact does not entail the furnishing of assistance as described in ITAR § 120.9(a). By ''natural person,'' the Department means a human being, as may be inferred from the definition of ''person'' provided in ITAR § 120.14.

In response to the recommendation of a commenting party, the Department confirms that, as stated in a Department of Commerce notice, ''Technology subject to the EAR that is used with technical data subject to the ITAR that will be used under the terms of a Technical Assistance Agreement (TAA) or Manufacturing License Agreement (MLA) and that would otherwise require a license from [the Department of Commerce] may all be exported under the TAA or MLA'' (*see* 78 FR 22660). In DDTC publication *Guidelines for Preparing Electronic Agreements (Revision 4.2),* Section 20.1.d., the following conditions are stipulated: The technology subject to the EAR will be used with ''technical data'' subject to the ITAR and described in the agreement, and the technology subject to the EAR will be used under the terms of a TAA or MLA (*see http://www.pmddtc.state.gov/licensing/agreement.html*).

Request for Comments

The Department invites public comment on any of the proposed definitions set forth in this rulemaking. With respect to the revisions to ITAR § 120.17, the Department recognizes the increasingly complex nature of telecommunications infrastructure and the manner in which data is transmitted, stored, and accessed, and accordingly seeks public comment with special emphasis on: (1) How adequately the proposed regulations address the technical aspects of data transmission and storage; (2) whether

the proposed regulations mitigate unintended or unauthorized access to transmitted or stored data; and (3) whether the proposed regulations impose an undue financial or compliance burden on the public.

The public is also asked to comment on the effective date of the final rule. Export Control Reform rules that revised categories of the USML and created new 600 series ECCN have had a six-month delayed effective date to allow for exporters to update the classification of their items. In general, rules effecting export controls have been effective on the date of publication, due to the impact on national security and foreign policy. As this proposed rule and the companion proposed rule from the Bureau of Industry and Security revise definitions within the ITAR and the EAR and do not make any changes to the USML or CCL, the Department proposes (should the proposed rule be adopted) a 30-day delayed effective date to allow exporters to ensure continued compliance.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the U.S. government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act (APA). Although the Department is of the opinion that this proposed rule is exempt from the rulemaking provisions of the APA, the Department is publishing this rule with a 60-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function.

Regulatory Flexibility Act

Since the Department is of the opinion that this proposed rule is exempt from the rulemaking provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This proposed amendment does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (the ''Act''), a major rule is a rule that the Administrator of the OMB Office of Information and Regulatory Affairs finds has resulted or is likely to result in: (1) An annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and foreign markets.

The Department does not believe this rulemaking will have an annual effect on the economy of $100,000,000 or more, nor will it result in a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions, or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and foreign markets. The proposed means of solving the issue of data protection are both familiar to and extensively used by the affected public in protecting sensitive information.

Executive Orders 12372 and 13132

This proposed amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this proposed amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this proposed amendment.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). The executive orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the proposed rule has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

The Department of State has reviewed the proposed amendment in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35; however, the Department of State seeks public comment on any unforeseen potential for increased burden.

List of Subjects

22 CFR 120 and 125

Arms and munitions, Classified information, Exports.

22 CFR 123

Arms and munitions, Exports, Reporting and recordkeeping requirements.

22 CFR Part 127

Arms and munitions, Exports, Crime, Law, Penalties, Seizures and forfeitures.

Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M, parts 120, 123, 125, and 127 are proposed to be amended as follows:

PART 120—PURPOSE AND DEFINITIONS

■ 1. The authority citation for part 120 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920; Pub. L. 111–266; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 2. Section 120.6 is amended by designating the current text as paragraph (a), revising the first sentence of newly designated paragraph (a), and adding paragraph (b) to read as follows:

§ 120.6 Defense article.

(a) *Defense article* means any item, software, or technical data designated in § 121.1 of this subchapter. * * *

(b) The following are not defense articles and thus not subject to the ITAR:

(1) [Reserved]

(2) [Reserved]

(3) Information and software that:

(i) Are in the public domain, as described in § 120.11;

(ii) Arise during, or result from, fundamental research, as described in § 120.46;

(iii) Concern general scientific, mathematical, or engineering principles commonly taught in schools, and released by instruction in a catalog course or associated teaching laboratory of an academic institution; or

(iv) Appear in patents or open (published) patent applications available from or at any patent office, unless covered by an invention secrecy order.

Note to paragraph (b): Information that is not within the scope of the definition of technical data (*see* § 120.10) and not directly related to a defense article, or otherwise described on the USML, is not subject to the ITAR.

■ 3. Section 120.9 is revised to read as follows:

§ 120.9 Defense service.

(a) *Defense service* means:

(1) The furnishing of assistance (including training) to a foreign person (*see* § 120.16), whether in the United States or abroad, in the production, assembly, testing, intermediate- or depot-level maintenance (*see* § 120.38), modification, demilitarization, destruction, or processing of a defense article (*see* § 120.6), by a U.S. person or foreign person in the United States, who has knowledge of U.S.-origin technical data directly related to the defense article that is the subject of the assistance, prior to performing the service;

Note 1 to paragraph (a)(1): ''Knowledge of U.S.-origin technical data'' for purposes of paragraph (a)(1) can be established based on all the facts and circumstances. However, a person is deemed to have ''knowledge of U.S.-origin technical data'' directly related to a defense article if the person participated in the development of a defense article described in the same USML paragraph or accessed (physically or electronically) technical data directly related to the defense article that is the subject of the assistance, prior to performing the service.

Note 2 to paragraph (a)(1): U.S. persons abroad who only receive U.S.-origin technical data as a result of their activities on behalf of a foreign person are not included within paragraph (a)(1).

Note 3 to paragraph (a)(1): Foreign person employees in the United States providing defense services as part of Directorate of Defense Trade Controls-authorized employment need not be listed on the U.S. employer's technical assistance agreement or receive separate authorization to perform defense services on behalf of their authorized U.S. employer.

(2) The furnishing of assistance (including training) to a foreign person (*see* § 120.16), whether in the United States or abroad, in the development of a defense article, or the integration of a defense article with any other item regardless of whether that item is subject to the ITAR or technical data is used;

Note to paragraph (a)(2): ''Integration'' means any engineering analysis (*see* § 125.4(c)(5) of this subchapter) needed to unite a defense article and one or more items. Integration includes the introduction of software to enable operation of a defense article, and the determination during the design process of where an item will be installed (*e.g.,* integration of a civil engine into a destroyer that requires changes or modifications to the destroyer in order for the civil engine to operate properly; not plug and play). Integration is distinct from ''installation.'' Installation means the act of putting an item in its predetermined place without the use of technical data or any modifications to the defense article involved, other than to accommodate the fit of the item with the defense article (*e.g.,* installing a dashboard radio into a military vehicle where no modifications (other than to accommodate the fit of the item) are made to the vehicle, and there is no use of technical data.). The ''fit'' of an item is defined by its ability to physically interface or connect with or become an integral part of another item. (*see* § 120.41).

(3) The furnishing of assistance (including training) to a foreign person (*see* § 120.16), regardless of whether technical data is used, whether in the United States or abroad, in the employment of a defense article, other than basic operation of a defense article authorized by the U.S. government for export to the same recipient;

(4) Participating in or directing combat operations for a foreign person (*see* § 120.16), except as a member of the regular military forces of a foreign nation by a U.S. person who has been drafted into such forces; or

(5) The furnishing of assistance (including training) to the government of a country listed in § 126.1 of this subchapter in the development, production, operation, installation, maintenance, repair, overhaul or refurbishing of a defense article or a part component, accessory or attachments specially designed for a defense article.

Note to paragraph (a): The following are examples of activities that are not defense services:

1. The furnishing of assistance (including training) in organizational-level (basic-level) maintenance (*see* § 120.38) of a defense article;

2. Performance of services by a U.S. person in the employment of a foreign person, except as provided in this paragraph;

3. Servicing of an item subject to the EAR (*see* § 120.42) that has been integrated or installed into a defense article, or the servicing of an item subject to the EAR into which a defense article has been installed or integrated, without the use of technical data, except as described in paragraph (a)(5) of this section;

4. The installation of any item into a defense article, or the installation of a defense article into any item;

5. Providing law enforcement, physical security, or personal protective services (including training and advice) to or for a foreign person (if such services necessitate the export of a defense article a license or other approval is required for the export of the defense article, and such services that entail the employment or training in the employment of a defense article are addressed in paragraph (a)(3) of this section);

6. The furnishing of assistance by a foreign person not in the United States;

7. The furnishing of medical, logistical (other than maintenance), translation, financial, legal, scheduling, or administrative services;

8. The furnishing of assistance by a foreign government to a foreign person in the United States, pursuant to an arrangement with the Department of Defense; and

9. The instruction in general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities.

(b) [Reserved]

■ 4. Section 120.10 is revised to read as follows:

§ 120.10 Technical data.

(a) *Technical data* means, except as set forth in paragraph (b) of this section:

(1) Information required for the development (*see* § 120.47) (including design, modification, and integration design), production (*see* § 120.48) (including manufacture, assembly, and integration), operation, installation, maintenance, repair, overhaul, or refurbishing of a defense article. Technical data may be in any tangible or intangible form, such as written or

oral communications, blueprints, drawings, photographs, plans, diagrams, models, formulae, tables, engineering designs and specifications, computer-aided design files, manuals or documentation, electronic media or information gleaned through visual inspection;

Note to paragraph (a)(1): The modification of an existing item creates a new item and technical data for the modification is technical data for the development of the new item.

(2) Information enumerated on the USML (*i.e.,* not controlled pursuant to a catch-all USML paragraph);

(3) Classified information for the development, production, operation, installation, maintenance, repair, overhaul, or refurbishing of a defense article or a 600 series item subject to the EAR;

(4) Information covered by an invention secrecy order; or

(5) Information, such as decryption keys, network access codes, or passwords, that would allow access to other technical data in clear text or software (*see* § 127.1(b)(4) of this subchapter).

(b) *Technical data does not include:*

(1) Non-proprietary general system descriptions;

(2) Information on basic function or purpose of an item; or

(3) Telemetry data as defined in note 3 to USML Category XV(f) (*see* § 121.1 of this subchapter).

■ 5. Section 120.11 is revised to read as follows:

§ 120.11 Public domain.

(a) Except as set forth in paragraph (b) of this section, unclassified information and software are in the public domain, and are thus not technical data or software subject to the ITAR, when they have been made available to the public without restrictions upon their further dissemination such as through any of the following:

(1) Subscriptions available without restriction to any individual who desires to obtain or purchase the published information;

(2) Libraries or other public collections that are open and available to the public, and from which the public can obtain tangible or intangible documents;

(3) Unlimited distribution at a conference, meeting, seminar, trade show, or exhibition, generally accessible to the interested public;

(4) Public dissemination (*i.e.,* unlimited distribution) in any form (*e.g.,* not necessarily in published form), including posting on the Internet on sites available to the public; or

(5) Submission of a written composition, manuscript or presentation to domestic or foreign co-authors, editors, or reviewers of journals, magazines, newspapers or trade publications, or to organizers of open conferences or other open gatherings, with the intention that the compositions, manuscripts, or publications will be made publicly available if accepted for publication or presentation.

(b) Technical data or software, whether or not developed with government funding, is not in the public domain if it has been made available to the public without authorization from:

(1) The Directorate of Defense Trade Controls;

(2) The Department of Defense's Office of Security Review;

(3) The relevant U.S. government contracting entity with authority to allow the technical data or software to be made available to the public; or

(4) Another U.S. government official with authority to allow the technical data or software to be made available to the public.

Note 1 to § 120.11: Section 127.1(a)(6) of this subchapter prohibits, without written authorization from the Directorate of Defense Trade Controls, U.S. and foreign persons from exporting, reexporting, retransfering, or otherwise making available to the public technical data or software if such person has knowledge that the technical data or software was made publicly available without an authorization described in paragraph (b) of this section.

Note 2 to § 120.11: An export, reexport, or retransfer of technical data or software that was made publicly available by another person without authorization is not a violation of this subchapter, except as described in § 127.1(a)(6) of this subchapter.

■ 6. Section 120.17 is revised to read as follows:

§ 120.17 Export.

(a) Except as set forth in § 120.52, § 126.16, or § 126.17 of this subchapter, *export* means:

(1) An actual shipment or transmission out of the United States, including the sending or taking of a defense article outside of the United States in any manner;

(2) Releasing or otherwise transferring technical data or software (source code or object code) to a foreign person in the United States (a ''deemed export'');

(3) Transferring by a person in the United States of registration, control, or ownership of any aircraft, vessel, or satellite subject to the ITAR to a foreign person;

(4) Releasing or otherwise transferring a defense article to an embassy or to any agency or subdivision of a foreign government, such as a diplomatic mission, in the United States;

(5) Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad;

(6) Releasing or otherwise transferring information, such as decryption keys, network access codes, passwords, or software, or providing physical access, that would allow access to other technical data in clear text or software to a foreign person regardless of whether such data has been or will be transferred; or

(7) Making technical data available via a publicly available network (*e.g.,* the Internet).

(b) Any release in the United States of technical data or software to a foreign person is a deemed export to all countries in which the foreign person has held citizenship or holds permanent residency.

■ 7. Section 120.19 is revised to read as follows:

§ 120.19 Reexport.

(a) Except as set forth in § 120.52, *reexport* means:

(1) An actual shipment or transmission of a defense article from one foreign country to another foreign country, including the sending or taking of a defense article to or from such countries in any manner;

(2) Releasing or otherwise transferring technical data or software to a foreign person of a country other than the foreign country where the release or transfer takes place (a ''deemed reexport'');

(3) Transferring by a person outside of the United States of registration, control, or ownership of any aircraft, vessel, or satellite subject to the ITAR to a foreign person outside the United States; or

(4) Releasing or otherwise transferring outside of the United States information, such as decryption keys, network access codes, password, or software, or providing physical access, that would allow access to other technical data in clear text or software to a foreign person regardless of whether such data has been or will be transferred.

(b) [Reserved]

§ 120.41 [Amended]

■ 8. Section 120.41 is amended by reserving Note 1 to paragraph (b)(3) and Note 2 to paragraph (b)(3).

■ 9. Section 120.46 is added to read as follows:

§ 120.46 Required.

(a) As applied to technical data, the term *required* refers to only that portion

of technical data that is peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics, or functions. Such required technical data may be shared by different products.

Note 1 to paragraph (a): The references to ''characteristics'' and functions'' are not limited to entries on the USML that use specific technical parameters to describe the scope of what is controlled. The ''characteristics'' and ''functions'' of an item listed are, absent a specific regulatory definition, a standard dictionary's definition of the item. For example, USML Category VIII(a)(1) controls aircraft that are ''bombers.'' No performance level is identified in the entry, but the characteristic of the aircraft that is controlled is that it is a bomber. Thus, any technical data, regardless of significance, peculiar to making an aircraft a bomber as opposed to, for example, an aircraft controlled under ECCN 9A610.a or ECCN 9A991.a, would be technical data required for a bomber and thus controlled under USML Category VIII(i).

Note 2 to paragraph (a): The ITAR and the EAR often divide within each set of regulations or between each set of regulations:

1. Controls on parts, components, accessories, attachments, and software; and

2. Controls on the end items, systems, equipment, or other items into which those parts, components, accessories, attachments, and software are to be installed or incorporated.

With the exception of technical data specifically enumerated on the USML, the jurisdictional status of unclassified technical data is the same as the jurisdictional status of the defense article or item subject to the EAR to which it is directly related. Thus, if technology is directly related to the production of an ECCN 9A610.x aircraft component that is to be integrated or installed in a USML Category VIII(a) aircraft, the technology is controlled under ECCN 9E610, not USML Category VIII(i).

Note 3 to paragraph (a): Technical data is ''peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics, or functions'' if it is used in or for use in the development (including design, modification, and integration design), production (including manufacture, assembly, and integration), operation, installation, maintenance, repair, overhaul, or refurbishing of a defense article unless:

1. The Department of State has determined otherwise in a commodity jurisdiction determination;

2. [Reserved];

3. It is identical to information used in or with a commodity or software that:

i. Is or was in production (*i.e.,* not in development); and

ii. Is not a defense article;

4. It was or is being developed with knowledge that it is for or would be for use in or with both defense articles and commodities not on the U.S. Munitions List; or

5. It was or is being developed for use in or with general purpose commodities or software (*i.e.,* with no knowledge that it would be for use in or with a particular commodity).

(b) [Reserved]

■ 10. Section 120.47 is added to read as follows:

§ 120.47 Development.

Development is related to all stages prior to serial production, such as: design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, and layouts. Development includes modification of the design of an existing item.

■ 11. Section 120.48 is added to read as follows:

§ 120.48 Production.

Production means all production stages, such as product engineering, manufacture, integration, assembly (mounting), inspection, testing, and quality assurance. This includes ''serial production'' where commodities have passed production readiness testing (*i.e.,* an approved, standardized design ready for large scale production) and have been or are being produced on an assembly line for multiple commodities using the approved, standardized design.

■ 12. Section 120.49 is added to read as follows:

§ 120.49 Technical data that arises during, or results from, fundamental research.

(a) *Technical Data arising during, or resulting from, fundamental research.* Unclassified information that arises during, or results from, fundamental research and is intended to be published is not technical data when the research is:

(1) Conducted in the United States at an accredited institution of higher learning located; or

(2) Funded, in whole or in part, by the U.S. government.

Note 1 to paragraph (a): The inputs used to conduct fundamental research, such as information, equipment, or software, are not ''technical data that arises during or results from fundamental research'' except to the extent that such inputs are technical data that arose during or resulted from earlier fundamental research.

Note 2 to paragraph (a): There are instances in the conduct of research, whether fundamental, basic, or applied, where a researcher, institution, or company may decide to restrict or protect the release or publication of technical data contained in research results. Once a decision is made to maintain such technical data as restricted or proprietary, the technical data becomes subject to the ITAR.

(b) *Prepublication review.* Technical data that arises during, or results from, fundamental research is intended to be published to the extent that the researchers are free to publish the technical data contained in the research without any restriction or delay, including U.S. government-imposed access and dissemination controls or research sponsor proprietary information review.

Note 1 to paragraph (b): Although technical data arising during or resulting from fundamental research is not considered ''intended to be published'' if researchers accept restrictions on its publication, such technical data will nonetheless qualify as technical data arising during or resulting from fundamental research once all such restrictions have expired or have been removed.

Note 2 to paragraph (b): Research that is voluntarily subjected to U.S. government prepublication review is considered intended to be published for all releases consistent with any resulting controls.

Note 3 to paragraph (b): Technical data resulting from U.S. government funded research which is subject to government-imposed access and dissemination or other specific national security controls qualifies as technical data resulting from fundamental research, provided that all government-imposed national security controls have been satisfied.

(c) *Fundamental research definition.* Fundamental research means basic or applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community. This is distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.

(1) *Basic research* means experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts, not primarily directed towards a specific practical aim or objective.

(2) *Applied research* means the effort that:

(i) Normally follows basic research, but may not be severable from the related basic research;

(ii) Attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques; and

(iii) Attempts to advance the state of the art.

■ 13. Section 120.50 is added to read as follows:

§ 120.50 Release.

(a) Except as set forth in § 120.52, technical data and software are released through:

(1) Visual or other inspection by foreign persons of a defense article that reveals technical data or software to a foreign person; or

(2) Oral or written exchanges with foreign persons of technical data in the United States or abroad.

(b) [Reserved]

■ 14. Section 120.51 is added to read as follows:

§ 120.51 Retransfer.

Except as set forth in § 120.52 of this subchapter, a *retransfer* is a change in end use or end user of a defense article within the same foreign country.

■ 15. Section 120.52 is added to read as follows:

§ 120.52 Activities that are not exports, reexports, or retransfers.

(a) The following activities are not exports, reexports, or retransfers:

(1) Launching a spacecraft, launch vehicle, payload, or other item into space;

(2) While in the United States, releasing technical data or software to a U.S. person;

(3) Shipping, moving, or transferring defense articles between or among the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands or any territory, dependency, or possession of the United States as listed in Schedule C, Classification Codes and Descriptions for U.S. Export Statistics, issued by the Bureau of the Census; and

(4) Sending, taking, or storing technical data or software that is:

(i) Unclassified;

(ii) Secured using end-to-end encryption;

(iii) Secured using cryptographic modules (hardware or software) compliant with the Federal Information Processing Standards Publication 140–2 (FIPS 140–2) or its successors, supplemented by software implementation, cryptographic key management and other procedures and controls that are in accordance with guidance provided in current U.S. National Institute for Standards and Technology publications; and

(iv) Not stored in a country proscribed in § 126.1 of this subchapter or the Russian Federation.

(b) For purposes of this section, end-to-end encryption means the provision of uninterrupted cryptographic protection of data between an originator and an intended recipient, including between an individual and himself or herself. It involves encrypting data by the originating party and keeping that data encrypted except by the intended recipient, where the means to access the data in unencrypted form is not given to any third party, including to any Internet service provider, application service provider or cloud service provider.

(c) The ability to access technical data or software in encrypted form that satisfies the criteria set forth in paragraph (a)(4) of this section does not constitute the release or export of such technical data or software.

Note to § 120.52: See § 127.1 of this subchapter for prohibitions on the release or transfer of technical data or software, in any form, to any person with knowledge that a violation will occur.

PART 123—LICENSES FOR THE EXPORT AND TEMPORARY IMPORT OF DEFENSE ARTICLES

■ 16. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2, 38, and 71, 90, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261, 112 Stat. 1920; Sec. 1205(a), Pub. L. 107–228; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 17. Section 123.28 is added to read as follows:

§ 123.28 Scope of a license.

Unless limited by a condition set out in a license, the export, reexport, retransfer, or temporary import authorized by a license is for the item(s), end-use(s), and parties described in the license application and any letters of explanation. DDTC grants licenses in reliance on representations the applicant made in or submitted in connection with the license application, letters of explanation, and other documents submitted.

PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT, AND OTHER DEFENSE SERVICES

■ 18. The authority citation for part 124 continues to read as follows:

Authority: Secs. 2, 38, and 71, 90, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2651a; 22 U.S.C. 2776; Section 1514, Pub. L. 105–261; Pub. L. 111–266; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 19. Section 124.1 is amended by adding paragraph (e) to read as follows:

§ 124.1 Manufacturing license agreements and technical assistance agreements.

* * * * *

(e) Unless limited by a condition set out in an agreement, the export, reexport, retransfer, or temporary import authorized by a license is for the item(s), end-use(s), and parties described in the agreement, license, and any letters of explanation. DDTC approves agreements and grants licenses in reliance on representations the applicant made in or submitted in connection with the agreement, letters of explanation, and other documents submitted.

PART 125—LICENSES FOR THE EXPORT OF TECHNICAL DATA AND CLASSIFIED DEFENSE ARTICLES

■ 20. The authority citation for part 125 continues to read as follows:

Authority: Secs. 2 and 38, 90, 90 Stat. 744 (22 U.S.C. 2752, 2778); 22 U.S.C. 2651a; E.O. 13637, 78 FR 16129.

■ 21. Section 125.4 is amended by revising paragraph (b)(9) to read as follows:

§ 125.4 Exemptions of general applicability.

* * * * *

(b) * * *

(9) Technical data, including classified information, regardless of media or format, exported by or to a U.S. person or a foreign person employee of a U.S. person, travelling or on temporary assignment abroad subject to the following restrictions:

(i) Foreign persons may only export or receive such technical data as they are authorized to receive through a separate license or other approval.

(ii) The technical data exported under this authorization is to be possessed or used solely by a U.S. person or authorized foreign person and sufficient security precautions must be taken to prevent the unauthorized release of the technology. Such security precautions include encryption of the technical data, the use of secure network connections, such as virtual private networks, the use of passwords or other access restrictions on the electronic device or media on which the technical data is stored, and the use of firewalls and other network security measures to prevent unauthorized access.

(iii) The U.S. person is an employee of the U.S. government or is directly employed by a U.S. person and not by a foreign subsidiary.

(iv) Technical data authorized under this exception may not be used for foreign production purposes or for defense services unless authorized through a license or other approval.

(v) The U.S. employer of foreign persons must document the use of this exemption by foreign person employees,

including the reason that the technical data is needed by the foreign person for their temporary business activities abroad on behalf of the U.S. person.

(vi) Classified information is sent or taken outside the United States in accordance with the requirements of the Department of Defense National Industrial Security Program Operating Manual (unless such requirements are in direct conflict with guidance provided by the Directorate of Defense Trade Controls, in which case such guidance must be followed).

* * * * *

PART 127—VIOLATIONS AND PENALTIES

■ 22. The authority citation for part 127 continues to read as follows:

Authority: Sections 2, 38, and 42, 90, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); 22 U.S.C. 401; 22 U.S.C. 2651a; 22 U.S.C. 2779a; 22 U.S.C. 2780; E.O. 13637, 78 FR 16129.

■ 23. Section 127.1 is amended by adding paragraphs (a)(6) and (b)(4) to read as follows:

§ 127.1 Violations.

(a) * * *

(6) To export, reexport, retransfer, or otherwise make available to the public technical data or software if such person has knowledge that the technical data or software was made publicly available without an authorization described in § 120.11(b) of this subchapter.

(b) * * *

(4) To release or otherwise transfer information, such as decryption keys, network access codes, or passwords, that would allow access to other technical data in clear text or to software that will result, directly or indirectly, in an unauthorized export, reexport, or retransfer of the technical data in clear text or software. Violation of this provision will constitute a violation to the same extent as a violation in connection with the export of the controlled technical data or software.

* * * * *

Dated: May 20, 2015.

Rose E. Gottemoeller,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2015–12844 Filed 6–2–15; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 91 and 576

[Docket No. FR–5474–N–02]

RIN 2506–AC29

Emergency Solutions Grants (ESG) Program, Solicitation of Comment on Specific Issues

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Regulatory review; request for comments.

SUMMARY: On December 5, 2011, HUD published an interim rule entitled ''Homeless Emergency Assistance and Rapid Transition to Housing: Emergency Solutions Grants Program and Consolidated Plan Conforming Amendments'' (interim rule). The comment period for the interim rule ended on February 3, 2012. Because recipients and subrecipients have now had more experience implementing the interim rule, HUD recognizes that they may have additional input and comments for HUD to consider in its development of the ESG final rule (final rule). Therefore, this document takes comments for 60 days to allow additional time for public input, and for HUD to solicit specific comment on certain issues.

DATES: *Comment due date:* August 3, 2015.

ADDRESSES: Interested persons are invited to submit comments responsive to this request for information to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–7000. Communications must refer to the above docket number and title and should contain the information specified in the ''Request for Comments'' of this notice.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

Submission of Hard Copy Comments. Comments may be submitted by mail or hand delivery. To ensure that the information is fully considered by all of the reviewers, each commenter submitting hard copy comments, by mail or hand delivery, should submit comments or requests to the address above, addressed to the attention of the Regulations Division. Due to security measures at all federal agencies, submission of comments or requests by mail often result in delayed delivery. To ensure timely receipt of comments, HUD recommends that any comments submitted by mail be submitted at least 2 weeks in advance of the public comment deadline. All hard copy comments received by mail or hand delivery are a part of the public record and will be posted to *http://www.regulations.gov* without change.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Comments. All comments submitted to HUD regarding this notice will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the documents must be scheduled by calling the Regulation Division at 202–708–3055 (this is not a toll-free number). Copies of all comments submitted will also be available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7262, Washington, DC 20410–7000, telephone number (202) 708–4300 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

1. Reasons for Re-Opening Public Comment Period

The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act) (Division B of Pub. L. 111–22), enacted into law on May 20, 2009, amended the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371 *et seq.*) (McKinney-Vento Act) to consolidate the following homeless programs—the Supportive Housing Program, the Shelter Plus Care program, and Moderate Rehabilitation Single Room Occupancy program—into a single program, the Continuum of Care Program. The HEARTH Act also revised the Emergency Shelter Grants program and renamed it the Emergency Solutions Grants (ESG) program, which is the subject of this notice.

The HEARTH Act broadened the emergency shelter and homelessness prevention activities of the Emergency Solutions Grants program beyond those of its predecessor program, the Emergency Shelter Grants program, and added short- and medium-term rental assistance and services to rapidly re-house persons experiencing homelessness. The change in the program's name reflects the change in the program's focus from addressing the needs of homeless people in emergency or transitional shelters to assisting people to quickly regain stability in permanent housing after experiencing a housing crisis or becoming homeless.

On December 5, 2011, at 76 FR 75954, HUD published an interim rule for ESG entitled ''Homeless Emergency Assistance and Rapid Transition to Housing: Emergency Solutions Grants Program and Consolidated Plan Conforming Amendments.'' [1] The interim rule revised the regulations for the Emergency Shelter Grants Program by establishing the new requirements for the Emergency Solutions Grants Program at 24 CFR part 576 and making corresponding amendments to HUD's Consolidated Plan regulations at 24 CFR part 91.

The interim rule took effect on January 4, 2012, and the public comment period for the interim rule ended on February 3, 2012. HUD has carefully reviewed all comments received in response to the interim rule. However, since the issuance of the interim rule, communities have gained valuable experience implementing the Emergency Solutions Grants (ESG) program, and HUD has been working with and hearing from ESG recipients, ESG subrecipients, Continuums of Care (CoCs), interest and advocacy groups, and other stakeholders to gather information about this experience. As is the case with any new program, ESG recipients and subrecipients have raised questions and issues about various components of the interim rule. HUD appreciates the questions and feedback provided to date, and consequently has decided to re-open the public comment period on the interim rule for the purpose of seeking broader input on implementation of the interim rule, before HUD makes final decisions for the final rule. In fact, HUD is raising many of the issues for consideration in this notice in order to be able to more clearly establish in the final rule what is or is not eligible and what the limitations are with ESG funds, in many cases based on recipient or subrecipient feedback. This notice offers an opportunity for ESG recipients and subrecipients, the public, and all interested parties to provide their feedback about particular issues in the interim rule.

Re-opening public comment period for the interim rule supports HUD's goals of increasing public access to and participation in developing HUD regulations and other related documents, and promoting more efficient and effective rulemaking through public involvement.

2. Statutory and Regulatory Changes Affecting the ESG Program

Since HUD issued the ESG interim rule, the following significant statutory or regulatory changes have occurred or are in progress, which will impact the ESG program:

a. MAP–21. On July 18, 2012, President Obama signed into law the ''*Moving Ahead for Progress in the 21st Century Act*'' (*MAP–21*) (Pub. L. 112–141, 126 Stat. 405), which changed the program requirements in the following four areas:

- Changed the applicable environmental review requirements from 24 CFR part 50 back to part 58.
- Defined the term ''local government'' to include an instrumentality of a unit of general purpose local government (other than a public housing agency) to act on behalf of the local government with regard to ESG activities, and to include a combination of general purpose local governments.
- Defined the term ''State'' to include an instrumentality of a State to act on behalf of the State with regard to ESG activities.
- Allowed a metropolitan city and urban county that each receive an ESG allocation and are in the same Continuum of Care (CoC) to receive a joint allocation of ESG funds.

HUD's ESG final rule will incorporate these statutory changes, which are in effect now. Later in this notice, HUD seeks comment on specifics related to implementing joint allocations and instrumentalities.

b. VAWA 2013. The Violence Against Women Reauthorization Act (VAWA) of 2013 (Pub. L. 113–4, 127 Stat. 54) was enacted on March 7, 2013. On August 6, 2013, at 78 FR 47717, HUD issued a **Federal Register** notice that provided an overview of the applicability of VAWA 2013 to HUD programs. This notice listed the HUD programs—including the ESG program—that VAWA 2013 added to the list of covered programs, described the changes that VAWA 2013 made to existing VAWA protections, and identified certain issues for which HUD specifically sought public comment. VAWA will be implemented through notice and comment rulemaking and a proposed rule was published in the **Federal Register** on April 1, 2015. However, the core protections of VAWA—not denying or terminating assistance to victims of domestic violence and expanding the VAWA protections to victims of sexual assault—are in effect, and do not require notice and comment rulemaking for compliance. Recipients and subrecipients should proceed to comply with the basic VAWA protections, and HUD's program offices have advised program participants of the immediate applicability of the core protections.[2] The ESG regulations will reflect all applicable VAWA protections following promulgation of a VAWA final rule.

c. OMB OmniCircular. On December 26, 2013, at 78 FR 78590, the Office of Management and Budget (OMB) issued final guidance on administrative costs, cost principles and audit requirements for federal awards. This final guidance supersedes and streamlines requirements from OMB Circulars A–21, A–87, A–110, and A–122 and Circulars A–89, A–102, and A–133. OMB has finalized the guidance in Title 2 of the Code of Federal Regulations (CFR). OMB charged federal agencies with adopting the policies and procedures in the final guidance by December 26, 2014. HUD is in the process of adopting

[1] It is available at the following link: *https://www.hudexchange.info/resource/1927/hearth-esg-program-and-consolidated-plan-conforming-amendments.*

[2] Listserv message from HUD's Office of Special Needs Assistance Programs, at *https://www.hudexchange.info/news/reauthorization-of-the-violence-against-women-act-vawa.*

such guidance in regulation and, when adopted, the ESG regulations will cross-reference to the applicable regulations addressing these award requirements.

d. Equal Access rule. The ''Equal Access to Housing in HUD Programs—Regardless of Sexual Orientation or Gender Identity'' final rule (77 FR 5662) was published on February 3, 2012. It amends 24 CFR 5.105 to create a new regulatory provision that generally prohibits HUD's assisted and insured housing programs, including ESG, from considering a person's marital status, sexual orientation, or gender identity (a person's internal sense of being male or female) in making housing assistance available. CPD Notice 15–02, ''Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities,'' published in February 2015, provides guidance on how recipients of ESG funding can ensure compliance with this rule.

e. Definition of Chronically Homeless. HUD intends to finalize the definition of ''chronically homeless,'' which affects 24 CFR part 91 (the Consolidated Plan regulations). Once published, it will apply to part 91, and the current definition will be amended. This will establish a consistent definition of chronically homeless across HUD's homeless assistance programs.

f. HMIS final rule. HUD intends to publish a final rule for Homeless Management Information Systems (HMIS). Once published, this rule will apply to all entities using the CoC's HMIS, including Consolidated Plan jurisdictions (both those that receive ESG funds and those that do not) and ESG subrecipients. The ESG regulations will reflect applicable HMIS requirements following promulgation of the HMIS final rule.

B. How To Read This Notice

In re-opening the public comment period for the ESG rule, HUD strives to present a structure to this notice that is informative and encourages meaningful public input to the questions posed by HUD. Accordingly, this notice commences with solicitation of comments on definitions and then generally follows the organization of the regulations in the interim rule. This notice describes specific areas of the interim rule on which HUD seeks additional public comment, in order to assist HUD in deciding policy for the final ESG rule. In addition to seeking additional feedback and comment on certain provisions of the ESG interim rule, for some provisions, HUD proposes specific language for comment. This notice contains some regulatory language to provide context to certain questions or proposed language presented by HUD, but it may be helpful to the reader to review this notice in conjunction with the interim rule. HUD appreciates and values the feedback that commenters provide, particularly feedback that draws on their experience with the interim rule.

The issues addressed in this notice are limited; there are several reasons for this. First, HUD has received public comments on numerous issues, and many of these comments are sufficient for HUD to be able to make a decision—in some cases, a change—for the final rule. Such issues are not specifically addressed in this notice. For example, HUD is planning to change the income requirement for re-evaluation from ''at or below 30 percent AMI'' to ''below 30 percent AMI'' to match the requirement at initial intake, because many people have been confused by the distinction. Second, some issues—including the definition of ''homeless,'' the corresponding recordkeeping requirements, and the definition of ''chronically homeless''—are not subject to further public comment. Public comment for the definition of ''homeless'' and the corresponding recordkeeping requirements were addressed in the Defining Homeless final rule published in the December 5, 2011, **Federal Register**. Likewise, please note that there are some elements of the ESG program that HUD cannot change because they are statutory, such as the cap on Street Outreach and Emergency Shelter program components, or the fact that public housing agencies (PHAs) cannot be recipients or subrecipients (with limited exceptions). Lastly, HUD requests that commenters not resubmit any comments already submitted in the first public comment period unless they provide new information or insights based on research or experience with the program. As mentioned above, HUD has already carefully considered the first set of comments. These are all available online at: *www.regulations.gov/#!docketDetail;D=HUD-2011-0153.* When the final rule is published, HUD will provide a response to each comment received in either comment period. Please take these factors into consideration when developing and submitting comments.

II. Areas of the Consolidated Plan and ESG Interim Rule on Which HUD Seeks Additional Public Comment

A. Definitions

HUD seeks comments on possible changes to several definitions included in the interim rule at §§ 91.5 and 576.2.

1. At risk of homelessness (§§ 91.5 and 576.2): HUD received many comments requesting further elaboration about the condition referenced at § 576.2(1)(iii)(G), which states: ''Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved Consolidated Plan.'' HUD recognizes that, given the variety of types, characteristics, and conditions of housing in urban, suburban, and rural areas around the country, this definition could encompass many different housing situations. However, it is important to note that this condition focuses on characteristics of the *housing,* not the *household.* For example, in a housing unit that does not have the capacity for utilities (*e.g.,* broken water pipes, non-functional wiring for electricity, etc.), the lack of utilities would be a characteristic of the housing. Other examples might include a leaking roof or damage from rodents. On the other hand, if the utilities have been shut off in a housing unit, due to the household's inability to pay, HUD considers this a characteristic of the household, not a characteristic of the housing (of course, that household might still be able to receive ESG assistance under a different category of the At Risk of Homelessness definition).

HUD is considering adding specificity to this condition in the ESG final rule, and seeks comments on the following questions:

a. What types of housing conditions exist in your region that would support this interpretation, or what housing conditions exist that would necessitate different regulatory language?

b. What characteristics, if any, should be added to this portion of the definition of ''At Risk of Homelessness'' to aid recipients in determining who is at risk of homelessness?

Note: For the corresponding recordkeeping requirement, see Section II.C.19.a. of this notice.

2. Emergency shelter (§§ 91.5 and 576.2): The definition of ''emergency shelter'' in the interim rule states: ''Any facility, the primary purpose of which is to provide a temporary shelter for the homeless in general or for specific populations of the homeless, and which

does not require occupants to sign leases or occupancy agreements. Any project funded as an emergency shelter under a Fiscal Year 2010 Emergency [Shelter] Grant may continue to be funded under ESG.'' HUD is considering revising the definition in § 576.2 to address several issues, and seeks comment on the following proposed definition (italicized language added or changed from the interim rule definition): ''Emergency shelter means any facility *(including any building or portion of a building),* the primary purpose of which is to provide a temporary shelter for homeless *individuals or families* in general or for specific populations of homeless *individuals or families. If occupancy creates rights of tenancy under state or local law, the primary purpose is not temporary shelter. The use of the building as an emergency shelter must not be inconsistent with applicable state and local law, including zoning and building codes.''* Each of the proposed changes addressed by the above language is described in greater detail below, with some alternatives discussed. Further, HUD seeks comment on an additional clause for inclusion in the definition: adding to the definition that the facility (building or portion of a building) must also be designated as an emergency shelter on the CoC's most recent Housing Inventory Count.

HUD's proposed changes to the definition of emergency shelter are designed to convey the following: (1) It is not solely the structure of the building that makes something an emergency shelter, it is its purpose—essentially temporary sleeping accommodation—and local zoning laws and building codes determine whether a particular use or structure is allowed in an area; (2) The primary purpose of emergency shelter is to provide a habitable place for a homeless individual or family to sleep, and occupancy by an individual or family in an emergency shelter is temporary (no rights of tenancy are conferred by occupancy); and (3) The homeless shelter provider and program participant relationship is fundamentally different than that of a landlord-tenant relationship.

Below is a discussion of the intent of the proposed changes as well as specific questions for public comment.

a. Adding ''building or portion of a building.'' HUD recognizes that an emergency shelter can take many shapes, especially in rural areas and during local emergencies (*e.g.* hypothermia season), and communities need flexibility to ensure that all homeless persons have a safe place to sleep at night. In light of this recognition, HUD is considering changing the definition of emergency shelter to include the term ''building or portion of a building.'' This change is intended to clarify that an emergency shelter might consist of a building (such as one designed as an emergency shelter facility or a residential-style building), or it might consist of only a portion of a building, such as a wing, room, or floor of a building, or even one or more apartment units, in which homeless families or individuals are given temporary shelter, as evidenced by restrictions on occupancy and use. HUD intends for each of these possible arrangements to be covered under the emergency shelter definition, and HUD invites comments as to whether adding ''building or portion of a building'' would be helpful clarification.

The requirements that apply to each emergency shelter would apply to each building or portion of a building used as an emergency shelter. Further, each separate building would be considered a separate emergency shelter, even if multiple buildings are located on the same site. However, multiple emergency shelters (whether whole buildings or portions of buildings) could comprise a single emergency shelter *project* if the recipient or subrecipient decides to group the shelters together under HUD's proposed definition of ''project'' (discussed below). Consequently, the recipient or subrecipient could apply a single set of written standards to all emergency shelters that are classified as the same emergency shelter project. HUD will consider other requirements that could apply when determining where the word ''project'' is to be used in the final rule, with the goal of improving the ease of administering a ''project'' for recipients and subrecipients. However, note that any ESG requirement that uses ''emergency shelter'' but not ''project'' would apply on a shelter-by-shelter basis, not project-wide. For example, a subrecipient might be able to group two or more shelters under one emergency shelter project for purposes of funding and written standards, but could not group the shelters together for purposes of meeting the involuntary family separation prohibition, which uses ''emergency shelter,'' not ''project.''

With respect to this idea, HUD seeks comment on the following specific questions:

(1) If HUD were to add ''building or portion of a building'' to the definition of ''emergency shelter,'' are there any particular issues or challenges that it would cause for ESG recipients and subrecipients, and if so, what are they? Or, would this be a helpful addition, and if so, how?

(2) Alternatively, HUD is considering adding ''building, buildings, or portions(s) of a building.'' However, in order to consider multiple buildings to be a single emergency shelter, HUD would need to make additional qualifications to be consistent with the nondiscrimination and other ESG requirements. HUD seeks comment on the following questions related to this proposal:

(a) Should HUD require the shelter buildings to be within a certain distance of each other to be considered the same emergency shelter? For example, could two emergency shelter buildings on opposite sides of a large urban county be considered a single emergency shelter, or should HUD set a distance limit? Is there a circumstance under which there would be an advantage—either administrative or otherwise—to consider two emergency shelter buildings as a single shelter, especially if they can be administered as the same project, with the same written standards and other rules?

(b) Should HUD require the buildings to be operated by the same subrecipient to be considered the same emergency shelter?

(c) Are there any other requirements HUD should establish in order to establish commonalities that makes the different buildings a single emergency shelter?

(d) If multiple shelter buildings could be considered a single project, would it make a significant difference in your community if HUD were to adopt ''building, buildings, or portion'' of a building, as opposed to ''building or portion of a building?''

(3) Are there any other considerations about this distinction that are important for HUD to take into account in determining the final rule on this topic?

b. Clarifying that occupancy in an emergency shelter must not create any rights of tenancy under state or local law. In formally recognizing that a facility could include an apartment or other building to serve as an emergency shelter, HUD aims to distinguish emergency shelter provided by a recipient or subrecipient where the shelter resident is sleeping in an apartment or other standard unit from the provision of rental assistance. This bolsters the requirement that emergency shelter is temporary. Therefore, HUD is considering adding the following sentence to the definition of emergency shelter: ''*If occupancy creates rights of tenancy under state or local law, the primary purpose is not temporary shelter.*'' In other words, if the shelter

resident's occupancy of a space creates a right of tenancy or entitlement to occupancy to that space, it is not temporary and, therefore, it is not emergency shelter. HUD seeks comment on this proposal, in particular: In communities that have ''right to shelter'' laws, would this addition create any conflicts? If any problems could arise, what are they?

c. Establishing a clearer distinction between emergency shelter and transitional housing, including removing ''leases or occupancy agreements'' from the definition. The primary distinction between emergency shelter and transitional housing is incorporated into the statutory definitions of these terms in the McKinney-Vento Act, as follows: The purpose of an emergency shelter is to provide temporary shelter; the purpose of transitional housing is ''to facilitate the movement of individuals and families experiencing homelessness to permanent housing within 24 months.'' HUD's proposed definition incorporates two related issues for the public to consider:

(1) In the ESG and CoC Program interim rules, HUD attempted to further clarify for recipients the distinction between the two by stating that transitional housing projects must require a lease or occupancy agreement and emergency shelters could not. HUD received many questions about what constitutes an occupancy agreement, and has since determined that this is not necessarily the best way to make this distinction. This is in part because an occupancy agreement is, simply, a document that is a contract between two parties that is not a legal lease under local landlord/tenant law (though in some communities an occupancy agreement meets the requirements of a lease). Therefore, HUD is proposing removing the phrase ''and which does not require occupants to sign leases or occupancy agreements'' from the definition of emergency shelter.

(2) In its place, HUD is considering adding to the definition a requirement that each emergency shelter must be designated as such on the most recent Housing Inventory Count (HIC) for the applicable CoC for the geographic area, in order to establish a clear and consistent location to identify the status for each emergency shelter or transitional housing project each year. Under this proposal, each recipient or subrecipient would be required to choose the status of a particular project, based on the primary purpose of the project, as either emergency shelter or transitional housing, and indicate this designation formally on the HIC. Per this proposal, the purpose of the project would become the distinguishing factor, as designated on the HIC. This designation would only apply to the project's eligibility for funding under HUD's CoC or ESG Programs.

HUD recognizes that in some ESG-funded ''transitional shelter'' projects, program participants tend to stay for longer than 3 or 6 months, and the program has a heavy service focus. HUD intends to require these types of projects to carefully consider their purpose. HUD also notes that if a subrecipient's emergency shelter contains overnight sleeping accommodations (*i.e.* not a day shelter), it could operate a rapid re-housing project in conjunction with that emergency shelter, to help move program participants to permanent housing. The primary purpose of the emergency shelter bed would be to provide temporary shelter, and the primary purpose of the rapid re-housing project would be to help program participants move quickly into permanent housing (whereas the primary purpose of a transitional housing project is to provide housing for up to 24 months while facilitating the movement to permanent housing). In addition, any emergency shelter that has used ESG funds for renovation and is under a 3- or 10-year minimum period of use requirement would be required to be designated as an emergency shelter. Likewise, any building rehabilitated under the transitional housing component of the CoC Program would be required to be designated as transitional housing.

If included in the final rule, HUD plans to issue guidance to help recipients and subrecipients make this determination. This Notice is not intended to provide that guidance; rather, it is intended to introduce this concept, and seek public comment on it in order to determine whether to move forward with it in the ESG final rule, and in the CoC final rule. HUD seeks public comment on including a requirement in the definition of emergency shelter for recipients and subrecipients to designate emergency shelter projects on the HIC; specifically the following questions:

(a) Would it be helpful to include a provision making the HIC the required place for designating whether a particular bed is considered emergency shelter or transitional housing? Or would it create an unnecessary burden, or would it make no difference since emergency shelters must be designated on the HIC already?

(b) If added, should it be included in the definition of emergency shelter or elsewhere in the final rule (*e.g.* the emergency shelter requirements section at § 576.102 or documentation section at § 576.500)? Alternatively, should it be required elsewhere, such as in the subrecipient agreement?

(c) Finally, HUD has considered that there may be an ESG subrecipient with an emergency shelter in an area that is either not covered by a CoC or where the CoC has not submitted a HIC, for some reason. Has this scenario occurred? Should HUD address this in the final rule?

d. Removing or altering the concept of ''grandfathering in'' projects in the interim rule. The ESG interim rule includes the following language, ''Any project funded as an emergency shelter under a Fiscal Year 2010 Emergency [Shelter] Grant may continue to be funded under ESG.'' The current language was intended to continue funding of ''transitional shelters'' which were included in the definition of ''emergency shelter'' under the Emergency Shelter Grants Program. HUD is considering whether to remove, alter, or maintain this clause in the definition, based on the changes described above which more clearly define an emergency shelter versus transitional housing.

If HUD were to remove this clause, HUD recognizes that there may be some facilities currently classified as emergency shelters that would not meet the revised definition of emergency shelter as proposed, and these facilities would not be eligible for continued funding under the ESG Program. HUD seeks comment on the following questions related to this issue:

(1) If removing the ''grandfathering'' clause *would not* affect your project or community, what strategies have you undertaken to meet the needs without providing ESG-funded transitional shelter or transitional housing?

(2) If removing the ''grandfathering'' clause *would* affect your project or your community, please describe the significance of the impact, specifically the number of beds that would lose ESG funding as a result. Also, what is it about the project that makes it not temporary, or what is the purpose of the project or activities provided that make it overlap between transitional housing and emergency shelter?

(3) How could HUD change the definition of emergency shelter—specifically, the ''grandfathering clause''—to ensure that beds that are truly needed as emergency shelter in the community can continue to receive ESG funds in the future?

e. Ensuring that emergency shelters are placed in locations that are not inconsistent with an area's zoning and

building code. Especially as HUD clarifies that buildings such as apartment buildings can be used as emergency shelters, HUD wants to ensure that recipients and subrecipients fully understand that the use of a building as emergency shelter (*e.g.,* the designation as such) must be in compliance with state and local laws. For this reason, HUD is considering adding the following language either to the definition of emergency shelter or to the requirements in § 576.102, to emphasize it: ''*The use of the building as an emergency shelter must not be inconsistent with the applicable state and local law, including zoning and building codes.*'' If HUD were to adopt such language in the final rule:

(1) Would it be helpful in ensuring that all recipients and subrecipients understand the context in which emergency shelter must be provided, especially if it is a building or portion of a building that is not traditionally used as emergency shelter, or would including this language make no practical difference?

(2) If HUD were to include this requirement, would it be most appropriate in the definition or the elsewhere in the final rule (*e.g.* § 576.102(a))?

(3) Additionally, would it be helpful to remind recipients and subrecipients in the final rule that all emergency shelters must be operated consistently with state or local law? If so, should that reminder be incorporated into the definition of emergency shelter or elsewhere in the final rule?

f. Other comments. In addition to the specific feedback requested above, HUD seeks any additional feedback on this the revised, proposed definition of emergency shelter.

3. Local government and State (Instrumentalities) (§ 576.2): MAP–21 expanded the statutory definition of ''local government'' to include an instrumentality of the unit of general purpose local government, other than a public housing agency, provided that the instrumentality is established pursuant to legislation and designated by the chief executive to act on behalf of the local government regarding activities funded under title IV of the McKinney-Vento Act. MAP–21 also expanded the statutory definition of ''state'' to include any instrumentality of a state that is designated by the governor to act on behalf of the state.

HUD is considering the following standards for recognizing instrumentalities under ESG and seeks comments on the following proposals, specifically how burdensome it would be to obtain this information:

a. Instrumentality of a State. For HUD to recognize an instrumentality as the state for ESG, the state must submit the following to the local HUD field office:

(1) The governor's written designation of the instrumentality to act on behalf of the state with respect to activities funded under ESG; and

(2) A legal opinion from the attorney general of the state that the instrumentality either:

(a) Meets each of the following criteria:

(i) Is used for a governmental purpose and performs a governmental function;

(ii) Performs its function on behalf of the state;

(iii) The state has the authority to appoint members of the governing body of the entity, or the control and supervision of the entity is vested in the state government;

(iv) Statutory authority is needed by the state to create and/or use the entity; and

(v) No part of the net earnings inures to the benefit of any private shareholder, member or individual; or

(b) The entity otherwise qualifies as an instrumentality of the state under its state law.

b. Instrumentality of a local government. For HUD to recognize an instrumentality as the metropolitan city or urban county for ESG, the metropolitan city/urban county must submit the following to the local HUD field office:

(1) The chief executive's written designation of the instrumentality to act on behalf of the metropolitan city/the urban county with respect to activities funded under ESG; and

(2) Certification by the metropolitan city or urban county (chief executive or authorized attorney for the metropolitan city or urban county) that:

(a) The instrumentality is established pursuant to legislation to act on behalf of the metropolitan city/the county with regard to homeless assistance activities, but is not a public housing authority/agency; and

(b) The instrumentality either:

(i) Meets the following criteria:

(A) The entity is used for a governmental purpose and performs a governmental function;

(B) The entity performs its function on behalf of the metropolitan city/the county;

(C) The metropolitan city/the county has the authority to appoint members of the governing body of the entity or the control and supervision of the entity is vested in the metropolitan city/the county;

(D) State or local statutory authority is needed to create and/or use the entity; and

(E) No part of the net earnings inures to the benefit of any private shareholder, member or individual; or

(ii) Otherwise qualifies as an instrumentality of the metropolitan city/urban county under its state or local law.

4. Project (§ 576.2): HUD is considering adding a definition of ''project,'' in order to establish a clear meaning for the term's primary use in the ESG final rule. HUD is considering that this definition read as follows:

> Project means an activity or group of related activities under a single program component, designed by the recipient or subrecipient to accomplish, in whole or in part, a specific objective, and which uses a single HMIS implementation for data entry on these activities. A project may include both ESG-funded and non-ESG-funded activities. This definition does not apply to the term ''project'' when used in the requirements related to environmental review, project-based rental assistance, or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

Under this proposed definition, a single organization could self-define the project in accordance with this definition, and administer one or more than one project. For example, a nonprofit subrecipient could administer a Rapid Re-housing project that only provides case management to persons receiving rental assistance through another federal program. Or, it could administer a Rapid Re-housing project that provides various activities under the Rapid Re-housing component. Alternatively, it could set up and administer two rapid re-housing projects in two different locations (*e.g.,* in different parts of a state), in a single location (*e.g.* one project for city-funded activities and one project for state-funded activities), or it could consider the two as a single rapid re-housing project. However, if a single provider used ESG funds for rapid re-housing and emergency shelter, these would be two separate projects. Similarly—related to the proposed definition of emergency shelter discussed above—multiple emergency shelters (whether whole buildings or portions of buildings) could comprise a single emergency shelter project. Also note that this proposed definition requires activities defined as a project to use the same HMIS implementation. This means that if an ESG recipient/subrecipient operates rapid re-housing activities, for example, in two different CoCs that use different HMIS implementations, they would need to consider these two separate projects. In addition, this definition of project may have implications for other aspects of the ESG final rule: For

example, a recipient or subrecipient could establish a single set of written standards at the project level (also addressed under written standards, below). Finally, note that this definition of ''project'' would not apply to the term when used for purposes of the Integrated Disbursement and Information System (IDIS).

HUD seeks comment on the following questions related to the definition of ''project:''

(1) HUD could allow each recipient or subrecipient to self-define the project in accordance with HUD's definition (such as the one proposed above), such as in a recipient's Annual Action Plan, in a subrecipient's request for funding from the recipient, or in the subrecipient agreement. Should HUD require recipients or subrecipients to formally define or declare each project, and should HUD define how it should be done? If so, what should that requirement be?

(2) What are the potential effects—positive and negative—of adopting the proposed definition?

(3) Are there suggestions for alternate definitions or changes to this definition?

5. Rapid Re-housing (§ 91.5): HUD is reviewing whether to revise the definition in § 91.5 as follows (italicized text replaces current language):

The provision of *a package of rental assistance, financial assistance, and/or services, tailored to the household,* necessary to help a homeless individual or family move as quickly as possible into permanent housing and achieve stability in that housing.

This definition would be consistent with a model established by HUD in collaboration with the U.S. Interagency Council on Homelessness, other federal agencies, and stakeholders. HUD seeks comment on this proposed definition.

B. Request for Comment on the Amendments to Consolidated Submissions for Community Planning and Development (CPD) Programs (24 CFR Part 91)

1. Submission of Action Plans—Timing (§ 91.15 and § 91.115): HUD is considering revising the Consolidated Plan regulations to prohibit Consolidated Plan jurisdictions from submitting Action Plans to HUD before formula allocations have been announced for each fiscal year, as explained in CPD Notice 2014–015, published on October 21, 2014.[3] However, this CPD Notice identified ways in which a jurisdiction could initiate citizen participation on its proposed plan before the jurisdiction knows its actual allocation amounts for a given year. HUD solicits comments on whether HUD should revise the regulations governing citizen participation (§ 91.105 and § 91.115) to reflect the CPD Notice; that is, to allow a jurisdiction to conduct citizen participation on a proposed plan that does not reflect actual allocation amounts, but only if the proposed plan provides ''contingency language'' explaining how the jurisdiction will adjust the proposed plan to reflect actual allocation amounts once known. (See also the discussions of § 570.200 and § 91.500 in sections II.B.2 and II.B.7 of this Notice, respectively.)

2. Reimbursement for Pre-Agreement Costs in the Entitlement Community Development Block Grant (CDBG) Program (§ 570.200(h)): In conjunction with CPD Notice 2014–15 HUD issued a waiver to certain CDBG Entitlement grantees to allow them to reimburse themselves for costs incurred as of the earlier of the grantee's program year start date or the date the Consolidated Plan/Action Plan is received by HUD. Should HUD revise the Consolidated Plan rule to prohibit submission of Action Plans before formula allocations have been announced, as described above, HUD would also pursue a conforming revision to the Entitlement CDBG program regulations; such a change would permanently adopt the alternative requirements provided by the waiver. HUD seeks comment on this proposal. (See also the discussions of §§ 91.15 and 91.115, and § 91.500 in sections II.B.1 and II.B.7 of this Notice, respectively.)

3. Area-Wide Systems Coordination Requirements—Consultation and Coordination (§ 91.100(a)(2) and (d), § 91.110(b) and (e), § 576.400(a), (b), and (c)): See Section II.C.12 of this Notice for more detail.

4. Housing and Homeless Needs Assessment (§ 91.205 and § 91.305):

a. ''Nearing the termination of rapid re-housing assistance'' (§ 91.205(b)(1)(i)(K) and § 91.305(b)(1)(i)(K)). HUD is reconsidering the inclusion of the following element in the housing needs assessment (currently required as a narrative in the Consolidated Plan): ''Formerly homeless families and individuals who are receiving rapid re-housing assistance and are nearing the termination of that assistance.'' HUD originally included this element to encourage Consolidated Plan jurisdictions to identify those households who are housed but who might be more likely to become homeless again than other households, and to focus on helping these families stay housed after their rapid re-housing assistance ends. HUD received a comment indicating that the requirement to obtain this data is too burdensome for states, and is considering removing the requirement for both states and local governments due to the difficulty in obtaining consistent and accurate data. Alternatively, HUD could attempt to clarify the requirement by changing it to ''Formerly homeless families and individuals who are receiving *ESG or CoC-funded* rapid re-housing assistance and are *within 30 days of the end of* that assistance.'' HUD seeks comment on the following questions:

(1) Is this information useful as a part of a jurisdiction's analysis of housing needs and its planning process? If so, in what ways? If not, should HUD eliminate this as a requirement in the final rule for states, local governments, or both?

(2) Is there a better way for HUD to encourage jurisdictions to identify and focus efforts on the households most likely to become homeless again? HUD seeks suggestions about how the requirement could be changed to make it easier to capture this or similar information.

b. Estimating needs for States (§ 91.305(b)(1)(i)). For states, the interim rule also added a requirement to estimate the number and type of families in need of housing assistance for public housing residents (paragraph (b)(1)(i)(F)) and families on the public housing and Housing Choice Voucher tenant-based waiting list (paragraph (b)(1)(i)(G)). HUD received a comment that it is too burdensome for states to collect this data, and is reconsidering the inclusion of both of these elements for states. HUD seeks comment on the following questions:

(1) Is this information useful as a part of a state's analysis of housing needs and its planning process? If so, in what ways?

(2) How are states collecting this data? Are states obtaining reliable estimates on these elements?

(3) Should HUD remove either of these elements from the housing needs assessment of the Consolidated Plan for states, and why or why not?

c. Estimation of homeless data (§ 91.305(c)(i) and § 91.205(c)(i)). The interim rule requires Consolidated Plan jurisdictions to include, in their Housing and Homeless Needs Assessment, the following:

for each category of homeless persons specified by HUD (including chronically

[3] CPD Notice 2014–015 is available at: *https://www.hudexchange.info/resources/documents/Notice-CPD-14-015-Guidance-Submitting-Con-Plans-Annual-Action-Plans-FY-2015.pdf.*

homeless individuals and families, families with children, veterans and their families, and unaccompanied youth), the number of persons experiencing homelessness on a given night, the number of persons who experience homelessness each year, the number of persons who lose their housing and become homeless each year, the number of persons who exit homelessness each year, and the number of days that persons experience homelessness.

HUD expects Consolidated Plan jurisdictions to obtain this data from CoCs, and CoCs will be able to obtain most elements from the local HMIS and the PIT count. However, CoCs must ensure that the data reflects the boundaries of the Consolidated Plan jurisdiction rather than the boundaries of the CoC. The HMIS Data Standards Manual at *https://www.hudexchange.info/resources/documents/HMIS-Data-Standards-Manual.pdf,* released in 2014, establishes certain data elements to be collected in HMIS that enable jurisdictions to report on the above-required measures. However, HUD recognizes that communities are currently working towards setting up their HMIS solutions in order to fully meet these requirements, and that some of this data may only be based on estimates until the new data standards are fully implemented. When a CoC's claimed geographic area includes multiple Consolidated Plan jurisdictions that CoC will need to disaggregate CoC-wide data for each Consolidated Plan jurisdiction. States, territories, and local Consolidated Plan jurisdictions with multiple CoCs need to compile relevant data from all of CoCs within their geographic area. HUD recognizes that some Consolidated Plan jurisdictions might have encountered challenges related to collecting data for the Homeless Needs Assessment of the Consolidated Plan due to the overlap of CoC boundaries and Consolidated Plan jurisdictions. HUD seeks feedback about how jurisdictions are currently providing estimates for these measures, specifically:

(1) What steps are CoCs currently carrying out to disaggregate CoC-wide data for the Consolidated Plan jurisdiction, when their geographies do not align?

(2) What are the barriers to obtaining accurate data for these measures at the Consolidated Plan jurisdiction level?

(3) Are Consolidated Plan jurisdictions using this data for planning or other purposes, and how?

(4) Based on the information above, should HUD make any additional changes to the regulation? If so, what would be most helpful?

d. Scope of Consolidated Plan Data for States (§ 91.305). In its Action Plan, each state is required to describe ''. . . the geographic areas of the state . . . in which it will direct assistance during the ensuing program year, giving the rationale for the priorities for allocating investment geographically . . .'' (required at § 91.320(f) for the Action Plan and found in the eCon Planning Suite on screen AP–50). Because the information gathered for the Consolidated Plan Housing and Homeless Needs Assessment establishes the need in the state and is the basis for the Strategic Plan and Action Plan, it is important for the public and for HUD to understand the scope of data being reported. However, there might be great variance in the universe of data that states report in their Needs Assessment: Some states include data from entitlement jurisdictions that receive their own allocation of Community Development Block Grant (CDBG), HOME Investment Partnerships (HOME), ESG, and/or Housing Opportunities for Persons With AIDS (HOPWA) funding, some only report data on non-entitlement jurisdictions, and some states include partial data from entitlement jurisdictions. In fact, the eCon Planning Suite pre-populates some default data in compliance with different program regulations that require entitlement jurisdictions' data to be either included or excluded for different parts of the Consolidated Plan Needs Assessment. Because *homeless* data is not pre-populated in the eCon Planning Suite, it might be unclear whether, and which, data from entitlements are included in the state's Consolidated Plan Homeless Needs Assessment.

In the final rule, HUD is considering adding one of the following requirements to § 91.305 to help obtain the most precise data possible so that each state can better demonstrate how it is tracking and addressing homelessness in its area, and seeks comments on which option HUD should select, if any:

(1) The state has the option to include in its Homeless Needs Assessment data on entitlement jurisdictions within its boundaries, and must cite all data sources. If the state's Needs Assessment includes data from any entitlement jurisdictions, it must cite which entitlement jurisdictions' data is included and the source of that data (if appropriate, the state could reference the applicable entitlement jurisdiction's Consolidated Plan). If the state's Homeless Needs Assessment is limited to non-entitlement areas' data, then the Consolidated Plan must indicate this; or

(2) The state must only report non-entitlement data in its Homeless Needs Assessment. If a state intends to allocate funds to an entitlement jurisdiction, the state would be required to incorporate the entitlement jurisdiction's data in its Homeless Needs Assessment by reference only (*e.g.,* provide a link to a Web site or to the jurisdiction's Consolidated Plan containing the data).

e. Funding services to people on tribal lands (§§ 91.205, 91.305). HUD intends to provide ESG recipients with the discretion to choose whether or not to use ESG to fund nonprofit organizations serving people living on tribal lands. HUD is considering adding the following language: ''An ESG recipient may fund activities in tribal areas located within the recipient's jurisdiction, provided that the recipient includes these areas in its Consolidated Plan.'' HUD seeks comment on this proposal—specifically:

(1) What effects will this requirement have?

(2) How are ESG recipients already including tribal areas in their consolidated planning process?

(3) If included, should this language be added at part 91 or in part 576?

f. States' use of HMIS and PIT data (§ 91.305(c)(1)). The interim rule does not include the following requirement for states, which is in the regulation for local governments: ''At a minimum, the recipient must use data from the Homeless Management Information System (HMIS) and data from the Point-In-Time (PIT) count conducted in accordance with HUD standards.'' HUD is considering including this requirement for states in the final rule, because most states are already obtaining this data from CoCs and HMIS systems, and this change would make the collection consistent with the requirement for metropolitan cities and urban counties. HUD seeks comment on this addition.

g. Coordination between the Con Plan jurisdiction and CoC on Planning (24 CFR 91.100(a)(2)(i) and 91.110(b)(1)). Currently, the consultation provisions at 24 CFR 91.100(a)(2)(i) and 91.110(b)(1) require each Consolidated Planning jurisdiction to consult with the applicable CoC(s) when preparing the portions of the consolidated plan describing the jurisdiction or state's homeless strategy and the resources available to address the needs of homeless persons and persons at risk of homelessness. In order to develop this strategy, Con Plan jurisdictions must assess the needs and identify available resources to address those needs. For the final rule, HUD is considering specifying that the consultation

requirements include a requirement for the Con Plan jurisdiction to consult with the applicable CoC(s) on the following homeless-specific aspects of the Con Plan: the jurisdiction's homeless needs assessment (§§ 91.205(c) and 91.305(c)), one-year goals and specific action steps for reducing and ending homelessness (§§ 91.220(i)(1) and 91.320(h)(1)), and performance reports (§ 91.520).

HUD expects that in many places, especially where the geographic boundaries of CoCs and Con Plan jurisdiction are coterminous, CoCs and Con Plan jurisdictions are already coordinating to align the strategies in the Con Plan and CoC plan. HUD has received questions about what acceptable consultation, participation, and collaboration consist of, between the CoCs and Con Plan jurisdictions, and especially for states. The purpose of proposing this requirement would be to specify the requirements and ensure that Con Plan jurisdictions and CoCs are collaborating on all aspects of the plan that directly impact the homeless goals and strategies, in order to develop a more complete and cohesive strategy to end homelessness in these overlapping plans.

HUD seeks comment on this concept, specifically:

(1) Would this requirement facilitate or improve collaboration and coordination between CoCs and Con Plan jurisdictions on homelessness activities? If so, how? If not, why not?

(2) Are the current consultation requirements in the interim rule sufficient for Con Plan jurisdictions to establish the needs and strategies for addressing homelessness in the jurisdiction?

(3) Should HUD include this requirement, or are there other ways that HUD could, in the final rule, facilitate better coordination between CoCs and Con Plan jurisdictions to ensure that their plans establish closely aligned and complementary goals to end homelessness?

5. Process for Making Subawards (§§ 91.220(l)(4)(iii) and 91.320(k)(3)(iii)):

HUD received comments from numerous respondents recommending that HUD require ESG recipients to describe how they will use performance data to select subrecipients. Based on these comments, HUD is considering including language in the final rule that would implement this suggestion, and seeks comments on what impact this would have on ESG recipients. For those recipients that currently select subrecipients based on performance data, HUD seeks feedback about processes currently used, including any specific performance indicators. Additionally, HUD seeks comment on whether there are any further requirements that HUD should include related to selecting subrecipients based on performance to help recipients implement this proposed requirement.

6. Written Standards for ESG Recipients (§ 91.220(l)(4) and § 91.320(k)(3), and § 576.400(e)): See section II.C.14 of this Notice for more detail.

7. HUD Approval of Action Plans (§ 91.500): HUD is considering amending the list of examples of substantially incomplete Action Plans at § 91.500(b), to include plans which do not reflect a jurisdiction's actual allocation amounts for that year. HUD envisions that this would also cover situations in which a jurisdiction submits a proposed plan on which it has conducted citizen participation, which neither reflects actual allocation amounts nor contains contingency language on how the jurisdiction will adjust its plan to reflect actual amounts. (See also the discussions of §§ 91.15 and 91.115, and § 570.200 in sections II.B.1 and II.B.2 of this Notice, respectively.)

8. Performance Reports Related to Homelessness for ESG Recipients (§ 91.520(g)): HUD proposes to require that ESG recipients and subrecipients use HMIS (except those subrecipients that are prohibited from doing so under VAWA) in compliance with the forthcoming HMIS rule, to collect and report on data in the Consolidated Annual Performance Evaluation Report (CAPER), as specified by HUD, and seeks comments on this proposal.

C. Request for Comment on Emergency Solutions Grants Program Regulations (24 CFR Part 576)

1. Emphasis on Rapid Re-housing: HUD has been encouraging ESG recipients to spend more of their funds on rapid re-housing, since it is often a cost-effective way to make a significant impact on homelessness in a community and help achieve the national goal of ending homelessness. HUD is considering ways to continue this policy, and seeks feedback on what requirements and/or incentives could be established in the final rule for recipients to focus more on rapid re-housing, or whether HUD should simply continue to encourage this focus through guidance.

HUD received several comments recommending that HUD limit the amount of funds that an ESG recipient can spend on homelessness prevention activities. However, HUD cannot place a cap on homelessness prevention activities without a statutory change. Instead, HUD seeks creative ways to encourage more rapid re-housing—possibly through the final rule. For example, if a recipient intended to spend funds on homelessness prevention, HUD could require the recipient to justify, in the Consolidated Plan, how meeting the needs of persons at risk of homelessness is more effective at ending homelessness (without this justification, the Consolidated Plan would be determined substantially incomplete and could not be approved). Another option could be to establish performance measures and link the local CoC application scoring to ESG recipients' achievement of those measures. Another option could be to require only the rent reasonableness standard for rapid re-housing activities, but require both the Fair Market Rent (FMR) and rent reasonableness standard for homelessness prevention activities. HUD seeks comments on whether to adopt these or suggestions for other methods to increase the amount of funds recipients spend on rapid re-housing activities.

2. Street Outreach and Emergency Shelter Components (§ 576.101 and § 576.102):

a. Essential services under the Emergency Shelter Component (§ 576.102(a)). The interim rule states that ESG funds may be used for costs of providing essential services to individuals and families in an emergency shelter. HUD has received feedback that this could be interpreted in two different ways:

(1) Only individuals and families who spent the prior night in an emergency shelter can receive ESG-funded essential services, no matter where those services are provided; or

(2) Anyone who meets the homeless definition can receive essential services, as long as the services are provided in the emergency shelter.

HUD proposes to clarify who can receive essential services under the Emergency Shelter component—including in day shelters—by changing the language as follows (proposed portions italicized):

> ESG funds may be used for costs of providing essential services to homeless families and individuals *as follows:*
>
> *(a) When provided in an emergency shelter, the services may be provided to persons:*
>
> *(i) who meet the criteria described in paragraph (1) of the homeless definition, and*
>
> *(ii) who are either staying in that emergency shelter, or who are sleeping on the street or another place described in paragraph (1) of the homeless definition (excluding those in transitional housing) and are referred to services by an emergency shelter, and*

(b) When provided in a facility that is not an emergency shelter, the services may be provided only to persons meet the criteria described in paragraph (1) of the homeless definition (excluding those in transitional housing) and who are referred to services by an emergency shelter.''

In other words, if an individual or family meets Category 1 of the homeless definition (excluding those in transitional housing) and is staying in an overnight or day shelter, they can receive eligible essential services in that shelter. Otherwise, if an individual or family meets Category 1 of the homeless definition (excluding those in transitional housing) and is referred by a shelter, they can receive eligible essential services at any provider's location. This change would widen the array of essential services that can be provided to those most in need—expanding the language to allow ESG funds to be used to pay for facility-based essential services to most persons sleeping on the street. HUD would require the referral from an emergency shelter as a linkage to the Emergency Shelter component, under which the services will be provided. HUD would consider this change in order to improve service coordination and also to ensure that the services charged to the grant are necessary and appropriate to the individual or family. HUD wants to encourage, to the extent possible, that non-facility-based services are provided by mainstream programs, not ESG. HUD seeks comment on this proposed change.

b. ''Unavailable'' and ''Inaccessible'' Services (§ 576.101(a) and § 576.102(a)). Under the Street Outreach and Emergency Shelter components of the interim rule, ESG funds may only be used for certain essential services ''to the extent that other appropriate [emergency health services, emergency mental health services, mental health services, outpatient health services, legal services, substance abuse treatment services] are unavailable or inaccessible within the community.'' HUD has received questions and comments about this requirement, specifically, what it means to be ''unavailable or inaccessible.'' HUD had originally included this restriction in order to prioritize ESG funds for housing rather than services that should be available through mainstream systems. However, HUD recognizes that sometimes services are necessary and not provided by any other resource; in these cases, certain essential services are eligible under ESG. HUD is not considering removing this restriction from the regulation in the final rule, but is considering changes to help communities implement the requirement and document compliance. HUD specifically seeks additional comment on:

(1) Whether HUD should define or set a standard for ''unavailable'' and ''inaccessible'' within the rule, and if so, what definition or standard would best help recipients and subrecipients implement this requirement?

(2) Whether only one term should be used, and if so, which one and why?

(3) How have recipients and subrecipients implemented this requirement under the interim rule? Have they documented it for each program participant, or generally at the community level, and why? What can HUD learn from these experiences that it should implement in the final rule?

c. Day shelters (§ 576.102(a)). While a shelter that provides temporary daytime accommodations and services can be funded as an emergency shelter under the ESG interim rule, HUD receives questions about day shelters and is therefore considering explicitly stating in the final rule that day shelters are emergency shelters, and specifying the conditions under which a day shelter may receive funding under the Emergency Shelter component, including several requirements to ensure that ESG funds are used for homeless persons most in need. HUD is considering adding the following language at 576.102(a):

A day shelter may be funded as an emergency shelter under this section only if: (1) The shelter's primary purpose is to provide temporary daytime accommodations and services to individuals and families who meet paragraph 1 of the homeless definition in this section (except those in transitional housing); and (2) those persons can stay in the shelter for as many hours as it is open.'' ESG funds for operating costs in a day shelter may only be incurred to the extent the shelter is used for persons assisted in the shelter who meet the definition of homeless under paragraph (1) (except those in transitional housing), and essential services provided in a day shelter may only be provided to persons meeting the definition of homeless under paragraph (1) (except those in transitional housing).

HUD seeks comment on the following questions regarding day shelters:

(1) What impact would adding these requirements for day shelters have in your community? For instance, would this require any changes to emergency shelter policies or procedures in your community?

(2) What changes, if any, would need to be made to this provision of the regulation so that your community can fund or continue to fund day shelters with ESG?

(3) Are there any changes to the documentation requirements for program participants in emergency shelters that would be needed for day shelters?

d. Involuntary family separation (§ 576.102(b)). This requirement states that ''The age of a child under age 18 must not be used as a basis for denying any family's admission to an emergency shelter that uses ESG funding or services and provides shelter to families with children under age 18.'' HUD interprets this provision to mean that if a shelter serves any families with children, the shelter must serve all members of a family with children under 18, regardless of age or gender. HUD is not proposing to change this provision because it is statutory. However, HUD is considering possible regulatory changes that would help recipients and subrecipients implement the statutory provision, and seeks ideas based on actual issues that have occurred in communities.

HUD is also proposing that a shelter must serve all members of the family together if the members of the family so choose (*e.g.* it may not separate adult men from women and children in a family and serve them on a different floor or in a different building). HUD seeks comments on this proposal.

e. Fees in emergency shelters (§ 576.102). In the past, HUD has allowed emergency shelters to charge reasonable fees for staying in the shelter. HUD is considering revising this policy, in the final rule, to explicitly allow emergency shelters to charge reasonable occupancy fees, but specify that the amount of the fee charged must account for the capacity of the client to afford to pay the fee, and the fee itself cannot be a barrier to occupancy in the shelter, and this fee must be counted as program income. Additionally, HUD will consider adding language prohibiting recipients or subrecipients providing Rapid Re-housing or Homelessness Prevention assistance to charge program participants any costs above any required contribution to rent payments. This change would increase consistency between the requirements of the ESG Program and the CoC Program. HUD seeks comment on these ideas.

f. Minimum Period of Use—Street Outreach component (§ 576.101(b)). The current minimum period of use requirement states: ''The recipient or subrecipient must provide services to homeless individuals and families for at least the period during which ESG funds are provided.'' This language comes from the statute, which requires that the recipient certify, with respect to the Street Outreach and Emergency

Shelter components, that it will ''provide services or shelter to homeless individuals and families for the period during which such assistance is provided, without regard to a particular site or structure as long as the same general population is served.'' HUD is considering clarifying the regulatory language to help recipients and subrecipients understand how to comply with this requirement, as follows: ''*The recipient or subrecipient providing the street outreach services must provide the street outreach services to homeless individuals and families for at least as long as that organization is expending ESG funds for street outreach activities.*''

g. Minimum Period of Use—Emergency Shelter component (§ 576.102(c)). HUD seeks comment on the following:

(1) Essential services and shelter operations. Similar to the minimum period of use change being considered under the Street Outreach component, HUD is considering clarifying the language at 576.102(c)(2) as follows (changed language is italicized) to help recipients and subrecipients understand how to comply with this requirement: ''Where the recipient or subrecipient uses ESG funds solely for essential services or shelter operations, the recipient or subrecipient must provide services or shelter to homeless individuals and families *for at least as long as it is expending ESG funds for essential services or shelter operations, without regard to a particular* site or structure so long as the site or structure serves the same type of persons originally served with the assistance (*e.g.* families with children, unaccompanied youth, disabled individuals or victims of domestic violence) or serves homeless persons in the same area where the recipient or subrecipient originally provided the services or shelter.''

(2) Renovation. Under the Emergency Shelter component, HUD is proposing the following language at § 576.102(c)(1), to account for partial building renovations and renovations of seasonal shelters (proposed portions italicized): ''Each building *or portion of a building for which ESG funds are used for renovation* must be maintained as a shelter for not less than a period of 3 or 10 years, depending on the type of renovation and the value of the building *or portion of the building being renovated. In the case of a seasonal shelter for which ESG renovation funds were used, it must be operated as a seasonal shelter (e.g., 5 months every year) for 3 or 10 calendar years, as applicable.''*

(3) Subrecipient agreement. HUD is considering requiring that the applicable period of use must be stated in the subrecipient agreement.

(4) Requirements that apply during minimum period of use. HUD is considering revising § 576.102(c)(1) and (2) to clarify and expand the requirements that apply during the minimum period of use when emergency shelters expend ESG funds for Operating Costs, Essential Services for a shelter project, or Renovation, as follows (as a reminder, for Operating Costs and Essential Services, the minimum period of use is the period during which the ESG services are provided; for Renovation, it is 3 or 10 years, as applicable):

(i) Each person who stays in the shelter must be homeless as defined under § 576.2;

(ii) Program participant and shelter data must be entered into the local HMIS (or comparable database, as applicable) as required under § 576.400(f);

(iii) The shelter must meet the minimum habitability standards for emergency shelters under § 576.403(b);

(iv) The recipient or subrecipient must maintain records for the shelter and the shelter applicants and program participants as required under § 576.500, including documentation of each program participant's eligibility and homeless status (§ 576.500(b)) and confidentiality requirements for survivors of domestic violence (§ 576.500(x));

(v) The shelter must meet the faith-based activities requirements under § 576.406 and the nondiscrimination requirements and affirmative outreach requirements in § 576.407.

h. Essential Services for Street Outreach, Case Management (§ 576.101(a)(2)) and Emergency Shelter, Case Management (obtaining identification documents) (§ 576.102(a)(1)(i)). HUD is considering explicitly allowing ESG funds to be used to pay for recipient or subrecipient staff time to help program participants obtain identification documents such as birth certificates and social security cards, and for the cost of such documents, if they are necessary to help a program participant obtain public benefits, employment, housing, or other mainstream resources.

i. Local Residency Requirements. HUD is considering establishing a requirement, in the final rule, that recipients must not deny services or shelter funded under the Emergency Shelter and Street Outreach components based on whether or not their last permanent residence was in the jurisdiction. That is, if a person is homeless on the streets of a jurisdiction and is seeking emergency shelter there, they must be able to receive ESG-funded assistance, regardless of whether their last residence was inside or outside of the jurisdiction. HUD seeks comment on this idea, and feedback about any issues that this might raise with the implementation of ESG or communities' efforts to end homelessness.

3. Rapid Re-housing component (defining ''rapid'' and ''as quickly as possible'') (§ 576.104): This section states, ''ESG funds may be used to provide housing relocation and stabilization services and short- and/or medium-term rental assistance as necessary to help a homeless individual or family move as quickly as possible into permanent housing and achieve stability in that housing.'' HUD has received questions about what ''rapid'' and ''as quickly as possible'' mean in practice, and is considering whether to establish a standard or time limit in which an individual or family could be rapidly re-housed. HUD is considering the following options: Setting the standard at a particular number of days (possibly 7, 30, or some other time limit over 30 days) per individual; setting a standard at an average number of days for an ESG recipient; requiring communities to set a standard based on local data and systems; or continuing the current policy and not setting such a standard. HUD seeks comments on:

(1) Should HUD establish a standard or time limit for rapid re-housing? Why or why not?

(2) If HUD should set such a standard or time limit, what would be an appropriate limit, based on local experiences with rapid re-housing?

(3) If HUD should set a standard at a particular number of days, at what point would the ''clock'' start—at the initial intake assessment, at the point the program participant is determined eligible and enrolled in the program, or other? Should HUD define it or allow the recipient or subrecipient to define it?

(4) What impact the proposed number of days would have on local program administration. For example, would this conflict with any local goals or other program requirements?

(5) If implemented, what should the consequence be if a recipient or subrecipient does not meet the standard?

4. Housing Relocation and Stabilization Services (§ 576.105):

a. Late fees. HUD is considering explicitly allowing late fees on the program participant's utility and rental payments (other than late fees

associated with the 6 months of rental arrears, which are already allowed) and utility reconnection fees for the program participant to be included as an allowable cost under housing relocation and stabilization services, and seeks comment on this proposal.

b. Court costs (§ 576.105(b)(4)). HUD is considering allowing, as a legal services activity under § 576.105(b)(4), court costs incurred by the landlord during an eviction proceeding as an eligible ESG cost, so long as it is necessary for the program participant to pay them in order to be stabilized in their housing. HUD is considering adding this because payment of this cost may help prevent homelessness for the program participant and it may be an incentive for landlords to work with the program participant. HUD seeks comment on this proposal, specifically:

(1) Should HUD allow a property owner's court costs to be eligible under ESG? Why or why not?

(2) Should HUD allow ESG to be used to pay a property owner's court costs only when a court orders the tenant to pay those costs?

(3) If HUD should allow such costs, how would recipients/subrecipients determine and document that the costs are ''necessary'' to stabilize a program participant's housing? Should HUD impose any limits on the amount of such costs that may be paid with ESG funds?

c. Trash removal (§ 576.105(a)(5)). HUD is considering including trash removal as an eligible utility cost at § 576.105(a)(5), in part to be consistent with the definition of utility used to calculate gross rent for purposes of FMR, and in part because in some places, particularly rural areas, tenants are required to pay for trash removal. HUD seeks comment on this proposal.

d. Mediation (§ 576.105(b)(3)). Under the interim rule, mediation cannot be used to help eligible individuals and families (including homeless youth) move back into housing they have left, when that might be the best placement for them, and the option they would choose. As such, HUD is considering adding language at § 576.105(b)(3) to allow ESG funds to pay for mediation services—under both the Rapid Re-housing and Homelessness Prevention components—to help individuals and families move back into their former housing and/or move in with friends or family members, after they have already moved to an emergency shelter, the streets, or another place described in paragraph (1) of the homeless definition or, for homelessness prevention, after the program participant has moved to other, temporary, housing. HUD proposes the following language (italicized language added): ''ESG funds may be used pay for mediation between the program participant and the owner or person(s) with whom the program participant is living *or proposes to live, to help the program participant move into, return to, or remain in housing.*'' HUD seeks comment on this proposal; specifically:

(1) What impact would this rule change have?

(2) Are there other concerns HUD should be aware of regarding placing individuals and families in such housing situations?

e. Broker fees (§ 576.105(b)(1)). HUD is considering explicitly allowing ESG to pay for fees to real estate agents, or ''broker fees,'' so long as the fee is reasonable and necessary for the household to obtain appropriate permanent housing, by including language at § 576.105(b)(1), Housing Search and Placement activities. HUD seeks comment on this proposal; specifically, is this a necessary cost in order to quickly move individuals and families to permanent housing?

f. Housing Stability Case Management (§ 576.105(b)(2)). HUD has received numerous questions about the language in the interim rule stating that for ESG housing stability case management, ''. . . assistance cannot exceed 30 days during the period the program participant is seeking permanent housing . . .'' HUD included this provision recognizing that many clients are enrolled in Rapid Re-housing while residing in shelters, but intentionally limited it, for two main reasons. First, HUD intended this restriction as an incentive to quickly re-house program participants, since any case management over 30 days would have to be paid with non-Federal funds or, if applicable, charged under the Street Outreach component or Emergency Shelter component, which are subject to an expenditure cap. Second, HUD intended that recipients/subrecipients that provide case management to persons in shelter under the Rapid Re-housing program focus on placing these program participants into housing. HUD aims to ensure that recipients/subrecipients are helping program participants obtain housing and not just charging essential services costs for persons in shelter to the Rapid Re-housing component in order to get around the Emergency Shelter/Street Outreach cap. However, HUD recognizes that sometimes it takes longer than 30 days to rapidly re-house a program participant. In addition, one recipient noted that HUD allows the payment of storage fees for up to 3 months under the Rapid Re-housing component and requires monthly case management to be provided during that time, but only allows housing stability case management to be charged to the Rapid Re-housing component for up to 30 days. Therefore, HUD seeks comment on the following questions related to this provision of the rule:

(1) For program participants who are receiving assistance under both the Emergency Shelter and Rapid Re-housing components (*i.e.,* those staying in a shelter and receiving services to get rapidly re-housed), how are recipients/subrecipients currently determining when to charge the case management costs to each component?

(2) Has the 30-day limit on charging housing stability case management to the Rapid Re-housing component had an effect on increasing the rates at which program participants find housing? If not, why not?

(3) If HUD were to change the limit to 90 days, what impact would this have?

(4) If HUD eliminated this restriction, is there a different way to distinguish between housing stability case management and case management under the emergency shelter component, which is subject to the cap?

g. Credit reports (§ 576.105(b)(5) and § 576.105(b)(2)). At § 576.105(b)(5), Credit Repair, and § 576.105(b)(2), Housing Stability Case Management, HUD is considering allowing ESG funds to be used to pay for a credit report for program participants being assisted under the Homelessness Prevention and Rapid Re-housing components, if the program participant has exhausted all opportunities to receive a free credit report in a given year and if the report is necessary to stabilize the individual or family in their current housing or quickly move them to permanent housing. HUD seeks comments from providers' experience on whether this would be a helpful addition to the rule, or whether it would not make a difference if included.

5. Short-Term and Medium-Term Rental Assistance (§ 576.106):

a. Rental assistance in shared housing—general. HUD proposes to clarify in the final rule that ESG funds may be used to provide rental assistance in shared housing. Except for the FMR requirements (established under § 576.106(d)(1) and addressed below), all ESG requirements that apply to rental assistance would apply to rental assistance provided in shared housing. Among other things, these requirements include the following:

- There must be a legally-binding, written lease between the owner and the program participant;

• There must be a rental assistance agreement between the recipient or subrecipient and the owner;
• The housing must meet ESG habitability standards;
• The program participant must meet the eligibility requirements for either Rapid Re-housing or Homelessness Prevention assistance;
• The rental assistance must be provided in accordance with the applicable written standards;
• Rental assistance may not be provided to a program participant who is receiving tenant-based rental assistance, or living in a housing unit receiving project-based rental assistance or operating assistance, through other public sources; and
• The shared housing must meet the rent reasonableness standards.

HUD seeks comments on these ideas; specifically:

(1) Whether HUD should adopt these policies for rental assistance in shared housing, and, if so, any concerns or issues that may arise in implementation;

(2) Suggestions about documentation that HUD should require in order to reduce fraud or ensure that the landlord is not a ''support network'' that can assist the program participant without rental or financial assistance, such as a family member or friend;

(3) Whether HUD should include all of the above or whether any elements should be added or deleted from the list; and

(4) How could providing ESG rental assistance to individuals and families that share housing work under state or local law? How do recipients/subrecipients currently make this type of arrangement work, especially with respect to a program participant's lease, and if the other renters are not ESG program participants?

b. Rental assistance in shared housing—FMR. With respect to the FMR for shared housing, HUD is considering establishing the following standard: When assisting an individual or family with rental assistance in shared housing, recipients and subrecipients would be required to use an adjusted FMR that is the household's pro-rata share of the FMR for the shared housing unit size. For example, in the case of a single-person household who will occupy one bedroom in a 4-bedroom house, the FMR used would be the household's pro-rata share of the 4-bedroom FMR (*i.e.* ¼ of the 4-bedroom FMR). Note that HUD's ultimate determination on this issue for the final rule will be influenced by the comments received, and the decision made, regarding the related FMR issue discussed below. HUD seeks comment on this idea, or whether there is an alternate calculation that HUD should use for determining the FMR in shared housing.

c. Rent restrictions (Fair Market Rent) (§ 576.106(d)): The ESG interim rule states that ''rental assistance cannot be provided unless the rent does not exceed the FMR established by HUD, as provided under 24 CFR part 888, and complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507.'' HUD received feedback expressing concern that, unlike the Housing Choice Voucher program, the ESG program uses FMR to limit the units for which rental assistance may be provided, and this does not provide enough flexibility for recipients and subrecipients to quickly find available units. Two of HUD's goals are to ensure that the units for which ESG assistance is provided will be affordable to program participants after the assistance ends, and limit the amount that may be expended on a given household so that more program participants can be assisted. However, HUD is considering alternatives for changes to the final rule to provide recipients and subrecipients with more flexibility in order to quickly find appropriate units. The options HUD is considering to include in the final rule, on which HUD seeks feedback are as follows:

(1) ESG funds could be used to pay rental assistance for units where the rent is at or below the payment standard set by the PHA for the area (*i.e.* up to the FMR, up to 110 percent of FMR if that is the PHA's payment standard, or higher if HUD has provided a waiver to the PHA).

(2) ESG funds could be used to pay rental assistance for units where the rent is above FMR, but ESG funds could only be used to pay up to the FMR amount (any amount of rent above the FMR would have to be paid by either the program participant, or the recipient/subrecipient with non-ESG funds). However, HUD is concerned that allowing program participants to pay for the cost of a unit above FMR might disadvantage those who need the ESG assistance most, since it might be easier to find units above the FMR and therefore, those who are more able to contribute to the rent would be more likely to receive ESG assistance. Therefore, HUD also seeks comments as to as the extent of this risk and if there are any requirements that can be put into place to prevent this practice.

(3) ESG could require only the rent reasonableness standard for rapid re-housing, but require both the FMR and rent reasonableness standard for homelessness prevention assistance. This might be one way to both increase flexibility and also encourage recipients and subrecipients to provide more rapid re-housing assistance.

(4) HUD could adopt the standard used in the HOPWA program, described at 24 CFR 574.320(a), which allows recipients (or possibly subrecipients) to establish a rent standard that is no more than the published FMR used for Housing Choice Vouchers or the ''HUD-approved community-wide exception rent for the unit size. However, on a unit by unit basis, the [recipient] may increase that amount by up to 10 percent for up to 20 percent of the units assisted.''

(5) HUD could maintain the FMR and/or rent reasonableness standards but add in some other type of flexibility—HUD seeks suggestions for additional options.

Note that in all cases HUD is planning to continue to require that the unit at least meet the rent reasonableness standard. Finally, one of HUD's primary concerns is that the program participants be able to remain in the unit after the assistance ends. If HUD included one of the above options to provide more flexibility to recipients and subrecipients by paying higher rents, how could they ensure that the units would remain affordable to program participants without housing assistance?

In addition, HUD is considering only allowing a recipient to pay rent over the FMR if the recipient includes its proposal to do so in the Consolidated Plan/Action Plan. That way, the recipient would be required to obtain and assess citizen feedback as to whether additional flexibility is necessary in its area before being able to pay rents above FMR.

d. Last month's rent, security deposits, and rental arrears (§§ 576.105(a) and 576.106).

(1) HUD is considering re-categorizing ''last month's rent'' and ''security deposit'' as rental assistance, rather than housing relocation and stabilization services (financial assistance), because last month's rent is counted in the maximum-allowed 24 months of assistance, which could be confusing. Last month's rent is often paid at the same time as the security deposit, so it might make sense to consider them together. If this change is made, the FMR/rent reasonableness standards and lease and rental assistance agreement requirements would apply when security deposits and last month's rent are used to move a program participant into a unit. HUD will also consider consistency with the CoC Program in making a final decision. HUD seeks

comment about this proposal, specifically whether the proposal would reduce confusion and improve administrative ease or whether there are potential negative consequences, and if so, what are they?

(2) HUD is considering explicitly stating that the FMR and rent reasonableness standards apply when rental arrears are being paid for a unit in which the program participant is staying, but not when the rental arrears are being paid for a unit in which the program participant no longer lives or is leaving. HUD seeks comment on this and any potential issues that could arise if HUD were to adopt this policy.

e. Providing subrecipients with discretion to set caps and conditions (§ 576.106(b)). HUD is considering changing the language as follows, to enable subrecipients to set caps on the assistance provided to a household (italicized language added): ''Subject to the requirements of this section, the recipient *or subrecipient* may set a maximum amount or percentage of rental assistance that a program participant may receive, a maximum number of months that a program participant may receive rental assistance, or a maximum number of times that a program participant may receive rental assistance. The recipient *or subrecipient* may also require program participants to share in the costs of rent.'' HUD seeks comments on this; in particular, any concerns that recipients might have with providing subrecipients with this discretion.

f. Rental Assistance Agreement requirements (§ 576.106(e)).

(1) HUD is considering listing the elements that must, at a minimum, be included in the rental assistance agreement. The following two elements are already required in the interim rule, and HUD plans to keep them in the final rule:

- The same payment due date, grace period, and late payment penalty requirements as the program participant's lease; and
- A provision requiring the owner to give the recipient/subrecipient a copy of any notice to the program participant to vacate the housing unit, or any complaint used under state or local law to commence an eviction action against the program participant.

HUD seeks comment on which, if any, of the following new requirements to include, and seeks suggestions on any others that should be required:

- The term of the assistance (*e.g.,* number months for which it is being provided);
- The type of assistance being provided (*e.g.,* tenant- or project-based rental assistance, rental arrears);
- The amount of funds to be paid by the recipient/subrecipient and the amount to be paid by the tenant;
- the address of the property for which payments are being made; and
- the signature and date of both the recipient/subrecipient representative and the property owner.

(2) The interim rule states that ''a recipient or subrecipient may make rental assistance payments only to an owner with whom the recipient or subrecipient has entered into a rental assistance agreement.'' HUD proposes to specify in the final rule that when ESG Rapid Re-housing assistance, either project-based or tenant-based, is used to assist a program participant to move into housing owned by a recipient or subrecipient, a rental assistance agreement is not required. However, under this proposal, the organization would be required to document and maintain on file the elements required to be included in a rental assistance agreement. HUD seeks comment on this proposal.

g. Lease (§ 576.106(g)). HUD is proposing to add the following requirement to the lease provision of the ESG final rule, for tenant-based rental assistance (it currently only applies to PBRA), and seeks comments on this proposal: ''*The program participant's lease must not condition the term of occupancy on the provision of rental assistance payments or the household's participation in the ESG program.*''

h. Using ESG funds for an unoccupied unit. HUD is considering allowing ESG recipients to choose to continue to assist a current program participant with ESG funds, in tenant- or project-based rental assistance, when a program participant is in an institution (such as a hospital or jail) during a portion of the time they are receiving ESG assistance. If implemented, ESG funds could be used for up to 90 days while that program participant is in the institution. However, if the recipient/subrecipient has knowledge that the program participant will not exit the institution before 90 days (*e.g.,* if the program participant's jail sentence is for longer than 90 days), then the month in which the program participant enters the institution is the last month for which ESG funds may be used for the program participant's unit. This change would ensure consistency with the CoC Program. HUD seeks comment on this proposal.

i. Advance payments of rental assistance (§ 576.105(a)(3)). HUD is considering prohibiting payments of rental assistance to a property owner for more than 1 month at a time in advance (except when providing an advance payment of the last month's rent under section § 576.105(a)(3)), and seeks comments on this idea.

j. Subleasing. Under the interim rule, subleasing—that is, the person or organization that holds the primary lease with the owner enters into a lease with an individual to rent the unit—is not allowed, for either tenant-based or project-based rental assistance. If HUD allowed subleasing in the final rule:

(1) Would this allow recipients to more effectively serve program participants?

(2) Would it make a significant difference for program participants? In what ways would it help them?

(3) What language could HUD include in the final rule that would ensure that (a) program participants' rights are protected, and (b) the appropriate payments are made to the owner?

k. Tenant-based rental assistance (TBRA) (§ 576.106(h)). HUD has received numerous questions about whether recipients may provide ESG assistance outside their Con Plan jurisdiction, allow program participants to move outside their jurisdiction, or limit assistance to residents of the jurisdiction. HUD is considering changing the language at § 576.106(h)(2) to specify the circumstances under which any of the options listed above may be carried out. HUD is considering the following revisions, and seeks comment on them:

(1) Under ESG TBRA, the program participant must be able to choose the unit in which they will live, with the following specifications:

(i) The recipient may allow a program participant to choose a unit outside of the recipient's jurisdictional boundaries, may limit TBRA to the recipient's jurisdictional boundaries, or, when necessary to facilitate the coordination of supportive services, may limit TBRA to a designated geographic area that encompasses, overlaps, or falls within the recipient's jurisdictional boundaries.

(ii) Unless otherwise specified by the recipient, a unit of general purpose local government that administers TBRA as a subrecipient may allow a program participant to choose a unit outside of the local government's jurisdictional boundaries, may limit TBRA to the local government's jurisdictional boundaries, or, when necessary to facilitate the coordination of supportive services, may limit TBRA to a designated geographic area—such as the CoC's geographic area—that encompasses, overlaps, or falls within the recipient's jurisdictional boundaries.

(iii) Unless prohibited by the recipient, a private nonprofit organization that administers TBRA as a subrecipient may allow a program participant to choose a unit outside of the recipient's jurisdictional boundaries or, when necessary to facilitate the coordination or provision of services, may limit TBRA to a designated geographic area—such as the CoC's geographic area or a smaller area within the recipient's jurisdiction—that encompasses, overlaps, or falls within the recipient's jurisdictional boundaries.

(2) The amount or type of assistance cannot be conditioned on the program participant moving outside the jurisdiction's boundaries (that is, a recipient or subrecipient may not require that a program participant move outside the jurisdiction in order to receive the rental assistance).

(3) HUD is considering establishing a requirement, in the final rule, that recipients must not deny ESG Rapid Re-housing assistance to homeless individuals and families based on whether or not their last permanent residence was in the recipient's jurisdiction. That is, if a person is homeless on the streets or in an emergency shelter in a jurisdiction and is seeking ESG-funded Rapid Re-housing assistance, they must be able to be assessed for, and, if eligible, receive, ESG Rapid Re-housing assistance, regardless of whether their last residence was inside or outside of the jurisdiction. HUD seeks comment on this idea, and feedback about any issues that this might raise with the implementation of ESG or communities' efforts to end homelessness.

l. Project-based rental assistance (PBRA) (§ 576.106(i)). HUD received many comments about how to implement PBRA for the Rapid Re-housing and Homelessness Prevention components. HUD recognizes that using ESG funds to provide PBRA for these types of assistance is challenging; however, including PBRA as an option for recipients and subrecipients to use when providing assistance is statutorily required. Therefore, HUD is looking for ways to further align the rule with TBRA and eliminate some of the burdensome requirements. However, at its core, PBRA is a different type of housing solution and carries with it special considerations. Below are issues related to PBRA about which HUD is considering revisions to the rule and on which HUD seeks additional public comment. HUD welcomes other suggestions on ways to improve the administration of PBRA as well.

(1) HUD is considering defining ''project-based rental assistance'' as follows: ''Project-based rental assistance, for purposes of the ESG program, means rental assistance that a recipient or subrecipient provides for individuals or families who live in a specific housing development or unit, and the assistance is attached to the development or unit.''

(2) Some commenters recommended that HUD remove the 1-year lease requirement and allow for a lease like TBRA with a flexible term. HUD is considering adopting this recommendation, but seeks additional comment on potential impacts that this policy would have.

(3) The interim rule, at § 576.106(i)(4), provides that if the project-based rental assistance payments are terminated for a particular program participant, the household may stay in its unit (subject to the terms of the lease) and the rental assistance may be moved to another unit in the same building. HUD is considering allowing the assistance to be transferred to another unit in a different building in the same development, and seeks comment on this idea, particularly whether it would increase flexibility.

6. Administrative Activities (§ 576.108) & Indirect Costs (§ 576.109):

a. Training. For § 576.108(a)(2), HUD is considering changing the language in the final rule to allow ESG to pay for the costs of a subrecipient to attend a training provided by the recipient on ESG, and more clearly establish the limits of the training allowed under ESG, as follows: ''Eligible training costs include the costs of providing training on ESG requirements and attending HUD-sponsored, *HUD-approved, or recipient-sponsored* ESG training.''

b. Other comments. HUD seeks other feedback regarding changes it should make for the final rule about eligible Administrative costs and indirect costs. However, note that the 7.5 percent cap on Administrative costs is statutory and therefore HUD is prohibited from changing it. Also, HUD must also comply with the OMB requirements on cost principles when making any changes to the language.

7. Submission Requirements and Grant Approval (Joint Agreements) (§ 576.200): MAP–21 included a provision allowing the following: ''A metropolitan city and an urban county that each receive an allocation under such title IV [of the McKinney-Vento Homeless Assistance Act] and are located within a geographic area that is covered by a single continuum of care may jointly request the Secretary of Housing and Urban Development to permit the urban county or the metropolitan city, as agreed to by such county and city, to receive and administer their combined allocations under a single grant.'' In the final rule, HUD is considering establishing the requirements for recipients to request a joint allocation of ESG funds, and seeks comment on the following ideas:

a. Coordination with CDBG. A jurisdiction may *only* enter into a joint agreement with another jurisdiction for ESG if it will also have a joint agreement with that jurisdiction for CDBG for the same program year. Also, under the CDBG program, only a single metropolitan city and urban county may enter into a joint agreement; therefore, this limitation would apply to ESG as well. That is, only a metropolitan city and urban county that each receives an ESG allocation, which are located within a geographic area that is covered by a single CoC and which receive a joint allocation for CDBG, may enter into joint agreements.

b. Timing of the joint agreement. The first time the jurisdictions enter into a joint agreement, the entities may enter into a joint agreement for any program year (that is, they would not have to wait until the next time the urban county requalifies as an urban county to enter into a joint agreement). However, the duration of the agreement must be until the next time the urban county requalifies as an urban county (currently this occurs every 3 years).

c. Lead entity responsibilities. The recipients must select a ''lead entity'' for the joint grant, which must be the lead entity for CDBG. The responsibilities of the lead entity are as follows:

(1) The lead entity, as the ESG recipient, assumes full responsibility for the execution of the ESG program under 24 CFR part 576, with respect to the Consolidated Plan requirements at 24 CFR part 91, and with respect to the joint grant. HUD will hold the lead entity accountable for the accomplishment of the ESG program, for following its Consolidated Plan, the grant agreement, and for ensuring that actions necessary for such accomplishment are taken by all subrecipients; and

(2) The lead entity is required to submit the ESG portions of the Action Plan and the CAPER for the entire geographic area encompassed by the joint agreement.

d. Cooperation agreement. The jurisdictions must execute a legally binding ''cooperation agreement'' that establishes each recipient's desire to combine their grant allocations and administer a joint ESG program, establishes which government will be the lead entity, identifies and authorizes the lead entity to act in a representative

capacity for the other government for the purposes of the joint ESG program, and provides that the lead entity assumes overall responsibility for ensuring the joint ESG program is carried out in compliance with the requirements of 24 CFR part 576.

e. Requirements of the joint request. The lead entity must submit the joint request to HUD before the entities start their Consolidated Plan in the eCon Planning Suite (this is because a single identification is required in the system). At a minimum, the joint request must include:

(1) A letter from the lead entity that identifies which governments seek to combine their grant allocations and administer a joint ESG program for their jurisdictions and indicates which federal fiscal year(s) grants the governments seek to combine;

(2) A copy of the cooperation agreement; and

(3) Documentation that shows the lead entity has sufficient authority and administrative capacity to administer the joint grant on behalf of the other government (if the joint agreement arrangement requires the lead entity to provide assistance outside its jurisdiction, the lead entity may want to consider including this in the documentation, specifically).

f. Approval of the joint request. A joint request will be deemed approved unless HUD notifies the city and the county otherwise within 45 days following submission of the joint request.

g. Consolidated Plan requirements.

(1) The metropolitan city and urban county must align their Consolidated Plan program years (done via the process at § 91.10).

(2) For the program year that the jurisdictions enter into a joint agreement, HUD is reviewing whether to require the lead entity to submit a new Consolidated Plan (because the former Consolidated Plan would no longer reflect the correct recipient and information). However, in the case that entities enter into a joint agreement in the middle of an urban county requalification period, this would not ''restart the clock'' for that time period.

i. Grant amount total. When two or more entities enter into a cooperation agreement and sign a joint grant agreement with HUD, the grant amount is the sum of the amounts authorized for the individual ESG recipients.

j. ESG subrecipient. An urban county or metropolitan city that has entered into a joint agreement under the ESG program is permitted to apply to the state for ESG funds, if the state allows.

8. Matching Requirement (§ 576.201):

HUD has received numerous questions seeking clarifications on the match requirements. HUD is carefully reviewing whether and how to amend and clarify this section, with the goal of helping recipients better understand the match requirement and be able to meet it. HUD seeks comment on the following ideas:

a. Additional sources of matching contributions. HUD received a comment requesting that HUD reconsider § 576.201(c)(1), in which all matching contributions must meet all requirements that apply to the ESG funds provided by HUD . . .'' HUD is considering adding exceptions to this rule—that is, HUD is considering providing a list of activities that are not eligible to be paid for with ESG funds but could be used as match, because they are technically eligible according to the statute, but not by rule. This list would include costs such as: Training costs for ESG recipients/subrecipients at ESG-related (but not HUD-sponsored) conferences such as those hosted by the National Alliance to End Homelessness or the Council of State Community Development Agencies (COSCDA); or the cash value of *donated* household furnishings and furniture for program participants to help establish them in housing, which can contribute to stability. HUD seeks comment on this proposal and suggestions for other items to include on this list.

b. Cash match. HUD is considering additional ways to enable subrecipients to contribute match to the recipient's program to meet the matching requirement. Section 416 of the McKinney-Vento Homeless Assistance Act states that recipients are ''required to supplement the [ESG funding] . . . with an equal amount of funds from sources other than [ESG].'' HUD has interpreted this requirement to mean that the matching funds must be contributed to and used to support the recipient's ESG program. Any policy designed to improve flexibility must meet this statutory requirement. Given this restriction, HUD seeks feedback and ideas for ways to clarify or expand the current regulatory language to improve recipients' ability to meet the matching requirement. One possible scenario HUD is considering changing the regulation to allow is where a subrecipient conducts two (or more) ESG-eligible activities—for example, emergency shelter and rapid re-housing—but only has an agreement with the recipient to receive ESG funds for one—for example, rapid re-housing. HUD is considering changing the rule to allow the funds spent on emergency shelter activities (in this example) to be used to meet the matching requirement, if the activity is conducted in accordance with all ESG requirements and if the recipient includes this emergency shelter activity as a part of the recipient's overall program design (*e.g.* in the Action Plan and CAPER). HUD might even consider requiring it to be included in the subrecipient's funding agreement, but seeks comment on whether this would be too burdensome. Would this be helpful? Are there any other issues HUD should consider in determining whether and how to change this policy?

c. Noncash contributions (depreciation of donated buildings) (§ 576.201(d)(2)). The interim rule does not allow the depreciation of the value of a donated building to be used as match, because currently, for donated buildings, match only includes the purchase value of the building in the year it was donated. HUD is considering allowing depreciation of donated buildings to be used as a source of in-kind match in the final rule, by changing the language at § 576.201(d)(2) to the following:

For equipment and buildings donated by a third party, the recipient may count as match either the property's fair market value or the depreciation amounts that would otherwise be allowable costs. The fair market value must be independently appraised when the recipient or subrecipient receives title. This value may only be divided and counted as match for fiscal year grants that are active when the property is first used in an ESG activity or project. If a property's fair market value is counted as match, the property's depreciation amounts cannot be counted as match or allowable costs for any federal grant. Annual depreciation amounts must be determined in a manner consistent with Generally Accepted Accounting Principles (GAAP) and may be counted as match for those fiscal year grants for which the amounts would be allowable costs under the applicable cost principles, provided that those amounts are never charged to any Federal grant.

d. Memorandum of understanding for noncash services as match. For noncash services (*e.g.,* volunteer services), HUD is also considering adopting the CoC Program requirement (at § 578.73(c)(3)), requiring a memorandum of understanding between the recipient or subrecipient and the third party that will provide the services. This would provide for consistency with the CoC Program and also ensure that the amounts used as match are consistently applied.

e. When to count matching funds. HUD proposes to clarify that the matching funds are counted as match for the ESG program when the allowable cost is incurred, or, for in-kind match,

when the donated service is actually provided to the recipient/subrecipient or the donation is used for the program.

f. Other programs as match for ESG. Sometimes, other programs cannot be used as match for ESG because their requirements conflict with ESG requirements. For example, HOME TBRA funds may be used for more than 24 months, whereas ESG funds are capped at 24 months of assistance (also, HOME TBRA funds must not require services, whereas ESG requires monthly case management under the interim rule—see section II.C.15.b. of this Notice). In the final rule, HUD is considering specifying that when HOME TBRA, or any program where the program time limit may be extended beyond 24 months, is used as match for the ESG Program funds, any renewal to extend that other program's assistance beyond 24 months would not invalidate its use as match for ESG for up to 24 months. In other words, the ESG recipient would be able to count as match the HOME TBRA funds that meet all of the ESG requirements for up to 24 months (if the case management requirement is removed, as discussed below), but not count any funds expended beyond that time period. HUD seeks comment on this idea.

9. Obligation, Expenditure, and Payment Requirements (§ 576.203(a)(i)):

a. State as HMIS lead. To account for situations where the state is the HMIS lead, HUD is considering augmenting the state obligation requirement, as follows: ''*With respect to funds for HMIS: if the state is the HMIS lead, this requirement may be met by a procurement contract or written designation of a department within the state government to directly carry out HMIS activities.*''

b. Exceptions. HUD is considering adding an exception to § 576.203, to allow HUD to grant a recipient an extension of up to 3 months for the obligation requirements and up to 12 months for the expenditure deadline, for good cause.

c. Subrecipient agreements. HUD is considering establishing, in the final rule, minimum elements that must be included in any subrecipient agreement. Although 2 CFR part 200 includes certain elements that must be provided to subrecipients at the time of the award (at 2 CFR part 200.331), the ESG rule contains more specific language about the ESG requirements that apply to subrecipients and language that must be included in the subrecipient agreement (such as any written standards the recipient requires the subrecipient to develop), so it might be helpful to include them all in one place. HUD seeks comment on whether it would be most helpful to include the minimum required elements for a subrecipient agreement in the regulation (*e.g.* to improve ease of recipients for monitoring their subrecipients and/or reduce burden for recipients), or whether to instead issue guidance, such as a sample subrecipient agreement.

10. Pre-Award Costs (§ 576.204): HUD is reviewing whether to explicitly allow pre-award costs in the final rule, and to describe requirements that must be met before charging them to the grant. HUD is considering including the following language:

ESG recipients may use grant funds to pay pre-award costs incurred on or after the recipient's program year start date, under the following conditions:

(1) The costs and corresponding activities must comply with the requirements under this part (including the environmental review requirements in section § 576.407(d)); and

(2) Before incurring pre-award costs, the recipient must describe the corresponding activities in its proposed action plan and satisfy the recipient's citizen participation plan requirements addressing § 91.105(b) (for local governments and territories) or § 91.115(b) (for states).

11. Reallocations (§§ 576.301, 576.302, and 576.303):

a. Timeframe for substantial amendments (§ 576.301(c), § 576.302(c), and § 576.303(d)). HUD is considering lengthening the time allowed for a recipient to submit a substantial amendment to its Consolidated Plan when the recipient has received reallocated funds, from 45 days after the date of notification to 60 or 90 days after the date of notification, or even allowing state recipients to reallocate the funds within its normal Consolidated Plan allocation process. This would allow recipients to have more time and flexibility to align the substantial amendment and funds with the following year's Consolidated Plan/Action Plan. HUD seeks comment on this proposal.

b. Reallocation of State ESG funds (§ 576.302). HUD is also considering changes to the process when a State declines its ESG allocation, which is described at § 576.302. HUD seeks comment on the following two options:

(1) Remove the paragraph at § 576.302(a)(2), which requires HUD to make ESG funds available to all of the non-urban counties in a state. HUD is considering this change because it believes it might be administratively infeasible for a number of reasons, including that each of the non-urban counties would be required to develop and submit an abbreviated Consolidated Plan that meets HUD's requirements. It is likely that the metropolitan cities and urban counties that already receive an allocation of CDBG funds are those best suited for, and capable of, administering the ESG program; or

(2) Change the requirement so that the funds declined by a state are distributed by formula to other state recipients.

c. Reallocation of local government ESG funds (§ 576.301(d)). HUD is considering the following change related to reallocation of grant funds returned by a metropolitan city or an urban county, under § 576.301(d) (changed or added sections italicized):

The same requirements that apply to grant funds allocated under § 576.3 apply to grant funds reallocated under this section, except that the state must distribute:

(1) Funds returned by metropolitan cities:

(i) First, to private nonprofit organizations operating in the metropolitan city's jurisdiction;

(ii) If funds remain, to private nonprofit organizations and units of general purpose local government located throughout the state; and

(2) Funds returned by urban counties:

(i) First, to private nonprofit organizations and units of general purpose local government within the county, excluding metropolitan cities that receive ESG funds and governments that are part of the urban county;

(ii) Next, to metropolitan cities within the county that receive ESG funds; then

(iii) If funds remain, to private nonprofit organizations and units of general purpose local government located throughout the state, *excluding governments that are part of the urban county.*

12. Area-Wide Systems Coordination Requirements—Consultation and Coordination (§ 91.100(a)(2) and (d), § 91.110(b) and (e), § 576.400(a), (b), and (c)):

a. ESG recipient Consultation with Continuums of Care. HUD recognizes that for some ESG recipients, such as states that must coordinate with many CoCs and metropolitan cities/urban counties that must coordinate with regional CoCs, the requirements in this section of the regulation can present a challenge. However, HUD believes that this consultation process is critical for the ESG recipient to be able to plan for the best use of resources in the relevant area(s). HUD has received many questions about how ESG recipients should consult with the CoC(s) to meet the current requirements effectively. Based on these questions, HUD seeks general comment on the following questions to inform the inclusion of any additional consultation requirements in the final rule:

(1) The practices and processes that recipients and CoCs have used to meet the consultation requirements and

feedback, positive and negative, based on local experiences with the consultation process. HUD seeks constructive suggestions on how to improve local consultation, particularly through changes to the final rule.

(2) HUD received a comment that it may be particularly difficult for ESG recipients to consult and coordinate with Balance of State CoCs. HUD is interested in hearing from other state recipients on whether they are experiencing a similar challenge. HUD also seeks comment on whether there are any requirements that could be added or removed from the interim rule to alleviate this issue.

(3) With respect to reallocation of funds under § 576.301, HUD is considering adding a stronger role for CoCs, in particular to help decide where the funds should be allocated. HUD is considering requiring that a state ESG recipient consult with the CoC covering the jurisdiction that returned the funds, and, if funds remain after the state distributed funds in accordance with § 576.301(d)(1), then the state must consult with CoCs covering other areas of the state in which it proposes to distribute the funds in accordance with § 576.301(d)(2). HUD seeks comment on this potential requirement.

(4) Should HUD specify different standards for consultation for different types or sizes of jurisdictions? For example, when the metropolitan city's or urban county's jurisdiction covers the exact geographic area as the CoC, HUD could require monthly consultation; for a county-based CoC with more than one ESG recipient, HUD could require consultation four times per year with each ESG recipient; for a state ESG recipient that includes multiple CoCs, HUD could require a lower level of consultation. HUD seeks feedback on this concept.

(5) Should HUD require an MOU between the CoC and the Consolidated Plan jurisdiction detailing how they will collaborate?

b. Defining ''consultation,'' ''coordinating,'' and ''integrating.'' HUD received several comments requesting a definition of ''consultation'' with CoCs (§ 576.400(a)), examples of ''coordinating and integrating'' ESG-funded activities with other programs targeted to homeless people in the area covered by the CoC (§ 576.400(b)) and with mainstream resources for which homeless and persons at risk of homelessness might be eligible (§ 576.400(c)). Therefore, HUD seeks comment on the following questions:

(1) Should definitions of ''consultation,'' ''coordinating,'' and ''integrating'' be included in HUD's regulations in 24 CFR part 91 and/or 24 CFR part 576? Considering the manner in which your jurisdiction currently consults, coordinates, and integrates, what should the definition(s) include? HUD is particularly interested in how an ESG recipient whose jurisdiction is incorporated into multiple CoCs' geographic areas, especially states, meets these requirements and what sort of definition would work best for these recipients.

(2) Instead of establishing one definition, HUD could require jurisdictions to define these terms themselves in their Consolidated Plan, and meet their own requirements. Would jurisdictions prefer this option? HUD specifically requests examples of definitions that jurisdictions would implement.

(3) Should HUD set a different standard for states? If so, how should it be different?

c. Improving collaboration between ESG recipients and CoCs. HUD is considering a change to the CoC Program interim rule and the ESG interim rule that would require all CoC boards to include a member from at least one Emergency Solutions Grants program (ESG) recipient's staff located within the CoC's geographic area. HUD would consider this change in order to promote meaningful collaboration between CoCs and ESG recipients. For states and other recipients whose jurisdictions cover more than one CoC, this might mean that a representative of the recipient would be required to be on multiple CoC boards. When a CoC's geographic area contains multiple ESG recipients' jurisdictions, it might mean that not all ESG recipients will be required to be on the CoC's board. However, when asked to participate on the CoC's board, ESG recipients would be required to participate. Ultimately, it is the responsibility of the CoC to develop a process for selecting the board. HUD is requesting comment on this proposed requirement for ESG recipients, including potential challenges. Ensuring that ESG recipients are coordinating closely with the CoC is important to HUD; therefore, in communities where ESG recipients and/or CoCs do not believe that this requirement is feasible, HUD asks commenters to provide suggestions for how ESG recipients can be involved in the CoC at one of the core decision-making levels.

d. Consulting with tribal groups. HUD received several comments requesting that HUD include tribal groups as a part of the required consultation process. Should HUD require consultation with tribal groups to the extent that the recipient intends to fund organizations serving people or activities on tribal lands?

e. Requiring coordination with CoC and Rural Housing Stability Programs (§ 576.400(b)). HUD proposes to add the CoC and Rural Housing Stability Programs to the list of ''other targeted homeless services'' with which ESG recipients must coordinate, at § 576.400(b).

f. Other feedback. In general, with respect to the consultation and coordination requirements:

(1) HUD seeks suggestions about particular provisions of the regulation that could be added or removed to assist with implementation and to make the process more useful for jurisdictions and CoCs.

(2) HUD also seeks feedback about current experiences with the consultation requirements, including what processes and procedures recipients are currently using to meet the requirements, how well these are working in the community, and whether there are specific impediments with the current consultation requirements.

13. Area-Wide Systems Coordination Requirements—Coordinated Assessment (§ 576.400(d)): HUD received numerous comments on the coordinated assessment requirement in the first public comment period, particularly related to what costs are eligible and how to charge them to the ESG grant. HUD is considering addressing these issues in guidance or including clarifications in the final rule. In addition, HUD intends to change the term ''coordinated assessment'' to ''coordinated entry'' in both the ESG and CoC final rules, and therefore uses the term ''coordinated entry'' in this Notice. However, HUD has also received questions about the following issues, and seeks comment as to whether any changes should be made in the final rule with respect to these questions:

a. Coordinated entry for walk-ins. How would coordinated entry work under circumstances where the recipient or subrecipient conducts intake based on who walks in—for example, legal services provided on site at a courthouse? Are there special considerations for such instances that HUD should consider in the final rule?

b. Coordinated entry and Street Outreach. Section 576.400(d): HUD is considering changing § 576.400(d) to clarify that that use of the coordinated entry is not required when providing services under the Street Outreach component. However, the use of coordinated entry will continue to be required by recipients and subrecipients of all other forms of ESG assistance.

14. Area-Wide Systems Coordination Requirements—Written Standards for ESG Recipients (§§ 91.220(l)(4) and 91.320(k)(3), and 576.400(e)): In its Action Plan, each ESG recipient must establish and consistently apply, or, if it is a state, elect to require that its subrecipients establish and consistently apply, written standards for providing ESG assistance, in accordance with § 91.320(k)(3) for states and § 91.220(l)(4) for metropolitan cities and urban counties and territories. HUD seeks comment on the following questions related to the required written standards:

a. When subrecipients receive ESG funds from multiple recipients. An ESG recipient or subrecipient could be subject to differing, or even conflicting, written standards. For example, this could occur when a nonprofit subrecipient receives ESG funds from both a state and local government and is subject to two sets of written standards. HUD seeks comments on recipient and subrecipient experiences with multiple funding sources and complying with conflicting written standards. Specifically:

(1) What have recipients and subrecipients done to resolve any conflicts or prevent confusion?

(2) Has this been a significant issue? Should HUD address this issue in the final rule, and if so, how? One option could be for HUD to require the local (metropolitan city or urban county) recipient's standards to supersede the state's standards when there is a conflict. What issues might arise if HUD were to establish this requirement?

b. Asset policy. Under the former Homelessness Prevention and Rapid Re-Housing Program (HPRP), HUD recommended that grantees and subgrantees develop policies to evaluate a household's assets, as a part of considering the full array of ''resources and support networks'' available to a program participant. HUD also recommended that this policy be consistent throughout the CoC. Under the ESG written standards, HUD is considering requiring recipients to develop such a policy regarding the treatment of assets, in order to more consistently and completely assess a household's resources during the initial and reevaluation for Homelessness Prevention and reevaluations for Rapid Re-housing assistance. HUD seeks comment on local experiences with this under HPRP and whether adding this as a requirement in the written standards would help provide consistency in assessing resources and assets during the initial evaluation and reevaluations for ESG assistance.

c. Written standards for subrecipients of local governments. In order to provide a greater amount of local flexibility in limiting and prioritizing eligibility for ESG assistance, HUD is considering allowing ESG recipients that are local governments and territories to pass the requirement to establish written standards down to their subrecipients, similar to the regulation for states at §§ 91.320(k)(3) and 576.400(e)(2).

d. Other feedback. HUD will carefully consider the written standards to be included in the final rule, and seeks feedback about the current written standards, based on recipient and subrecipient experiences. Specifically:

(1) How have the existing written standards helped the recipient or subrecipient design and run its ESG program?

(2) Are there other written standards that HUD should be require? Are there any that are not useful?

(3) Are there any where a slight clarification in the language would help recipients understand and implement the requirement more effectively?

e. Written standards for projects. If HUD were to adopt the definition of ''project'' proposed earlier in this Notice, HUD would consider allowing written standards to be established at the project level. The purpose of doing this would be to improve the ease of administering the program, for recipients and subrecipients. For example, if an emergency shelter project consists of more than one emergency shelter buildings, allowing a recipient—or even a subrecipient—to establish written standards at the project level may be administratively easier. HUD seeks comment on whether this would be helpful, or whether there might be any problems with adopting written standards at the project level.

f. Limiting eligibility and targeting ESG assistance. HUD proposes to specify, in the final rule (either in the written standards at § 576.400(e) or at § 576.407), when and how recipients and subrecipients may establish stricter criteria for eligibility and target assistance to particular groups and subpopulations of homeless persons. Under the interim rule, the recipient, or subrecipient, under limited circumstances, may only allow targeting or limiting of eligibility via the written standards; if not included with sufficient specificity, subrecipients may not target program participants or impose stricter eligibility criteria. For example, a project designed for homeless veterans and their families must serve homeless persons who are not veterans unless the applicable written standards explicitly authorize that project or project type to limit eligibility to veterans and their families. HUD seeks to make this process simpler, and establish clearer guidelines. HUD is considering allowing subrecipients to target and set stricter eligibility criteria with the approval of the recipient—without requiring that the policy be included in the written standards—or allowing the recipient to establish a policy for targeting or setting stricter eligibility criteria for all subrecipients in the written standards.

Specifically, HUD seeks comment on the following questions regarding the requirements at § 576.400(e) related to establishing stricter eligibility criteria or prioritizing ESG assistance:

(1) At what level should decisions about targeting and eligibility for homelessness prevention and rapid re-housing be made—the recipient level, the CoC level, the subrecipient level, or some combination? Have the existing requirements to include such decisions in the applicable written standards created an impediment to the recipient's or subrecipient's flexibility? If so, how?

(2) Likewise, at what level should decisions about emergency shelter and street outreach be made—the local government recipient level, the CoC level, the subrecipient level, or some combination?

(3) Is it burdensome for recipients to include specific policies for setting stricter eligibility criteria or targeting assistance in their written standards in the Action Plan?

(4) What impact would these proposed policies have on the program participants?

(5) HUD welcomes other feedback and thoughts about the targeting/eligibility proposal described above.

15. Evaluation of Program Participant Eligibility and Needs (§ 576.401):

a. Initial evaluations (§ 576.401(a)). HUD is reviewing whether to distinguish between an initial evaluation under the Street Outreach and Emergency Shelter components and an initial evaluation under the Homelessness Prevention and Rapid Re-housing components. Specifically, HUD is considering providing that, while an initial evaluation will still be required under Street Outreach and Emergency Shelter, the recipient/subrecipient will not be required to determine ''the amount and type of assistance the individual or family needs to regain stability in permanent housing'' as a part of the evaluation for assistance. HUD seeks feedback as to whether this would be helpful, or if any important information could be lost if HUD does not require this.

b. Housing stability case management requirements (§ 576.401(e)(i)). The interim rule requirements for monthly meetings with a case manager and developing a housing stability case plan are intended to help ensure that the ESG-funded emergency, short-, or medium-term assistance will be effective in assisting program participants regain long-term housing stability and avoid relapses into homelessness. It also has the effect of emphasizing that ESG is intended to serve those who are most in need of the assistance. Finally, it helps recipients ensure that they are spending scarce ESG funds on program participants that are still in the units. However, HUD received many comments about this requirement, and has also determined that this case management requirement prevents recipients and subrecipients from using HOME TBRA funds as match for ESG because services must not be mandatory when providing HOME TBRA assistance. HUD seeks additional comment on the following questions:

(1) HUD requests that recipients/subrecipients inform HUD about their experiences with these requirements; for example, how does your organization fulfill these requirements? If HUD were to clarify in the final rule that a meeting by phone or videoconference would suffice (which is allowed now but not explicit in the rule), does that make a difference? If HUD were to allow the monthly meeting to simply consist of a brief check-in or follow-up with the program participant (but still be charged as a case management activity), would that help?

(2) If HUD should change the requirement, what would be a more preferable case management requirement? For example, HUD could change the language to require program participants to meet with a case manager ''at a frequency appropriate to the client's needs.'' What might be the positive and negative effects of making this change?

(3) Are these requirements effective in assisting the program participants to achieve stability? Do they encourage recipients/subrecipients to serve those who are most in need? If not, then knowing that the intended purpose of case management is to ensure that the ESG-funded emergency, short- or medium-term assistance will be effective in helping program participants regain long-term housing stability and avoid relapses into homelessness, is there a requirement that could be added—instead of case management—that would meet the intended purpose, but not require recipients or subrecipients to conduct monthly case management?

16. Shelter and Housing Standards (§ 576.403): HUD received significant feedback and comment about the ''habitability standards,'' and seeks comments on the following proposals:

a. Essential services only (emergency shelters). Under the interim rule, if a shelter only receives ESG funds for essential services costs, it is not currently required to meet the minimum standards for emergency shelters at § 576.403(a). HUD is reviewing whether to require an emergency shelter to meet these minimum standards if the emergency shelter receives ESG funding for essential services. This would include emergency shelters, including day shelters that receive non-ESG funds for operating expenses but use ESG for the provision of essential services to persons in the shelter. It would not include a subrecipient that receives ESG for essential services only but is not an emergency shelter (*e.g.,* a legal services provider).

b. Housing Relocation and Stabilization Services only (Homelessness Prevention assistance to remain in unit). HUD is considering removing the requirement that a unit must meet the minimum habitability standards for permanent housing when homelessness prevention assistance, under § 576.105(b) (services only), is used to help a program participant remain in the unit. Alternatively, HUD could allow ESG funds to be used to help a program participant remain in their unit for a short time (up to 30 days) before an inspection is performed. In this case, if the unit does not meet the habitability standards at the time of inspection, recipients/subrecipients would be prohibited from using any additional ESG assistance to help the program participant remain in their unit; however, ESG funds could be used to help the program participant move to a new unit. HUD seeks comment on these two options.

c. Housing Quality Standards. Some recipients might prefer to use HUD's Housing Quality Standards (HQS) instead of the ESG habitability standards; however, HQS is less stringent in the areas of fire safety and interior air quality, which is why it cannot be used to meet the habitability standards under the interim rule. However, HUD recognizes that HQS is the standard used for other HUD programs, and allowing it to be used may reduce the burden of meeting this requirement for some recipients and subrecipients. Therefore, for the final rule, HUD is considering explicitly allowing a certification that a particular permanent housing unit meets HQS to qualify as meeting the minimum standards for permanent housing under ESG.

17. Conflicts of Interest (§ 576.404):

a. Organizational conflicts of interest (§ 576.404(a)). Based on experiences with HPRP, HUD included a provision in the ESG interim rule that was intended to ensure that recipients or subrecipients would not ''feather their own nests''—that is, steer program participants into housing that they own or only serve those that are already in housing that they own. This provision, at § 576.404(a), states: ''No subrecipient may, with respect to individuals or families occupying housing owned by the subrecipient, or a parent or subsidiary of the subrecipient, carry out the initial evaluation required under § 576.401 or administer homelessness prevention assistance under § 576.103.'' With respect to this conflict of interest provision:

(1) HUD is considering including recipients in this conflict of interest requirement. Based on recipient/subrecipient experiences, is this an issue that warrants concern?

(2) For rapid re-housing only, HUD is considering removing this provision altogether. That is, HUD could allow recipients/subrecipients to rapidly re-house ''Category 1'' homeless program participants into housing that they or their parent/subsidiary organization owns, because in some cases, these providers might be some of the most well-suited in the community to provide the assistance that persons being rapidly re-housed need. Are there any potential issues with this? Should HUD leave the requirement in place as-is, to prevent potential steering or conflicts of interest?

(3) For homelessness prevention assistance and rapid re-housing assistance (if HUD retains the conflict of interest requirement for rapid re-housing), HUD is considering adding a provision to prohibit recipients/subrecipients from providing housing search and placement services to assist program participants to move into housing that the recipient/subrecipient owns. HUD seeks comment on this idea.

b. Individual conflicts of interest (§ 576.404(b)). It is generally HUD's policy under its homeless programs to prohibit personal conflicts of interest. For example, if a city staff member makes decisions about grants and also sits on the board of directors of a potential subrecipient, this should be a conflict of interest that requires an exception from HUD. This was omitted from the ESG interim rule; HUD is considering including this provision in

the final rule. HUD seeks comment on how significant an issue this type of conflict of interest is, based on the experience of recipients, subrecipients, and other stakeholders in the community, and whether HUD should prohibit it without requiring an exception.

18. Other Federal Requirements—Limiting Eligibility and Targeting (§ 576.407): The emergency shelter or housing may be limited to a specific subpopulation so long as the recipient/subrecipient does not discriminate against any protected class under federal nondiscrimination laws in 24 CFR 5.105 (*e.g.,* the housing may be limited to homeless veterans and their families, victims of domestic violence and their families, or chronically homeless persons and families), and does comply with the nondiscrimination and equal access requirements under 24 CFR 5.109, and § 576.406. HUD seeks comment on the following policies proposed for inclusion in the final rule, for permanent housing and for emergency shelters:

a. Rapid Re-housing and Homelessness Prevention. A project[4] may limit eligibility to or provide a preference to subpopulations of individuals and families who are homeless or at risk of homelessness and need the specialized services offered by the project (*e.g.,* substance abuse addiction treatment, domestic violence services, or a high intensity package designed to meet the needs of hard-to-reach homeless persons). While the project may offer services for a particular type of disability, no otherwise eligible individuals with disabilities or families including an individual with a disability, who may benefit from the services provided, may be excluded on the grounds that they do not have a particular disability.

b. Emergency shelters. Recipients and subrecipients may exclusively serve a particular homeless subpopulation in emergency shelter if the shelter addresses a need identified by the recipient and meets one of the following conditions:

(1) The emergency shelter may be limited to one sex where it consists of a single structure with shared bedrooms or bathing facilities such that the considerations of personal privacy and the physical limitations of the configuration of the emergency shelter make it appropriate for the shelter to be limited to one sex;

(2) The shelter may be limited to families with children, but if it serves families with children, it must serve all families with children (it may not separate based on the age of a child under 18, regardless of gender);

(3) If the shelter serves at least one family with a child under the age of 18, the shelter may exclude registered sex offenders and persons with a criminal record that includes a violent crime from the project so long as the child is served in the shelter; and

(4) An emergency shelter may limit admission to or provide a preference to subpopulations of homeless individuals and families who need the specialized services provided (*e.g.,* substance abuse addiction treatment programs; victim service providers that serve both men and women; veterans and their families). While the shelter may offer services for a particular type of disability, no otherwise eligible individuals with disabilities or families including an individual with a disability, who may benefit from the services provided, may be excluded on the grounds that they do not have a particular disability.

19. Recordkeeping and Reporting Requirements (§ 576.500):

a. At risk of homelessness (§ 576.500(c)(1)(iv)). Under the ''at risk of homelessness'' recordkeeping requirements at § 576.500(c)(1)(iv), HUD is considering including, in the final rule, specific documentation standards for each of the seven conditions that would be required for a program participant to qualify for assistance under this definition. Note that HUD will consider comments received here with the other comments requested on this characteristic earlier in this document. The changes are as follows:

(A) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance. Acceptable documentation includes, but is not limited to: *Certification by the individual or head of household and any available supporting documentation that the individual or family moved two or more times during the 60-day period immediately preceding the date of application for homeless assistance, and that the reasons for the moves were economic. Such supporting documentation could include:*

(1) For documentation of ''two or more moves:'' Recorded statements or records obtained from each owner, renter, or provider of housing in which the individual or family resided; proof of address and dates of residency at two or more locations, such as a utility bill or lease;

(2) For documentation of ''economic reasons:'' Other third-party verification to document that the reasons for the moves were economic, including notifications of job termination or reduction in hours, documentation of different jobs in different locations (e.g., migratory workers), or job applications; bills and statements, such as utility bills or medical bills, demonstrating a sudden increase in expenses; bank statements demonstrating that the household could not afford rent; or, where such statements or records are unobtainable, a written record of the intake worker's due diligence in attempting to obtain these statements or records.

(B) Is living in the home of another because of economic hardship. Acceptable documentation includes, but is not limited to: *Certification by the individual or head of household and any available supporting documentation that the individual or family is living in the home of another because of economic hardship. Such supporting documentation could include: Written/recorded statements or records obtained from the owner or renter in which the individual or family resides and proof of homeownership or the lease by that owner or renter; other third-party verification to document that the reasons the individual or family is living there is because of economic hardship, including notifications of job termination or reduction in hours, or job applications, bills and statements, such as utility bills or medical bills, demonstrating a sudden increase in expenses, bank statements demonstrating that the household could not afford rent; or, where these statements or records are unobtainable, a written record of the intake worker's due diligence in attempting to obtain these statements or records.*

(C) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance. Acceptable documentation is:

(1) For living arrangements where there is a written or oral lease agreement under states law: A court order resulting from an eviction action that requires the individual or family to leave their residence within 21 days after the date of their application for homeless assistance; or the equivalent notice under applicable state law; or

(2) For informal living arrangements, staying with a family or friend (i.e., ''love evictions''): An oral statement by

[4] Here, HUD is using the word ''project'' as it is proposed above in this Notice. If HUD ultimately adopts a different definition or term based on public comments received, HUD will adjust this provision accordingly.

the individual or head of household that the owner or renter of the housing in which they currently reside will not allow them to stay for more than 21 days after the date of application for homeless assistance. The intake worker must record the statement and certify that it was found credible. To be found credible, the oral statement must either:

(i) Be verified by the owner or renter of the housing in which the individual or family resides at the time of application for homeless assistance and documented by a written certification by the owner or renter or by the intake worker's recording of the owner or renter's oral statement; or

(ii) if the intake worker is unable to contact the owner or renter, be documented by a written certification by the intake worker of their diligence in attempting to obtain the owner or renter's verification and the written certification by the individual or head of household seeking assistance that their statement was true and complete.

(D) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by Federal, State, or local government programs for low-income individuals. Acceptable documentation includes, but is not limited to: *Certification by the individual or head of household and any available supporting documentation that the individual or family is living in a hotel or motel not paid by a charitable organization or government program, such as receipts from the motel/hotel or a written statement from the motel/hotel management; or, where these statements or records are unobtainable, a written record of the intake worker's due diligence in attempting to obtain these statements or records.*

(E) Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons or lives in a larger housing unit in which there reside more than 1.5 persons per room, as defined by the U.S. Census Bureau. Acceptable documentation includes, but is not limited to: *Certification by the individual or head of household and any available supporting documentation that the individual or family is living in a severely overcrowded situation, such a written statement from the intake worker who visited the unit and witnessed the severely overcrowded unit or evidence thereof.*

(F) Is exiting a publicly funded institution, or system of care. Acceptable documentation is: *Certification by the individual or head of household and any available supporting documentation that the individual or family is exiting a publicly-funded institution or system of care. Such documentation could include: Discharge paperwork or a written or oral referral from a social worker, case manager, or other appropriate official of the institution, stating the beginning and end dates of the time residing in the institution. All oral statements must be recorded by the intake worker; or, where these statements or records are unobtainable, a written record of the intake worker's due diligence in attempting to obtain these statements or records.*

(G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved Consolidated Plan. Acceptable documentation includes, but is not limited to: *A statement, in the approved Consolidated Plan/Annual Action Plan, identifying these characteristics, and available supporting documentation that the individual or family is living in housing that has characteristics associated with instability and an increased risk of homelessness, which must follow HUD's order of priority for documentation: third-party documentation first, intake worker observations second, and certification from the person seeking assistance third.*

b. Determinations of ineligibility—Street Outreach (§ 576.500(d)). HUD is proposing that for the Street Outreach component, HUD will not require recipients/subrecipients to keep documentation of the reason(s) for determinations of ineligibility, in order to reduce a recordkeeping burden. HUD seeks comment on any issues that may arise if this requirement is eliminated.

c. Maintenance of effort recordkeeping requirement (§ 576.500(l)). The interim rule states: ''The recipient and its subrecipients that are units of general purpose local government must keep records to demonstrate compliance with the maintenance of effort requirement, including records of the unit of the general purpose local government's annual budgets and sources of funding for street outreach and emergency shelter services.'' This might be an overly burdensome recordkeeping requirement for recipients and subrecipients that are in compliance with this requirement—that is, how does a local government demonstrate that it is *not* using ESG funds to replace other local government funds? Therefore, HUD is considering removing this from the recordkeeping section. HUD would continue to monitor to ensure that recipients are meeting the requirements of § 576.101(c); this change would simply eliminate a difficult and potentially ineffective recordkeeping requirement. HUD seeks comment on this idea.

d. Records of services and assistance provided (§ 576.500(l)). Currently, only recipients are required to ''keep records of the types of essential services, rental assistance, and housing stabilization and relocation services provided under the recipient's program, and the amounts spent on these services and assistance.'' HUD is considering adding ''and subrecipients'' to this recordkeeping requirement, and seeks comment on whether this change would be burdensome or useful.

e. Period of record retention (§ 576.500(y)(2) and (3)). Under the interim rule, records for major renovation or conversion must be retained until 10 years after the date ESG funds are first obligated, but the minimum period of use requirements, at § 576.102(c)(1), begin at the date of first occupancy after the completed renovation. HUD is considering whether to change the record retention requirements so that they are the same as the ''minimum period of use'' requirements in § 576.102(c), as follows: ''*Where ESG funds are used for the renovation or conversion of an emergency shelter, the records must be retained for a period that is not less than the minimum period of use.''* HUD seeks comment on this proposal.

20. Recipient Sanctions (§ 576.501(c)): Under the interim rule, at § 576.501(c), when a recipient reallocates or reprograms ESG funds as a part of subrecipient sanctions, these funds must be expended by the same deadline as all other funds. HUD is considering removing this expenditure requirement to provide recipients, especially states, with additional flexibility in situations where a subrecipient compliance issue or other impediment causes delays in the recipient's ability to expend all of the funds by the 24-month deadline. HUD seeks comment on this proposal.

Dated: May 27, 2015.

Harriet Tregoning,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2015–13485 Filed 6–2–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

[Docket ID: BSEE–2015–0002; 15XE1700DX EEEE500000 EX1SF0000.DAQ000]

RIN 1014–AA11

Oil and Gas and Sulphur Operations on the Outer Continental Shelf—Blowout Preventer Systems and Well Control

AGENCY: Bureau of Safety and Environmental Enforcement (BSEE), Interior.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The BSEE is extending the public comment period on the Notice of proposed rulemaking entitled ''Oil and Gas and Sulphur Operations on the Outer Continental Shelf—Blowout Preventer Systems and Well Control,'' which was published in the **Federal Register** on April 17, 2015. The original public comment period would have ended on June 16, 2015. However, BSEE received requests from various stakeholders to extend the comment period. The BSEE reviewed the extension requests and determined that a 30-day comment period extension—to July 16, 2015—is appropriate.

DATES: The comment period for the notice of proposed rulemaking published in the **Federal Register** on April 17, 2015 (80 FR 21504), is extended. Written comments must be received by the extended due date of July 16, 2015. The BSEE may not fully consider comments received after this date.

ADDRESSES: You may submit comments on the proposed rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1014–AA11 as an identifier in your message.

- Federal eRulemaking Portal: *http://www.regulations.gov.* In the entry titled Enter Keyword or ID, enter BSEE–2015–0002 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this rulemaking. The BSEE may post all submitted comments in their entirety.
- Mail or hand-carry comments to the Department of the Interior (DOI); Bureau of Safety and Environmental Enforcement; Attention: Regulations and Standards Branch; 45600 Woodland Road, Sterling, Virginia 20166. Please reference ''Oil and Gas and Sulphur Operations on the Outer Continental Shelf—Blowout Preventer Systems and Well Control, 1014–AA11'' in your comments and include your name and return address. Please note that this address for BSEE is new; however, any comments already submitted to BSEE's former address (381 Elden St., Herndon, VA 20171) do not need to be resubmitted to the new address.
- Public Availability of Comments—Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Kirk Malstrom, Regulations and Standards Branch, 202–258–1518, *Kirk.Malstrom@bsee.gov.*

SUPPLEMENTARY INFORMATION: The BSEE published a notice of proposed rulemaking on Blowout Preventer Systems and Well Control on April 17, 2015 (80 FR 21504). This proposed rule is intended to consolidate equipment and operational requirements that are common to other subparts pertaining to offshore oil and gas drilling, completions, workovers, and decommissioning. This proposed rule would focus, at this time, on blowout preventer (BOP) requirements, including incorporation of industry standards and revision of existing regulations. The proposed rule would also include reforms in the areas of well design, well control, casing, cementing, real-time well monitoring, and subsea containment. The proposed rule would address and implement multiple recommendations resulting from various investigations of the *Deepwater Horizon* incident. This proposed rule would also incorporate guidance from several Notices to Lessees and Operators (NTLs) and revise provisions related to drilling, workover, completion, and decommissioning operations to enhance safety and environmental protection.

After publication of the proposed rule, BSEE received requests from various stakeholders asking BSEE to extend the comment period on the proposed rule. The majority of those requests sought extensions of 120 days, which would triple the length of the original 60-day comment period. One comment requested a 30-day extension. BSEE also received a written comment from another stakeholder urging BSEE not to extend the comment period because the proposed rule has been in development since the *Deepwater Horizon* incident, is based on recommendations resulting from that incident, and represents a critical regulatory improvement that should be finalized without delay.

The BSEE has considered those requests and has determined that extending the original 60-day comment period by an additional 30 days will provide sufficient additional time for review of and comment on the proposal without unduly delaying a final rulemaking decision. Accordingly, written comments must be submitted by the extended due date of July 16, 2015. The BSEE may not fully consider comments received after this date.

Dated: May 28, 2015.

Janice M. Schneider,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 2015–13499 Filed 6–2–15; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3100

[LLWO3100 L13100000.PP0000]

RIN 1004–AE41

Oil and Gas Leasing; Royalty on Production, Rental Payments, Minimum Acceptable Bids, Bonding Requirements, and Civil Penalty Assessments

AGENCY: Bureau of Land Management, Interior.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: On April 21, 2015, the Bureau of Land Management (BLM) published in the **Federal Register** an advanced notice of proposed rulemaking (ANPR) to solicit public comments and suggestions that may be used to update the BLM's regulations related to royalty rates, annual rental payments, minimum acceptable bids, bonding requirements, and civil penalty assessments for Federal onshore oil and gas leases. In response to requests received for additional time to provide comment, the BLM is announcing by issuance of this notice that the public comment period for the ANPR will be extended 14 days beyond the end of the initial comment period.

DATES: The comment period for the ANPR published April 21, 2015 (80 FR

22148), is extended. Send your comments on this proposed rule to the BLM on or before June 19, 2015. The BLM need not consider, or include in the administrative record for the final rule, comments that the BLM receives after the close of the comment period or comments delivered to an address other than those listed below (see **ADDRESSES**).

ADDRESSES: *Mail:* U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 2134 LM, 1849 C St. NW., Washington, DC 20240, Attention: 1004–AE41. *Personal or messenger delivery:* Bureau of Land Management, 20 M Street SE., Room 2134 LM, Attention: Regulatory Affairs, Washington, DC 20003. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions at this Web site.

FOR FURTHER INFORMATION CONTACT: Dylan Fuge, Office of the Director, at 202–208–5235, Steven Wells, Division of Fluid Minerals, at 202–912–7143, or Jully McQuilliams, Division of Fluid Minerals, at 202–912–7156, for information regarding the substance of this ANPR. For information on procedural matters or the rulemaking process generally, you may contact Anna Atkinson, Regulatory Affairs, at 202–912–7438. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week to contact the above individuals.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

If you wish to comment, you may submit your comments by any one of several methods: *Mail:* You may mail comments to U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 2134LM, 1849 C Street NW., Washington, DC 20240, Attention: 1004–AE41. *Personal or messenger delivery:* Bureau of Land Management, 20 M Street SE., Room 2134 LM, Attention: Regulatory Affairs, Washington, DC 20003. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions at this Web site.

Please make your comments as specific as possible by confining them to issues directly related to the content of the ANPR, and explain the basis for your comments. The comments and recommendations that will be most useful and likely to influence agency decisions are:

1. Those supported by quantitative information or studies; and

2. Those that include citations to, and analyses of, the applicable laws and regulations.

The BLM is not obligated to consider or include in the Administrative Record for the rule comments received after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES** during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Background

The ANPR was published on April 21, 2015 (80 FR 22148), with a 45-day comment period closing on June 5, 2015. The ANPR poses questions and seeks information related to potential updates and changes to the BLM's existing regulations governing Federal onshore oil and gas leases related to royalty rates, annual rental payments, minimum acceptable bids, bonding requirements, and civil penalty assessments. Following publication of the ANPR, the BLM received requests for extension of the comment period. In response to those requests, the BLM has decided to extend the comment period on the rule for 14 days, until June 19, 2015.

Dated: May 26, 2015.

Janice M. Schneider,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 2015–13474 Filed 6–2–15; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 5, 7, 8, 10, 12, 15, 16, 19, and 52

[FAR Case 2014–015; Docket No. 2014–0015; Sequence No. 1]

RIN 9000–AM92

Federal Acquisition Regulation; Consolidation and Bundling of Contract Requirements

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement sections of the Small Business Jobs Act of 2010 and regulatory changes made by the Small Business Administration, which provide for a Governmentwide policy on the consolidation and bundling of contract requirements.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before August 3, 2015 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2014–015 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2014–015''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2014–015.'' Follow the instructions provided at the ''Comment Now'' screen. Please include your name, company name (if any), and ''FAR Case 2014–015'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR Case 2014–015, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, at 703–605–2868, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAR Case 2014–015.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to revise the FAR to implement regulatory changes made by the Small Business Administration (SBA) in its final rule which was published in the **Federal Register** at 78 FR 61113 on October 2, 2013, concerning contract consolidation and bundling. SBA's final rule implements the statutory requirements set forth at sections 1312 and 1313 of the Small Business Jobs Act of 2010 (Jobs Act) (Pub. L. 111–240). This proposed rule will encompass the acquisition of commercial items, including commercially available off-the-shelf (COTS) items.

Section 1312 of the Jobs Act amends the Small Business Act at 15 U.S.C. 644(q) to require Federal agencies to include in each solicitation for any multiple-award contract above the substantial bundling threshold of the Federal agency a provision soliciting bids from any responsible source, including responsible small business teaming arrangements or joint ventures of small business concerns. Section 1312 requires the FAR be amended to establish a Governmentwide policy regarding contract bundling, including regarding the solicitation of teaming and joint ventures, and to require agencies to publish said policy on their agency Web site. Section 1312 also requires the head of the Federal agency to publish on the Web site of the Federal agency a list and rationale for any bundled contract for which the Federal agency solicited bids or that was awarded by the agency.

Section 1313 amends the Small Business Act at 15 U.S.C. 657q to define the term ''consolidation of contract requirements'' to mean the use of a solicitation to obtain offers for a single contract or a multiple-award contract to satisfy two or more requirements of the Federal agency for goods or services that have been provided to or performed for the Federal agency under two or more separate contracts, each of which was lower in cost than the total cost of the contract for which the offers are solicited. The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (2013 NDAA), Public Law 112–239, section 1671 further amended the definition of consolidation to include construction requirements.

Further, section 1313 prohibits the agency from carrying out an acquisition strategy that includes consolidation of contract requirements of the Federal agency with an estimated total value exceeding $2 million, unless the Senior Procurement Executive or Chief Acquisition Officer for the Federal agency, before carrying out the acquisition strategy—

- Conducts market research;
- Identifies any alternative contracting approach that would involve a lesser degree of consolidation of contract requirements;
- Makes a written determination that the consolidation of contract requirements is necessary and justified;
- Identifies any negative impact by the acquisition strategy on contracting with small business concerns; and
- Ensures that steps will be taken to include small business concerns in the acquisition strategy.

II. Discussion and Analysis

Amendments to the FAR are proposed by this rule. The proposed changes are summarized in the following paragraphs.

A. *FAR Subpart 2.1, Definitions.* This subpart is amended to revise the definition of ''bundling'' for clarity, incorporating the definition of ''bundled contract'', and to add a new definition for ''consolidation, consolidation of contract requirements, consolidated contract or consolidated requirement''. In keeping with SBA's final rule and section 1671 of the NDAA for FY 2013, Public Law 112–239, the latter definition also encompasses the consolidation of construction requirements. This subpart is also amended to add a definition for ''small business teaming arrangement''.

B. *FAR Subpart 5.2, Synopses of Proposed Contract Actions.* A conforming cross-reference has been added at FAR 5.205(g).

C. *FAR Subpart 7.1, Acquisition Plans.*

- FAR 7.103—This section is amended to clarify that agencies are to ensure that unnecessary and unjustified consolidation is avoided.
- FAR 7.104—This section is amended to remove the substantial bundling thresholds at FAR 7.104. The substantial bundling thresholds are relocated to the proposed new section FAR 7.107–4, Substantial Bundling, for clarity and consistency with the new proposed structure of FAR 7.107. An additional revision was made to clarify that small business is to be a discipline that is represented in the acquisition planning team.
- FAR 7.105—This section is amended by adding a reference to the statutory authority for limiting the use of acquisition strategies involving the consolidation of contract requirements.
- FAR 7.107—This section is amended by revising the title of the section and adding the statutory authority for the consolidation of contract requirements. This section also proposes to clarify that if a requirement is considered both consolidated and bundled, the agency must follow the guidance regarding bundling. In addition, this section is amended by restructuring FAR 7.107 to add proposed subsections FAR 7.707–1, General, FAR 7.107–2, Consolidation of contract requirements, FAR 7.107–3 Bundling, FAR 7.107–4 Substantial Bundling, FAR 7.107–5 Notifications, and 7.107–6 Solicitation provision. The proposed revisions are as follows:
  - FAR 7.107–1—General. This proposed new section provides information relevant to both consolidation and bundling, such as evaluation of benefits, substantial benefits, and applicability.
  - FAR 7.107–2—Consolidation of contract requirements. This proposed new section is added to clarify that an agency may not conduct an acquisition exceeding $2 million that is a consolidation of contract requirements unless the agency's Senior Procurement Executive or Chief Acquisition Officer: (1) Justifies the consolidation by showing that the benefits of the consolidated acquisition substantially exceed the benefits of each possible alternative approach that would involve a lesser degree of consolidation and (2) identify any negative impact by the acquisition strategy on contracting with small business concerns.
  - FAR 7.107–3—Bundling. This proposed new section clarifies language regarding the requirements a contracting officer must adhere to prior to conducting an acquisition strategy that involves the bundling of contract requirements.
  - FAR 7.107–4—Substantial Bundling. This proposed new section includes the substantial bundling thresholds relocated from FAR 7.104(d) and existing documentation requirements.
  - FAR 7.107–5—Notifications. This proposed new section is added to require Federal agencies to: (1) Notify current small business contractors of an agency's intent to bundle a contract requirement that was not previously bundled at least 30 days prior to the issuance of the solicitation; (2) provide public notification of an agency's intent to bundle by publishing on the agency's

Web site a list and rationale for any bundled requirement for which the agency solicited offers or issued an award; (3) require the agency to notify SBA of a follow-on bundled or consolidated contract requirement; and (4) publish the Governmentwide policy regarding contract bundling, including regarding the solicitation of teaming and joint ventures, on their agency Web site.

○ FAR 7.107–6—Solicitation Provision. This proposed new section is added to prescribe a new provision 52.207–XX ''Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts)'', in solicitations for multiple-award contracts that are estimated to be above the agency's substantial bundling threshold.

D. *FAR Subpart 8.4, Federal Supply Schedules.* Proposed revisions to FAR 8.404(c)(2) are necessary to apply consolidation requirements to orders.

E. *FAR Part 10, Market Research.* Proposed revisions to FAR 10.001 are necessary to add references to the statutory authority for the consolidation of contract requirements.

F. *FAR Subpart 12.3, Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items.* Proposed revisions to FAR 12.301(d)(4) are necessary to add a reference to the new provision for multiple-award contracts over the substantial bundling thresholds at FAR 52.207–XX, Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts).

G. *FAR Subpart 15.3, Source Selection.*

• FAR 15.304, Evaluation factors and significant subfactors. This section is amended by adding references to the consolidation of contract requirements.

H. *FAR Subpart 16.5, Indefinite-Delivery Contracts.*

• FAR 16.505, Ordering. This section is amended to apply consolidation requirements to orders.

• FAR 16.506, Solicitation provisions and contract clauses. This section is amended by adding a cross-reference to the prescription in FAR Subpart 7.1 for a new provision ''Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts)''.

I. *Subpart 19.2, Policies.*

• FAR 19.201 General policy and 19.202–1 Encouraging small business participation in acquisitions. These sections are amended by adding references to the consolidation of contract requirements.

J. *FAR Subpart 52.2, Text of Provisions and Clauses.*

• FAR 52.207–XX, Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts). This section is amended to include this provision in solicitations for multiple-award contracts when the estimated contract value is expected to exceed the agency's substantial bundling threshold. The agency shall consider offers from any responsible source, including responsible small business concerns and teaming arrangements or joint ventures of small business concerns.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

DoD, GSA, and NASA are proposing to amend the FAR to provide uniform guidance consistent with SBA's final rule which was published in the **Federal Register** at 78 FR 61113 on October 2, 2013, which implements sections 1312 and 1313 of the Small Business Jobs Act of 2010, Public Law 111–240.

The objective of this proposed rule is to alleviate the adverse effects of contract bundling and consolidation on small business concerns competing for Federal contracts. This rule provides a balance between the benefits of bundling and consolidation and the obstacles they create for small businesses. The authorizing legislation for this action is sections 1312 and 1313 of the Small Business Jobs Act of 2010, Public Law 111–240, and section 1671 of the NDAA for FY 2013 Public Law 112–239. Section 1671 in conjunction with section 1313 now provides for a Governmentwide requirement and threshold for consolidated contracts.

This rule may have a positive economic impact on any small business entity that wishes to participate in the Federal procurement arena. Analysis of the System for Award Management (SAM) database indicates there are over 351,203 small business registrants that can potentially benefit from the implementation of this rule.

This rule does not impose any new reporting, recordkeeping or other compliance requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2014–015), in correspondence.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 2, 5, 7, 8, 10, 12, 15, 16, 19, and 52

Government procurement.

Dated: May 28, 2015.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 5, 7, 8, 10, 12, 15, 16, 19, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 5, 7, 8, 10, 12, 15, 16, 19, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b) by—

■ a. Removing the definition ''Bundled contract'';

■ b. Revising the definition ''Bundling'';

■ c. Adding, in alphabetical order, the definitions ''Consolidation,

consolidation of contract requirements, consolidated contract, or consolidated requirement''; and ''Small Business Teaming Arrangement''.

The revised and added text reads as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Bundling or *bundled contract*—

(1) Means the consolidating or combining of two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a solicitation for a single contract, a multiple-award contract, a task order or delivery order that is likely to be unsuitable for award to a small business concern (but may be suitable for award to a small business with a Small Business Teaming Arrangement) due to—

(i) The diversity, size, or specialized nature of the elements of the performance specified;

(ii) The aggregate dollar value of the anticipated award;

(iii) The geographical dispersion of the contract performance sites; or

(iv) Any combination of the factors described in paragraphs (1)(i), (ii), and (iii) of this definition.

(2) ''Separate smaller contract'' as used in this definition, means a contract that has been performed by one or more small business concerns or that was suitable for award to one or more small business concerns.

(3) This definition does not apply to a contract that will be awarded and performed entirely outside of the United States.

(4) (See 7.107–4 for a description of substantial bundling.)

* * * * *

Consolidation, consolidation of contract requirements, consolidated contract, or consolidated requirement—

(1) Means a solicitation for a single contract, a multiple-award contract, a task order, or a delivery order to satisfy—

(i) Two or more requirements of the Federal agency for supplies or services that have been provided to or performed for the Federal agency under two or more separate contracts, each of which was lower in cost than the total cost of the contract for which offers are solicited; or

(ii) Requirements of the Federal agency for construction projects to be performed at two or more discrete sites.

(2) *Separate contract* as used in this definition, means a contract that has been performed by any business, including small and other than small business concerns.

* * * * *

Small Business Teaming Arrangement—

(1) Means an arrangement where—

(i) Two or more small business concerns have formed a joint venture; or

(ii) A potential small business prime contractor (''offeror'') agrees with one or more other small business concerns to have them act as its subcontractors under a specified Government contract. A Small Business Teaming Arrangement between the offeror and its small business subcontractor(s) exists through a written agreement between the parties that—

(A) Is specifically referred to as a *Small Business Teaming Arrangement* or *Small Business Teaming Agreement;* and

(B) Sets forth the different responsibilities, roles, and percentages (or other allocations) of work as it relates to the acquisition; and

(2) May include two business concerns in a mentor-protege relationship so long as both the mentor and the protege are small or the protege is small and the concerns have received an exception to affiliation pursuant to 13 CFR 121.103(h)(3)(ii) or (iii).

(3) See 13 CFR 121.103(b)(9) regarding the exception to affiliation for offers received from Small Business Teaming Arrangements.

* * * * *

PART 5—PUBLICIZING CONTRACT ACTIONS

■ 3. Amend section 5.205 by adding paragraph (g) to read as follows:

5.205 Special situations.

* * * * *

(g) *Notification to public of rationale for bundled requirement.* See 7.107–5(b)(2) with regard to notification to *FedBizOpps.gov* before issuance of the solicitation of any bundled requirement.

PART 7—ACQUISITION PLANNING

■ 4. Amend section 7.103 by revising paragraph (u)(2) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(u) * * *

(2) Avoid unnecessary and unjustified consolidation or bundling of contract requirements that precludes small business participation as prime contractors (see 7.107) (15 U.S.C. 631(j) and 15 U.S.C. 657(q)).

* * * * *

■ 5. Amend section 7.104 by removing from paragraph (a) ''contracting,'' and adding ''contracting, small business,'' in its place; and revising paragraph (d) to read as follows:

7.104 General procedures.

* * * * *

(d) The planner shall coordinate the acquisition plan or strategy with the cognizant small business specialist when the strategy contemplates an acquisition meeting the dollar amounts for substantial bundling unless the contract or task order or delivery order is entirely reserved or set-aside for small business under part 19. The small business specialist shall notify the agency Office of Small and Disadvantaged Business Utilization or the Office of Small Business Programs if the strategy involves consolidation or bundling that is unnecessary, unjustified, or not identified as consolidated or bundled by the agency (see 7.107 for further guidance regarding consolidation and bundling).

* * * * *

■ 6. Amend section 7.105 by revising paragraph (b)(1) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) *Plan of action.* (1) *Sources.* (i) Indicate the prospective sources of supplies or services that can meet the need.

(ii) Consider required sources of supplies or services (see part 8) and sources identifiable through databases including the Governmentwide database of contracts and other procurement instruments intended for use by multiple agencies available at *https://www.contractdirectory.gov/contractdirectory/.*

(iii) Include consideration of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns (see part 19).

(iv) Consider the impact of any consolidation or bundling that might affect participation of small businesses in the acquisition (see 7.107) (15 U.S.C. 644(e) and 15 U.S.C. 657(q)). When the proposed acquisition strategy involves the consolidation or bundling of contract requirements, identify the incumbent contractors and contracts affected by the consolidation or bundling.

(v) Address the extent and results of the market research and indicate their impact on the various elements of the plan (see part 10).

* * * * *

■ 7. Revise section 7.107 to read as follows:

7.107 Additional requirements for acquisitions involving consolidation, bundling, or substantial bundling.

7.107–1 General.

(a) Consolidation and bundling of contract requirements may provide substantial benefits to the Government. However, because of the potential impact on small business participation, the agency shall conduct market research and any required analysis to determine whether consolidation is necessary and justified in accordance with 15 U.S.C. 657(q) or if bundling is necessary and justified pursuant to 15 U.S.C. 644(e)(2).

(b) A consolidated or bundled requirement is necessary and justified if the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches identified.

(c) Such benefits may include—

(1) Cost savings;

(2) Price reduction;

(3) Quality improvements that will save time or improve or enhance performance or efficiency;

(4) Reduction in acquisition cycle times, or

(5) Better terms and conditions.

(d) Benefits are substantial if individually, in combination, or in the aggregate the anticipated financial benefits are equivalent to—

(1) Ten percent of the estimated contract or order value (including options) if the value is $94 million or less; or

(2) Five percent of the estimated contract or order value (including options) or $9.4 million, whichever is greater, if the value exceeds $94 million.

(e) Reduction of administrative or personnel costs alone is not sufficient justification for consolidation or bundling unless the cost savings are expected to be at least 10 percent of the estimated contract or order value (including options) of the consolidated or bundled requirements. For consolidated requirements, the Senior Procurement Executive or Chief Acquisition Officer must make a determination of the cost savings (15 U.S.C. 657(q)(c)(2)).

(f) If the requirement is considered both consolidated and bundled, the agency shall follow the guidance regarding bundling in 7.107–3 and 7.107–4).

(g) The requirements of this section do not apply—

(1) Except 7.107–4, if a cost comparison analysis will be performed in accordance with OMB Circular A–76; and

(2) To orders against single-agency task-order contracts or delivery-order contracts, if the requirement was considered in determining that the consolidation or bundling of the underlying contract was necessary and justified.

7.107–2 Consolidation of contract requirements.

(a) Before conducting an acquisition that is a consolidation of contract requirements with an estimated total dollar value exceeding $2 million, the Senior Procurement Executive or Chief Acquisition Officer shall make a written determination that the consolidation of contract requirements is necessary and justified, after ensuring that—

(1) Market research has been conducted;

(2) Any alternative contracting approaches that would involve a lesser degree of consolidation of contract requirements have been identified;

(3) The determination is coordinated with the agency's Office of Small Disadvantaged Business Utilization or the Office of Small Business Programs;

(4) Any negative impact by the acquisition strategy on contracting with small business concerns has been identified; and

(5) Steps are taken to include small business concerns in the acquisition strategy.

(b) The Senior Procurement Executive or Chief Acquisition Officer may determine that the consolidation of contract requirements is necessary and justified if, as compared to the benefits that would be derived from the alternative contracting approaches identified under paragraph (a)(2) of this subsection, consolidation would derive substantial benefits (see 7.107–1(d)).

(c) If a determination is made, the contracting officer shall include it in the acquisition strategy documentation and provide it to SBA upon request.

7.107–3 Bundling.

(a) Before conducting an acquisition strategy that involves the bundling of contract requirements, the agency shall make a written determination that the bundling is necessary and justified. A bundled requirement is considered necessary and justified if the agency would obtain measurably substantial benefits as compared to meeting its agency's requirements through separate smaller contracts or orders.

(b) The agency shall quantify the specific benefits identified through the use of market research and other techniques to explain how their impact would be measurably substantial (see 10.001(a)(2)(iv) and (a)(3)(vi)).

(c) Without power of delegation, the service acquisition executive for the military departments, the component acquisition executive for the Defense Logistics Agency, the Under Secretary of Defense for Acquisition, Technology and Logistics for the defense agencies, or the Deputy Secretary or equivalent for the civilian agencies may determine that bundling is necessary and justified when—

(1) The expected benefits do not meet the thresholds for a substantial benefit but are critical to the agency's mission success; and

(2) The acquisition strategy provides for maximum practicable participation by small business concerns.

(d) In assessing whether cost savings and/or price reduction would be achieved through bundling, the agency and SBA shall—

(1) Compare the price that has been charged by small businesses for the work that they have performed; or

(2) Where previous prices are not available, compare the price, based on market research, that could have been or could be charged by small businesses for the work not previously performed by other than a small business.

(e) If a determination is made, the contracting officer shall include it in the acquisition strategy documentation and provide it to SBA upon request.

7.107–4 Substantial bundling.

(a)(1) Substantial bundling is any bundling that results in a contract or order with an estimated value of—

(i) $8 million or more for the Department of Defense;

(ii) $6 million or more for the National Aeronautics and Space Administration, the General Services Administration, and the Department of Energy; or

(iii) $2.5 million or more for all other agencies.

(2) These thresholds apply to the cumulative estimated dollar value (including options) of—

(i) Multiple-award contracts;

(ii) Task orders or delivery orders issued against a GSA Schedule contract; or

(iii) Task orders or delivery orders issued against a task-order or delivery-order contract awarded by another agency.

(b) In addition to addressing the requirements for bundling (see 7.107–3), when the proposed acquisition strategy involves substantial bundling, the agency shall document in its strategy—

(1) The specific benefits anticipated to be derived from substantial bundling;

(2) An assessment of the specific impediments to participation by small business concerns as contractors that result from substantial bundling;

(3) Actions designed to maximize small business participation as contractors, including provisions that encourage small business teaming;

(4) Actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract, or order, that may be awarded to meet the requirements;

(5) The determination that the anticipated benefits of the proposed bundled contract or order justify its use; and

(6) Alternative strategies that would reduce or minimize the scope of the bundling, and the rationale for not choosing those alternatives.

7.107–5 Notifications.

(a) *Notifications to current small business contractors of agency's intent to bundle.*

(1) The contracting officer shall notify each small business performing a contract that it intends to bundle the requirement with one or more other requirements at least 30 days prior to the issuance of the solicitation for the bundled requirement.

(2) The notification shall provide the name, phone number and address of the applicable SBA procurement center representative (PCR), or if a PCR is not assigned to the procuring activity, the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located (see subpart 19.4 regarding the duties and responsibilities of the SBA PCR).

(3) This notification shall be documented in the contract file.

(b) *Notification to public of rationale for bundled requirement.*

(1) The agency shall publish on its Web site a list and rationale for any bundled requirement for which the agency solicited offers or issued an award. The notification shall be made within 30 days of the agency's data certification regarding the validity and verification of data entered in the Federal Procurement Data System to the Office of Federal Procurement Policy (see 4.604).

(2) In addition, the agency is encouraged to provide to *FedBizOpps.gov,* before issuance of the solicitation, notification of the rationale for any bundled requirement (see 5.201).

(c) *Notification to SBA of follow-on bundled or consolidated requirements.* For each follow-on bundled or consolidated contract (even if additional requirements have been added or some have been deleted), the contracting officer shall obtain from the requiring activity and notify the SBA PCR as soon as possible but no later than 30 days prior to issuance of the solicitation of—

(1) The amount of savings and benefits achieved under the prior consolidation or bundling of contract requirements;

(2) Whether such savings and benefits will continue to be realized if the contract remains consolidated or bundled; and

(3) Whether such savings and benefits would be greater if the procurement requirements were divided into separate solicitations suitable for award to small business concerns.

(d) *Public notification of bundling policy.* In accordance with 15 U.S.C. 644(q)(2)(A)(ii), agencies shall publish the Governmentwide policy regarding contract bundling, including regarding the solicitation of teaming and joint ventures, on their agency Web site.

7.107–6 Solicitation provision.

The contracting officer shall insert the provision at 52.207–XX, Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts), in solicitations for multiple-award contracts above the substantial bundling threshold of the agency.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 8. Amend section 8.404 by revising paragraph (c)(2) to read as follows:

8.404 Use of Federal Supply Schedules.

* * * * *

(c) * * *

(2) Shall comply with all FAR requirements for a consolidated or bundled contract when the task order or delivery order meets the definition at 2.101(b) of ''consolidation'' or ''bundling''; and

* * * * *

PART 10—MARKET RESEARCH

■ 9. Amend section 10.001 by—

■ a. Removing from the introductory text of paragraph (a) ''Agencies must—'' and adding ''Agencies shall—'' in its place;

■ b. Revising paragraphs (a)(2)(iv) and (a)(2)(vi)(B);

■ c. Removing from the end of paragraph (a)(3)(v) ''efficiency; and'' and adding ''efficiency;'' in its place;

■ d. Redesignating paragraphs (a)(3)(vi) and (a)(3)(vii) as paragraphs (a)(3)(vii) and (a)(3)(viii), respectively;

■ e. Adding a new paragraph (a)(3)(vi);

■ f. Revising the newly designated paragraph (a)(3)(vii); and

■ g. Revising paragraph (c) to read as follows.

10.001 Policy.

(a) * * *

(2) * * *

(iv) Before soliciting offers for acquisitions that could lead to a consolidated or bundled contract (15 U.S.C. 644(e)(2)(A) and 15 U.S.C. 657q);

* * * * *

(B) Disaster relief to include debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities (see 26.205); and

(3) * * *

(vi) Determine whether consolidation is necessary and justified (see 7.107–2) (15 U.S.C. 657q);

(vii) Determine whether bundling is necessary and justified (see 7.107–3) (15 U.S.C. 644(e)(2)(A)); and

* * * * *

(c) If an agency contemplates awarding a consolidated or bundled contract, the agency—

(1) When performing market research, should consult with the agency small business specialist and the local Small Business Administration procurement center representative (PCR). If a PCR is not assigned, see 19.402(a); and

(2) Shall notify any affected incumbent small business concerns of the Government's intention to bundle the requirement and how small business concerns may contact the appropriate Small Business Administration procurement center representative (see 7.107–5(a).

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 10. Amend section 12.301 by redesignating paragraphs (d)(3) through (d)(6) as paragraphs (d)(4) through (d)(7), respectively; and adding a new paragraph (d)(3) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(d) * * *

(3) Insert the provision at 52.207–XX, Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts), as prescribed at 7.107–6.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

■ 11. Amend section 15.304 by revising paragraphs (c)(3)(ii) and (c)(4) to read as follows:

15.304 Evaluation factors and significant subfactors.

* * * * *

(c) * * *

(3) * * *

(ii) For solicitations involving the consolidation of contract requirements or bundling that offer a significant opportunity for subcontracting, the contracting officer shall include a factor to evaluate past performance indicating the extent to which the offeror attained applicable goals for small business participation under contracts that required subcontracting plans (15 U.S.C. 637(d)(4)(G)(ii)).

* * * * *

(4) For solicitations involving the consolidation of contract requirements or bundling that offer a significant opportunity for subcontracting, the contracting officer shall include proposed small business subcontracting participation in the subcontracting plan as an evaluation factor (15 U.S.C. 637(d)(4)(G)(i)).

* * * * *

PART 16—TYPES OF CONTRACTS

■ 12. Amend section 16.505 by revising paragraph (a)(8)(iii) to read as follows:

16.505 Ordering.

(a) * * *

(8) * * *

(iii) Shall comply with all FAR requirements for a consolidated or bundled contract when the task order or delivery order meets the definition at 2.101(b) of ''consolidation'' or ''bundling''.

* * * * *

■ 13. Amend section 16.506 by adding paragraph (i) to read as follows:

16.506 Solicitation provisions and contract clauses.

* * * * *

(i) See 7.107–6 for use of 52.207–XX, Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangement or Joint Ventures (Multiple-Award Contracts) in solicitations for multiple-award contracts above the substantial bundling threshold of the agency.

PART 19—SMALL BUSINESS PROGRAMS

■ 14. Amend section 19.201 by revising paragraphs (c)(5)(i), (c)(11)(ii), and (c)(11)(iii) to read as follows:

19.201 General policy.

* * * * *

(c) * * *

(5) * * *

(i) Identify proposed solicitations that involve significant bundling and work with the agency acquisition officials and SBA to revise the procurement strategies for such proposed solicitations to increase the probability of participation by small businesses as prime contractors through Small Business Teaming Arrangements;

* * * * *

(11) * * *

(ii) Adequacy of consolidated or bundled contract documentation and justifications; and

(iii) Actions taken to mitigate the effects of necessary and justified consolidation of contract requirements or contract bundling on small businesses.

* * * * *

■ 15. Amend section 19.202–1 by revising paragraphs (e)(1)(iii), (e)(2), (e)(2)(v), (e)(3), and (e)(4) to read as follows:

19.202–1 Encouraging small business participation in acquisitions.

* * * * *

(e)(1) * * *

(iii) The proposed acquisition is for a consolidated or bundled requirement. (See 7.107–5(a) for mandatory 30-day notice requirement to incumbent small business concerns.) The contracting officer shall provide all information relative to the justification for the consolidation of contract requirements or contract bundling, including the acquisition plan or strategy, and if the acquisition involves substantial bundling, the information identified in 7.107–4. The contracting officer shall also provide the same information to the agency Office of Small and Disadvantaged Business Utilization.

(2) Provide a statement explaining why the—

* * * * *

(v) The consolidation of contract requirements or bundling is necessary and justified.

(3) Process the 30-day notification concurrently with other processing steps required prior to the issuance of the solicitation.

(4) If the contracting officer rejects the SBA procurement center representative's recommendation made in accordance with 19.402(c)(2), document the basis for the rejection and notify the SBA procurement center representative in accordance with 19.505.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 16. Add section 52.207–XX to read as follows:

52.207–XX Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts).

As prescribed in 7.107–6, insert the following provision:

Solicitation of Offers From Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts) (Date)

(a) *Definition. Small Business Teaming Arrangement,* as used in this provision—

(1) Means an arrangement where—

(i) Two or more small business concerns have formed a joint venture; or

(ii) A potential small business prime contractor (''offeror'') agrees with one or more other small business concerns to have them act as its subcontractors under a specified Government contract. A Small Business Teaming Arrangement between the offeror and its small business subcontractor(s) exists through a written agreement between the parties that—

(A) Is specifically referred to as a ''Small Business Teaming Arrangement'' or ''Small Business Teaming Agreement''; and

(B) Sets forth the different responsibilities, roles, and percentages (or other allocations) of work as it relates to the acquisition; and

(2) May include two business concerns in a mentor-protege relationship so long as both the mentor and the protege are small or the protege is small and the concerns have received an exception to affiliation pursuant to 13 CFR 121.103(h)(3)(ii) or (iii).

(3) See 13 CFR 121.103(b)(9) regarding the exception to affiliation for offers received from Small Business Teaming Arrangements.

(b) The Government is soliciting and will consider offers from any responsible source, including responsible small business concerns and offers from Small Business Teaming Arrangements or joint ventures of small business concerns.

(End of provision)

[FR Doc. 2015–13421 Filed 6–2–15; 8:45 am]

BILLING CODE 6820–EP–P

Notices

Federal Register
Vol. 80, No. 106
Wednesday, June 3, 2015

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2015–0039]

Notice of Request for Extension of Approval of an Information Collection; Special Need Requests Under the Plant Protection Act

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Animal and Plant Health Inspection Service (APHIS) to request an extension of approval of an information collection associated with the regulations to allow States to impose prohibitions or restrictions on specific articles in addition to those required by APHIS to help protect against the introduction and establishment of plant pests.

DATES: We will consider all comments that we receive on or before August 3, 2015.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0039.*
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2015–0039, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0039* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on special need requests under the Plant Protection Act, contact Mr. Jonathan Jones, National Policy Manager, PHP, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737; (301) 851–2128. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

SUPPLEMENTARY INFORMATION:

Title: Special Need Requests Under the Plant Protection Act.

OMB Control Number: 0579–0291.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture, which administers regulations to implement the PPA. Regulations governing the interstate movement of plants, plant products, and other articles are contained in 7 CFR part 301, ''Domestic Quarantine Notices.''

The regulations in ''Subpart-Preemption and Special Need Requests'' allow States or political subdivisions of States to request approval from APHIS to impose prohibitions or restrictions on the movement in interstate commerce of specific articles that pose a plant health risk that are in addition to the prohibitions and restrictions imposed by APHIS. This process requires information collection activities, including a pest data detection survey with a pest risk analysis showing that a pest is not present in a State, or, if already present, the current distribution in the State, and that the pest would harm or injure the environment and/or agricultural resources of the State or political subdivision.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 160 hours per response.

Respondents: State governments.

Estimated annual number of respondents: 1.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 1.

Estimated total annual burden on respondents: 160 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 27th day of May 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015–13371 Filed 6–2–15; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2015–0038]

Notice of Request for an Extension of Approval of an Information Collection; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with qualitative customer and stakeholder feedback on service delivery by the Animal and Plant Health Inspection Service.

DATES: We will consider all comments that we receive on or before August 3, 2015.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0038.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2015–0038, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0038* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 7997039 before coming.

FOR FURTHER INFORMATION CONTACT: For copies of more detailed information on this information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, IMC, ITD, MRPBS, APHIS, 4700 River Road Unit 123, Riverdale, MD 20737; (301) 851–2727.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 0579–0377.

Type of Request: Extension of approval of an information collection.

Abstract: This information collection activity provides a means for the Animal and Plant Health Inspection Service (APHIS) to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Agency's commitment to improving service delivery.

By qualitative feedback, we mean information that provides useful insights on perceptions and opinions, but not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences, and expectations; provide an early warning of issues with service; or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. This collection will allow for ongoing generic, collaborative, and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on Agency's services will be unavailable.

APHIS will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collection is voluntary;
- The collection is low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and is low-cost for both the respondents and the Federal Government;
- The collection is non-controversial and does not raise issues of concern to other Federal agencies;
- The collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of APHIS (if released, APHIS must indicate the qualitative nature of the information);
- Information gathered will not be used for the purpose of substantially informing influential policy decisions;
- Information gathered will yield qualitative information; and
- The collection will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding this study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, this information collection will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: Individuals and households; businesses and organizations; State, local, or Tribal governments; and foreign federal governments.

Estimated annual number of respondents: 70,000.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 70,000.

Estimated total annual burden on respondents: 17,500 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 27th day of May 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015–13369 Filed 6–2–15; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2015–0035]

Notice of Request for Extension of Approval of an Information Collection; Health Certificates for the Export of Live Crustaceans, Finfish, Mollusks, and Related Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with health certificates for the export of live crustaceans, finfish, mollusks, and related products.

DATES: We will consider all comments that we receive on or before August 3, 2015.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0035.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2015–0035 Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0035* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on health certificates for the export of live crustaceans, finfish, mollusks, and related products, contact Dr. Christa Speekmann, Import-Export Specialist-Aquaculture, NIES, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 851–3365. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

SUPPLEMENTARY INFORMATION:

Title: Health Certificates for the Export of Live Crustaceans, Finfish, Mollusks, and Related Products.

OMB Control Number: 0579–0278.

Type of Request: Extension of approval of an information collection.

Abstract: The export of agricultural commodities, including animals and animal products, is a major business in the United States and contributes to a favorable balance of trade. To facilitate the export of U.S. animals and animal products, the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) maintains information regarding the import health requirements of other countries for animals and animal products exported from the United States.

Many countries that import animals from the United States require a certification that the United States is free of certain diseases. These countries may also require the certification statement to contain additional declarations regarding the U.S. animals or products being exported. U.S. trading partners are increasing import requirements, which must be addressed using one of the three APHIS export health certificates or country specific export health certificates. The three APHIS export health certificates are USDA, APHIS, Veterinary Services (VS) Form 17–141 (Health Certificate for the Export of Live Finfish, Mollusks, and Crustaceans (and their Gametes); USDA, APHIS, VS Form 17–140 (United States Origin Health Certificate); and USDA, APHIS Form 7001 (United States Interstate and International Certificate of Health Examination for Small Animals).

The certificates are completed by an accredited veterinarian and must be signed by the accredited veterinarian who inspects the animals prior to their departure from the United States, and endorsed by APHIS.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.254 hours per response.

Respondents: Accredited veterinarians and producers who will assist in supplying the necessary information to complete the certificates.

Estimated annual number of respondents: 256.

Estimated annual number of responses per respondent: 16.062.

Estimated annual number of responses: 4,112.

Estimated total annual burden on respondents: 1,050 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 27th day of May 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015–13370 Filed 6–2–15; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council (Council) will meet in Coral Gables, Florida. The Council is established consistent with the Federal Advisory Committee Act of 1972 and the 1990 Farm Bill, Cooperative Forestry Assistance Act, Section 9 of the Cooperative Forestry Assistance Act, as amended by Title XII, Section 1219. Additional information concerning the Council, including meeting summary/minutes, can be found by visiting the Council's Web site at: *www.fs.fed.us/ucf/nucfac.*

DATES: The meeting will be held on:

- Wednesday, June 16, 2015 from 8:30 a.m.–4:00 p.m.
- Thursday, June 17, 2015 from 8:30 a.m.–4:00 p.m.
- Friday, June 18, 2015 from 8:30 a.m.–12:00 p.m., or until Council business is completed.

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

ADDRESSES: The meeting will be held at the John Martin's Restaurant (2nd Level), 253 Miracle Mile, Coral Gables, Florida 33134. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses, when provided, are placed in the record and available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT: Nancy Stremple, Executive Staff to the National Urban and Community Forestry Advisory Council, 201 14th Street SW., Yates Building (3 South Central), Washington, DC 20024, or by cell phone 202–309–9873. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to provide:

(1) Review the status of the next National Ten Year Urban Forest Action Plan;

(2) Meet with State and local urban forestry partners;

(3) Tour local urban and forestry restoration, volunteer and conservation efforts;

(4) Finalize the Work Plan action items;

(5) Discuss National Grants;

(6) Hear updates from past grant recipients;

(7) Receive Forest Service updates on program activities and budget; and

(8) Hear feedback from the submitted accomplishment/recommendations report.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should submit a request in writing by June 2, 2015 to be scheduled on the agenda. Council discussion is limited to Forest Service staff and Council members; however, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council's staff before or after the meeting. Written comments and time requests for oral comments must be sent to Nancy Stremple, Executive Staff to the National Urban and Community Forestry Advisory Council, 201 14th Street SW., Yates Building (3 South Central), Washington, DC 20024, or by email at *nstremple@fs.fed.us.*

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: May 28, 2015.

Patti Hirami,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 2015–13448 Filed 6–2–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Central Idaho Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Central Idaho Resource Advisory Committee (RAC) will meet in Salmon, Idaho. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *http://www.fs.usda.gov/main/scnf/workingtogether/advisorycommittees.*

DATES: The meeting will be held at 9:30 a.m. on June 29–July 1, 2015.

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

ADDRESSES: The meeting will be held at the Public Lands Center, 1206 S. Challis Street, Salmon, Idaho.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Public Lands Center. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Amy Baumer, RAC Coordinator, by phone at 208–756–5145 or via email at *abaumer@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is:

1. To review and vote on project proposals for 2015.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 26, 2015, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Amy Baumer, Public Affairs Officer; 1206 S. Challis Street; Salmon, Idaho 83467; by email to *abaumer@fs.fed.us,* or via facsimile to 208–756–5151.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: May 27, 2015.

Amy E. Baumer,

Acting Forest Supervisor.

[FR Doc. 2015–13498 Filed 6–2–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members To Serve on the National Advisory Committee on Racial, Ethnic, and Other Populations

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: The Bureau of the Census (Census Bureau) is requesting nominations of individuals and organizations to the National Advisory Committee on Racial, Ethnic, and Other Populations. The Census Bureau will consider nominations received in response to this notice, as well as from other sources. The ''SUPPLEMENTARY INFORMATION'' section of this notice provides committee and membership criteria.

DATES: Please submit nominations by July 6, 2015.

ADDRESSES: Please submit nominations by Email to the *census.national.advisory.committee@census.gov* (subject line ''2015 NAC Nominations''), or by letter submission to the Committee Liaison Officer, 2015 NAC Nominations, Department of Commerce, U.S. Census Bureau, Room 8H185, 4600 Silver Hill Road, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Kimberly L. Collier, Assistant Division Chief, Customer Liaison Marketing Services Offices, U.S. Census Bureau, Room 8H185, 4600 Silver Hill Road, Washington, DC 20233, telephone (301) 763–6590, or by Email to *kimberly.l.collier@census.gov.* For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Racial, Ethnic, and Other Populations (''The Committee'') was established in accordance with the Federal Advisory Committee Act (FACA), Title 5, United States Code, Appendix 2. The following provides information about the Committee, membership, and the nomination process.

Objectives and Duties

1. The Committee provides insight, perspectives, expertise and advice to the Director of the Census Bureau on the full spectrum of Census surveys and programs. The Committee assists the Census Bureau in developing appropriate research/methodological, operational, and communication strategies to reduce program/survey costs, improve coverage and operational efficiency, improve the quality of data collected, protect the public's and business units' privacy and enhance public participation and awareness of Census programs and surveys, and make data products more useful and accessible.

2. The Committee advises on topics such as: Hidden households, language barriers, students and youth, aging populations, American Indian and Alaska Native tribal considerations, new immigrant populations, populations affected by natural disasters, highly mobile and migrant populations, complex households, poverty populations, race/ethnic minorities, rural populations and population segments with limited access to technology. The Committee also advises on data privacy and confidentiality concerns, administrative records, marketing, social media, the dynamic nature of new businesses, minority ownership of businesses, as well as other concerns impacting Census survey design and implementation.

3. The Committee discusses census policies, research and methodology, tests, operations, communications/messaging and other activities and advises regarding best practices to improve censuses, surveys, operations and programs. The Committee's expertise and experiences help identify cost efficient ways to increase participation among hard to count segments of the population as well as ensuring that the Census Bureau's statistical programs are inclusive and continue to provide the Nation with accurate, relevant, and timely statistics.

4. The Committee uses formal advisory committee meetings, webinars, web conferences, working groups, and other methods to accomplish its goals, consistent with the requirements of the FACA. The Committee is encouraged to use Census Regional Office knowledge to help identify regional, local, tribal and grass roots issues, and capture regional and local perspectives about Census Bureau surveys and programs. The Committee should use technology and video/web conferencing to reduce meeting and travel costs, and to more fully engage local and regional working groups and hard to count populations.

5. The Committee functions solely as an advisory body under the FACA.

Membership

1. The Committee will consist of up to 32 members who serve at the discretion of the Director.

2. The Committee aims to have a balanced representation among its members, considering such factors as geography, age, gender, race, ethnicity, technical expertise, community involvement, knowledge of hard to count populations, and familiarity with Census Bureau programs and/or activities.

3. The Committee aims to include members from diverse backgrounds, including state, local and tribal governments, academia, research, national and community-based organizations, and the private sector.

4. Membership shall include individuals, Special Government Employees (SGE), who are selected for their personal expertise with the topics highlighted above and/or representatives of organizations reflecting diverse populations, national, state, local and tribal interests, organizations serving hard to count populations, and community-based organizations. SGEs will be subject to the ethical standards applicable to SGEs. Members will be individually advised of the capacity in which they

will serve through their appointment letters.

5. Membership is open to persons who are not seated on other Census Bureau stakeholder entities (*e.g.,* State Data Centers, Census Information Centers, Federal State Cooperative on Populations Estimates program, other Census Advisory Committees, etc.). No employee of the federal government can serve as a member of the Committee.

6. Generally, members will serve for a three-year term. All members will be reevaluated at the conclusion of each term with the prospect of renewal, pending advisory committee needs. Active attendance and participation in meetings and activities (*e.g.,* conference calls and assignments) will be considered when determining term renewal or membership continuance. Generally, members may be appointed for a second three-year term at the discretion of the Director.

7. Members are selected in accordance with applicable Department of Commerce guidelines.

Miscellaneous

1. Members of the Committee serve without compensation, but receive reimbursement for committee-related travel and lodging expenses.

2. The Committee meets at least twice a year, budget permitting, but additional meetings may be held as deemed necessary by the Census Director or Designated Federal Officer. All Advisory Committee meetings are open to the public in accordance with the FACA.

Nomination Process

1. Nominations should satisfy the requirements described in the Membership section above.

2. Individuals, groups, and/or organizations may submit nominations on behalf of candidates. A summary of the candidate's qualifications (resume´ or curriculum vitae) *must* be included along with the nomination letter. Nominees must be able to actively participate in the tasks of the Committee, including, but not limited to regular meeting attendance, committee meeting discussant responsibilities, review of materials, as well as participation in conference calls, webinars, working groups, and/or special committee activities.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a diverse Advisory Committee membership.

Dated: May 27, 2015.

John H. Thompson,

Director, Bureau of the Census.

[FR Doc. 2015–13431 Filed 6–2–15; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 99–9A005]

Export Trade Certificate of Review

ACTION: Notice of Application to Amend the Export Trade Certificate of Review Issued to California Almond Export Association, LLC (''CAEA''), Application No. (99–9A005).

SUMMARY: The Office of Trade and Economic Analysis (''OTEA'') of the International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) (''the Act'') authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325 (2015). Section 302(b)(1) of the Export Trade Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its application. Under 15 CFR 325.6(a), interested parties may, within twenty days after the date of this notice, submit written comments to the Secretary on the application.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 21028, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the amended Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 99–9A005.''

Summary of the Application

Applicant: California Almond Export Association, LLC (''CAEA''), 4800 Sisk Road Modesto, CA 95356.

Contact: Bill Morecraft, Chairman, Telephone: (916) 446–8537.

Application No.: 99–9A005.

Date Deemed Submitted: May 18, 2015.

Proposed Amendment: CAEA seeks to amend its Certificate to add the following company as a Member of CAEA's Certificate: RPAC Almonds, LLC, Los Banos, CA.

CAEA's proposed amendment of its Export Trade Caertificate of Review would result in the following companies as Members under the Certificate: Almonds California Pride, Inc., Caruthers, CA, Baldwin-Minkler Farms, Orland, CA, Blue Diamond Growers, Sacramento, CA, Campos Brothers, Caruthers, CA, Chico Nut Company, Chico, CA, Del Rio Nut Company, Inc., Livingston, CA, Fair Trade Corner, Inc., Chico, CA, Fisher Nut Company, Modesto, CA, Hilltop Ranch, Inc., Ballico, CA, Hughson Nut, Inc., Hughson, CA, Mariani Nut Company, Winters, CA, Nutco, LLC d.b.a. Spycher Brothers, Turlock, CA, Paramount Farms, Inc., Los Angeles, CA, P–R Farms, Inc., Clovis, CA, Roche Brothers International Family Nut Co., Escalon, CA, RPAC Almonds, LLC, Los Banos, CA, South Valley Almond Company, LLC, Wasco, CA, Sunny Gem, LLC, Wasco, CA, Western Nut Company, Chico, CA.

Dated: May 28, 2015.

Joseph Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration.

[FR Doc. 2015–13444 Filed 6–2–15; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Civil Nuclear Energy Export Opportunity Seminar

AGENCY: ITA, DOC.

ACTION: Notice of Civil Nuclear Energy Export Opportunity Seminar.

SUMMARY: This notice sets forth the proposed agenda for a Civil Nuclear Energy Export Opportunity Seminar.

DATES: The meeting is scheduled for Thursday, June 18, 2015, at 1:00 p.m. Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held at Westinghouse Electric Company (1000 Westinghouse Drive, Cranberry Township, PA, 16066).

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Chesebro, Office of Energy & Environmental Industries, ITA, Room 4053, 1401 Constitution Ave. NW., Washington, DC 20230. (Phone: 202–482–1297; Fax: 202–482–5665; email: *jonathan.chesebro@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background: Hosted by the U.S. Department of Energy, National Nuclear Security Administration (NNSA), the purpose of this event is to provide a forum for U.S. Government (USG) officials to brief companies on recent developments in U.S. civil nuclear export controls, 123 Agreements for Peaceful Nuclear Cooperation, and export market opportunities. There will also be a Question and Answer session after each topic. This is an opportunity to hear from USG experts on these topics to get information on U.S. civil nuclear export opportunities. Additional Export Opportunity Seminars will be scheduled in Charlotte, NC and Washington, DC in July.

Topics to be considered: The agenda for the Thursday, June 18, 2015 Civil Nuclear Energy Export Opportunity Seminar is as follows:

1:00 p.m.–5:00 p.m.

1:00–1:15—Introduction—USG Support for the U.S. Civil Nuclear Industry

1:15–1:45—123 Agreements for Peaceful Nuclear Cooperation

Jim Warden—Office of Nuclear Energy, Safety & Security—U.S. Department of State

1:45–2:30—Part 810 Export Control Rule

Rich Goorevich/Katie Strangis/Jason Greenfeld—U.S. Department of Energy, National Nuclear Security Administration (NNSA)

2:30–3:00—Part 110 Export Control Rule

Brooke Smith—Chief, Export Controls & Nonproliferation Branch, Nuclear Regulatory Commission (NRC)

3:00–3:30—Export Administration Regulations

Steven Clagett—Director, Nuclear and Missile Technology Division, Bureau of Industry and Security (BIS), U.S. Department of Commerce

3:30–4:00—Demonstration of Part 810 e-licensing system (e810)

4:00–5:00—Question & Answer Session

The meeting will be disabled-accessible. Seating is limited and available on a first-come, first-served basis.

How To RSVP

Email your name, title, and organization to *jonathan.chesebro@trade.gov* by 5:00 p.m. EDT on Tuesday June 16. The event is free but space is limited.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2015–13416 Filed 6–2–15; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Meeting of the Advisory Committee on Commercial Remote Sensing

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: The Advisory Committee on Commercial Remote Sensing (ACCRES) will meet June 30, 2015.

DATES: The meeting is scheduled as follows: June 30, 2015, 9:00 a.m.–12:00 p.m. The meeting will be open to the public.

ADDRESSES: The meeting will be held at the Department of Commerce Room 1412, 1401 Constitution Avenue, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of the meeting of ACCRES. ACCRES was established by the Secretary of Commerce (Secretary) on May 21, 2002, to advise the Secretary through the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for the licensing of commercial remote sensing satellite systems.

Matters To Be Considered

The meeting will be open to the public pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended by Section 5(c) of the Government in Sunshine Act, Public Law 94–409 and in accordance with Section 552b(c)(1) of Title 5, United States Code.

The Committee will receive a presentation on commercial remote sensing issues and updates of NOAA's licensing activities. The committee will also receive comments on its activities.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed to ACCRES, NOAA/NESDIS/CRSRA, 1335 East West Highway, Room 8260, Silver Spring, Maryland 20910.

Additional Information and Public Comments

Any member of the public wishing further information concerning the meeting or who wishes to submit oral or written comments should contact Tahara Dawkins, Designated Federal Officer for ACCRES, NOAA/NESDIS/CRSRA, 1335 East West Highway, Room 8260, Silver Spring, Maryland 20910. Copies of the draft meeting agenda can be obtained from Richard James at (301) 713–0572, fax (301) 713–1249, or email *Richard.James@noaa.gov.*

The ACCRES expects that public statements presented at its meetings will not be repetitive of previously-submitted oral or written statements. In general, each individual or group making an oral presentation may be limited to a total time of five minutes. Written comments (please provide at least 15 copies) received in the NOAA/NESDIS/CRSRA on or before June 15, 2015; will be provided to Committee members in advance of the meeting. Comments received too close to the meeting date will normally be provided to Committee members at the meeting.

FOR FURTHER INFORMATION CONTACT: Tahara Dawkins, NOAA/NESDIS/CRSRA, 1335 East West Highway, Room 8260, Silver Spring, Maryland 20910; telephone (301) 713–3385, fax (301) 713–1249, email *Tahara.Dawkins@noaa.gov,* or Richard James at telephone

(301) 713–0572, email *Richard.James@noaa.gov*.

Tahara Dawkins,

Director, Commercial Remote Sensing and Regulatory Affairs.

[FR Doc. 2015–13439 Filed 6–2–15; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD955

Caribbean Fishery Management Council (CFMC); Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Caribbean Fishery Management Council's (Council) Panel of Experts will hold a meeting.

DATES: The meeting will be held on June 16–18, 2015, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the CFMC Headquarters, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Panel of Experts will meet to discuss the items contained in the following agenda:

Tuesday, June 16, 2015

9 a.m.–9:20 a.m.: Call to Order
9:20 a.m.–9:30 a.m.: Adoption of Agenda
9:30 a.m.–10 a.m.: Charge from Council: Developing a Draft List of Species to Manage Using Criteria Defined in Action 1 alternatives
10 a.m.–10:30 a.m.: Review of National Standards Guidelines on General Factors to Consider when Determining if a Fishery Needs Management
10:30 a.m.–noon: Species Selection for the Island Base FMPs Management Units (Puerto Rico)
Noon–1:30 p.m.: Lunch
1:30 p.m.–5 p.m.: Species Selection for the Island Base FMPs Management Units (Puerto Rico)

Wednesday, June 17, 2015

9 a.m.–noon: Species Selection for the Island Base FMPs Management Units (Puerto Rico)
Noon–1:30 p.m.: Lunch
1:30 p.m.–5 p.m.: Species Selection for the Island Base FMPs Management Units (Puerto Rico)

Thursday, June 18, 2015

9 a.m.–noon: Species Selection for the Island Base FMPs Management Units (St. Thomas/St. John)
Noon–1:30 p.m.: Lunch
1:30 p.m.–5 p.m.: Species Selection for the Island Base FMPs Management Units (St. Croix)
—Other Business
—Adjourn

The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. To further accommodate discussion and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

The meeting is open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be subjects for formal action during the meeting. Actions will be restricted to those issues specifically identified in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: May 29, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–13469 Filed 6–2–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD979

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. This Exempted Fishing Permit would allow four commercial fishing vessels to fish outside of the limited access sea scallop regulations in support of bycatch reduction research.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before June 18, 2015.

ADDRESSES: You may submit written comments by any of the following methods:

• *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''DA15–036 CFF Dredge Speed on Bycatch Reduction Study EFP.''

• *Mail:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope '' DA15–036 CFF Dredge Speed on Bycatch Reduction Study EFP.''

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fisheries Management Specialist, 978–282–8456.

SUPPLEMENTARY INFORMATION: NOAA awarded the Coonamesset Farm Foundation (CFF) a grant through the 2015 Atlantic sea scallop research set-aside program, in support of a project titled, ''Determination of the Impacts of Dredge Speed on Bycatch Reduction and Scallop Selectivity.''

CFF submitted a complete application for an EFP on March 30, 2015. The project would look at how high towing speeds using the Turtle Deflector Dredge (TDD) impact scallop catch per unit of

effort, scallop size selectivity, and fish bycatch. The study was funded in response to feedback from the fishing industry that the TDD must be towed at relatively high speeds to perform effectively.

CFF is requesting exemptions that would allow four commercial fishing vessels be exempt from the Atlantic sea scallop days-at-sea (DAS) allocations at 50 CFR 648.53(b); crew size restriction at § 648.51(c); Closed Area I Closed Area at § 648.58(a), Closed Area II Closed Area at § 648.58(b); and Nantucket Lightship Closed Area at § 648.58(c). It would also exempt the from possession limits and minimum size requirements specified in 50 CFR part 648, subparts B and D through O, for sampling purposes only. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Four vessels would conduct scallop dredging in June-September 2015, on a total of four 7-day trips, for a total of 28 DAS. Each trip would complete approximately 15 tows per day for an overall total of 420 tows for the project. All trips would take place in the open areas of Southern New England and Georges Bank as well as in Georges Bank scallop closed areas. Trips would be centralized around areas with high yellowtail and winter flounder bycatch and in areas that contain a wide range of scallop sizes to examine changes in size selectivity due to tow speed.

All tows would be conducted with two tandem 15-foot (4.57-meter) TDD dredges for a duration of 60 minutes with a tow speed range of 4–5.5 knots. One dredge would be rigged with a 7-row apron and twine top hanging ratio of 2:1, while the other dredge would be rigged with a 5-row ring apron and 1.5:1 twine top hanging ratio. Both dredge aprons would use 4-inch (10.16-cm) rings. Each tow pair would be conducted in a straight line varying between higher and lower speeds with dredge positions in an AB–BA alternating pattern with a wire scope of three to one plus ten fathoms.

For all tows the sea scallop catch would be counted into baskets and weighed. One basket from each dredge would be randomly selected and the scallops would be measured in 5-mm increments to determine size selectivity. Finfish catch would be sorted by species and then counted, weighed and measured in 1-mm increments. Depending on the volume of scallops and finfish captured, the catch would be subsampled as necessary. No catch would be retained for longer than needed to conduct sampling and no catch would be landed for sale.

PROJECT CATCH ESTIMATES

Species	SNE		GB	
	lbs	mt	lbs	mt
Scallops	52,300	23.72	22,700	10.30
Yellowtail	1,100	0.50	2,200	1.00
Winter Flounder	400	0.18	1,300	0.59
Windowpane Flounder	2,800	1.27	3,000	1.36
Monkfish	3,100	1.41	9,400	4.26
Other Fish	1,800	0.82	2,200	1.00
Barndoor Skate	300	0.14	4,300	1.95
NE Skate Complex	84,000	38.10	60,900	27.62

CFF has requested these exemptions to allow them to conduct experimental dredge towing without being charged DAS, as well as deploy gear in access areas that are currently closed to scallop fishing. Participating vessels would need crew size waivers to accommodate science personnel and possession waivers would enable them to conduct finfish sampling activities.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: May 29, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–13468 Filed 6–2–15; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 15–C0004]

Office Depot, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Office Depot, Inc., containing a civil penalty of $3,400,000, within twenty (20) days of service of the Commission's final Order accepting the Settlement Agreement.[1]

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by June 18, 2015.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 15–C0004 Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Sean R. Ward, Trial Attorney, Office of the General Counsel, Division of Compliance, Consumer Product Safety Commission, 4330 East West Highway,

[1] Chairman Elliot F. Kaye and Commissioners Robert S. Adler and Marietta S. Robinson voted to provisionally accept the Settlement Agreement and Order. Commissioners Joseph P. Mohorovic and Ann Marie Buerkle voted to reject the Settlement Agreement and Order. Commissioner Mohorovic submitted a statement regarding the matter. The statement will be available from the Office of the Secretariat and the CPSC Web site, *www.cpsc.gov.*

Bethesda, Maryland 20814–4408; telephone (301) 504–7602.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: May 28, 2015.

Todd A. Stevenson,

Secretary.

UNITED STATES OF AMERICA

CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of:

Office Depot, Inc.

CPSC Docket No.: 15–C0004

SETTLEMENT AGREEMENT

1. In accordance with the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''CPSA'') and 16 CFR 1118.20, Office Depot, Inc. (''Office Depot'' or ''Firm''), and the United States Consumer Product Safety Commission (''Commission''), through its staff, hereby enter into this Settlement Agreement (''Agreement''). The Agreement, and the incorporated attached Order, resolve staff's charges set forth below.

THE PARTIES

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for the enforcement of, the CPSA, 15 U.S.C. 2051–2089. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 CFR 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. Office Depot is a corporation, organized and existing under the laws of the state of Delaware, with its principal place of business in Boca Raton, Florida.

STAFF CHARGES

Quantum Chair

4. Between May 2006 and August 2009, Office Depot sold in the United States approximately 150,000 Quantum Realspace PRO™ 9000 Series Mid-Back Multifunction Mesh Chairs and Quantum Realspace PRO™ 9000 Series Mid-Back Multifunction Mesh Chairs with Headrest (''Quantum Chair'').

5. The Quantum Chair is a ''consumer product'' ''distributed in commerce,'' as those terms are defined or used in sections 3(a)(5), (8) of the CPSA, 15 U.S.C. 2052(a)(5), (8). Office Depot was a ''retailer'' of the Quantum Chair, as such term is defined in section 3(a)(13) of the CPSA, 15 U.S.C. 2052(a)(13).

6. The Quantum Chair is defective and creates an unreasonable risk of serious injury because the bolts attaching the seatback on the Quantum Chair can loosen and detach, posing a fall and injury hazard to consumers.

7. Office Depot first received notice of a Quantum Chair failure in 2007 when a consumer reported to Office Depot that the seatback loosened or detached on the Quantum Chair, causing the consumer to sustain injuries.

8. In 2008, Office Depot became aware that, in an effort to eliminate seatback detachment, the manufacturer of the Quantum Chair made two design changes to the Quantum Chair and a change to the accompanying instructions.

9. In 2008 and 2009, Office Depot received 13 additional reports of injury, some requiring medical attention, and 33 total reports of the seatback detaching.

10. Despite having information regarding the defect in and risk of injury relating to the Quantum Chair, Office Depot did not notify the Commission immediately of such defect or risk, as required by section 15(b)(3) and (4) of the CPSA, 15 U.S.C. 2064(b)(3) and (4). Office Depot never notified the Commission about the Quantum Chair as required by the CPSA.

Gibson Chair

11. Between 2003 and 2012, Office Depot imported into the United States and sold approximately 1.4 million Gibson Leather Task Chairs (''Gibson Chair'').

12. The Gibson Chair is a ''consumer product'' ''distributed in commerce,'' as those terms are defined or used in sections 3(a)(5), (8) of the CPSA, 15 U.S.C. 2052(a)(5), (8). Office Depot was a ''manufacturer'' of the Gibson Chair, as such term is defined in section 3(a)(11) of the CPSA, 15 U.S.C. 2052(a)(11). Office Depot also was a ''retailer'' of the Gibson Chair, as such term is defined in section 3(a)(13) of the CPSA, 15 U.S.C. 2052(a)(13).

13. The Gibson Chair is defective and creates an unreasonable risk of serious injury because the mounting weld can break and separate the seat from the base of the Gibson Chair, posing a fall hazard to consumers.

14. Office Depot first received notice of a Gibson Chair failure in 2005, when one consumer reported to Office Depot that the seat broke and separated from the base of the Gibson Chair, causing the consumer to sustain injuries.

15. Office Depot continued to receive reports of injuries and incidents involving breakage of the Gibson Chair mounting plate weld and the resulting separation of the seat from the base of the Gibson Chair, with some injuries requiring medical attention. Office Depot settled the claims of several consumers who reported injuries resulting from the Gibson Chair's failure.

16. In all, Office Depot received 25 reports of injuries and 153 incident reports from consumers of the seat breaking and separating from the base of the Gibson Chair.

17. Despite having information regarding the defect in and risk of injury relating to the Gibson Chair, Office Depot did not notify the Commission immediately of such defect or risk, as required by section 15(b)(3) and (4) of the CPSA, 15 U.S.C. 2064(b)(3) and (4). Office Depot failed to notify the Commission about the Gibson Chair until December 14, 2012, after receiving staff's letter requesting a Full Report. Office Depot recalled the Gibson Chair on May 22, 2014.

Failure to Report

18. In failing to inform the Commission immediately about the Quantum Chair and the Gibson Chair (together, ''Subject Products''), Office Depot knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

19. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Office Depot is subject to civil penalties for its knowing failure to report, as required under section 15(b) of the CPSA, 15 U.S.C. 2064(b).

RESPONSE OF OFFICE DEPOT

20. This Agreement does not constitute an admission by Office Depot that the law has been violated. Office Depot neither admits nor denies the staff's charges set forth above, including but not limited to the contention that the Subject Products ''contain[] a defect which could create a substantial product hazard . . . or create[] an unreasonable risk of serious injury or death,'' 15 U.S.C. 2064(b); that Office Depot did not notify the Commission in a timely manner, in accordance with 15 U.S.C. 2064(b); and that there was any allegedly ''knowing'' violation of the CPSA as that term is defined in 15 U.S.C. 2069(d).

21. The Quantum recall notice states that Office Depot received 14 reports of injuries in connection with about 150,000 Quantum chairs sold. There were fewer reports of consumers seeking medical treatment in connection with any reported injuries. The Gibson recall notice states that Office Depot received 25 reports of injuries in connection with about 1.4 million Gibson chairs sold. There were fewer reports of consumers seeking medical treatment in connection

with any reported injuries. Office Depot investigated the reports, including by contacting the manufacturers of the Subject Products and the consumers making the reports.

22. The Subject Products passed multiple safety tests administered by independent third party testing organizations.

23. Following discussions with Office Depot, the manufacturer of the Quantum Chair reported the Quantum Chair to the CPSC in April 2009. Therefore, Office Depot did not make its own report.

24. At all relevant times, Office Depot has had a product safety compliance program, including dedicated product safety personnel and appropriate product safety testing.

25. As a retailer, Office Depot sells thousands of products and relies on product testing, conducted pursuant to voluntary industry standards, in order to protect its consumers. Office Depot reviews and reacts to consumer complaints and parts requests associated with office chairs.

26. Office Depot enters into this Agreement to settle this matter without the delay and expense of litigation. Office Depot enters into this Agreement and agrees to pay the amount referenced below in compromise of staff's charges.

AGREEMENT OF THE PARTIES

27. Under the CPSA, the Commission has jurisdiction over the matter involving the Subject Products described herein and over Office Depot.

28. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Office Depot or a determination by the Commission that Office Depot violated the CPSA's reporting requirements.

29. In settlement of staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, Office Depot shall pay a civil penalty in the amount of three million, four hundred thousand dollars ($3,400,000) (''Settlement Payment'') within thirty (30) calendar days after receiving service of the Commission's final Order accepting the Agreement. The payment shall be made by electronic wire transfer to the Commission via: *http://www.pay.gov.*

30. After staff receives this Agreement executed on behalf of Office Depot, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the **Federal Register**, in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date the Agreement is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

31. This Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and it is subject to the provisions of 16 CFR 1118.20(h). Upon the later of: (i) Commission's final acceptance of this Agreement and service of the accepted Agreement upon Office Depot, and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect and shall be binding upon the parties.

32. Effective upon the later of: (i) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon Office Depot, and (ii) and the date of issuance of the final Order, for good and valuable consideration, Office Depot hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in this Agreement: (i) an administrative or judicial hearing; (ii) judicial review or other challenge or contest of the Commission's actions; (iii) a determination by the Commission of whether Office Depot failed to comply with the CPSA and the underlying regulations; (iv) a statement of findings of fact and conclusions of law; and (v) any claims under the Equal Access to Justice Act.

33. Office Depot has and shall maintain a compliance program designed to ensure compliance with the CPSA with respect to any consumer product imported, manufactured, distributed, or sold by Office Depot. Office Depot's compliance program shall contain the following elements: (i) written standards and policies, including those designed to convey effectively to personnel responsible for CPSA compliance information (whether in the form of complaints, parts requests, incident reports, or otherwise) that may relate to or impact CPSA compliance; (ii) a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary; (iii) effective communication of company compliance-related policies and procedures regarding the CPSA to the appropriate employees through training programs or otherwise; (iv) Office Depot senior management responsibility for, and general board oversight of, CPSA compliance; and (v) retention of all CPSA compliance-related records for at least five (5) years, and reasonable availability of such records, insofar as they are not protected by attorney-client, work product, or other privilege, to staff upon reasonable request.

34. Office Depot has, and shall maintain and enforce, a system of internal controls and procedures designed to ensure that, with respect to all consumer products imported, manufactured, distributed, or sold by Office Depot: (i) information required to be disclosed by Office Depot to the Commission is recorded, processed, and reported in accordance with applicable law; (ii) all reporting made to the Commission is timely, truthful, complete, accurate, and in accordance with applicable law; and (iii) prompt disclosure is made to Office Depot's management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to affect adversely, in any material respect, Office Depot's ability to record, process, and report to the Commission in accordance with applicable law.

35. Upon reasonable request of staff, Office Depot shall provide written documentation of its internal controls and procedures, including, but not limited to, the effective dates of the procedures and improvements thereto. Office Depot shall cooperate fully and truthfully with staff and shall make available all non-privileged information and materials, and personnel deemed necessary by staff to evaluate Office Depot's compliance with the terms of the Agreement.

36. The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order.

37. Office Depot represents that the Agreement: (i) is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever; (ii) has been duly authorized; and (iii) constitutes the valid and binding obligation of Office Depot, enforceable against Office Depot in accordance with its terms. Office Depot will not directly or indirectly receive any reimbursement, indemnification, insurance-related payment, or other payment in connection with the civil penalty to be paid by Office Depot pursuant to the Agreement and Order. The individuals signing the Agreement on behalf of Office Depot represent and

warrant that they are duly authorized by Office Depot to execute the Agreement.

38. The signatories represent that they are authorized to execute this Agreement.

39. The Agreement is governed by the laws of the United States.

40. The Agreement and the Order shall apply to, and be binding upon, Office Depot and each of its successors, transferees, and assigns, and a violation of the Agreement or Order may subject Office Depot, and each of its successors, transferees and assigns, to appropriate legal action.

41. The Agreement and the Order constitute the complete agreement between the parties on the subject matter contained therein.

42. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party for that reason in any subsequent dispute.

43. The Agreement may not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 CFR 1118.20(h). The Agreement may be executed in counterparts.

44. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Office Depot agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

Dated: *May 11, 2015*
OFFICE DEPOT, INC.
By: _____
Heather Stern
Vice President, Associate General Counsel
Office Depot, Inc.
6600 North Military Trail
Boca Raton, FL 33496

Dated: *May 11, 2015*
By: _____
Daniel F. Katz
Luba Shur
Counsel to Office Depot, Inc.
Williams & Connolly LLP
725 Twelfth Street NW.
Washington, DC 20005

U.S. CONSUMER PRODUCT SAFETY COMMISSION
Stephanie Tsacoumis
General Counsel
Mary T. Boyle
Deputy General Counsel
Mary B. Murphy
Assistant General Counsel

Dated: *May 11, 2015*
By: _____
Sean R. Ward
Trial Attorney
Division of Compliance
Office of the General Counsel

UNITED STATES OF AMERICA

CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of:

Office Depot, Inc.

CPSC Docket No.: 15–C0004

ORDER

Upon consideration of the Settlement Agreement entered into between Office Depot, Inc. (''Office Depot''), and the U.S. Consumer Product Safety Commission (''Commission''), and the Commission having jurisdiction over the subject matter and over Office Depot, and it appearing that the Settlement Agreement and the Order are in the public interest, it is:

ORDERED that the Settlement Agreement be, and is, hereby, accepted; and it is

FURTHER ORDERED that Office Depot shall comply with the terms of the Settlement Agreement and shall pay a civil penalty in the amount of three million, four hundred thousand dollars ($3,400,000) within thirty (30) days after service of the Commission's final Order accepting the Settlement Agreement. The payment shall be made by electronic wire transfer to the Commission via: *http://www.pay.gov.* Upon the failure of Office Depot to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Office Depot at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b). If Office Depot fails to make such payment or to comply in full with any other provision of the Settlement Agreement, such conduct will be considered a violation of the Settlement Agreement and Order.

Provisionally accepted and provisional Order issued on the *28th* day of *May*, 2015.

By order of the Commission.

Todd A. Stevenson,

Secretariat, U.S. Consumer Product Safety Commission.

[FR Doc. 2015–13422 Filed 6–2–15; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License of U.S. Government-Owned Patents

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209 (e) and 37 CFR 404.7 (a)(1)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to US Patent number 7,702,473, issued April 20, 2010, entitled, ''Submersible portable in-situ automated water quality biomonitoring apparatus and method'' and US Patent number 6,988,394, issued January 24, 2006, entitled, ''Apparatus and method of portable automated biomonitoring of water quality'' and US Patent number 6,393,899, issued May 28, 2002, entitled, ''Apparatus and method for automated biomonitoring of water quality'' and US Patent number 6,058,763 issued May 9, 2000, entitled, ''Apparatus and method for automated biomonitoring of water quality'' and Canada Patent number 2,515,062 issued April 17, 2012, entitled ''Apparatus and method of portable automated biomonitoring of water quality'' to Solution Resources, LLC, with its principal place of business at 7906 Juniper Drive, Frederick, MD 21702.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For licensing issues, Mr. Barry Datlof, Office of Research & Technology Assessment, (301) 619–0033. For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, within 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (see **ADDRESSES**).

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2015–13419 Filed 6–2–15; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License for a U.S. Government-Owned Invention

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e), and 37 CFR 404.7 (a)(1)(i), announcement is made of the intent to grant an exclusive, revocable license, to U.S. Provisional Patent No. 61/884,630, filed September 30, 2013, entitled ''Intelligent Focused Assessment with Sonography for Trauma,'' and foreign

filing PCT/US2014/058374, filed September 30, 2014, entitled, ''Automatic Focused Assessment with Sonography for Trauma Exams.'' The intended licensee is Cherokee Nation Diagnostic Innovations, with its principal place of business at 10838 E. Marshall St., Tulsa, OK, 74116.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For licensing issues, Barry M. Datlof, Office of Research and Technology Applications (ORTA), (301) 619–0033. For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, within 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (see **ADDRESSES**).

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2015–13420 Filed 6–2–15; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 15–36]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 15–36 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 29, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

MAY 18 2015

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 15-36, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Israel for defense articles and services estimated to cost $1.879 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 15–36

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Israel

(ii) *Total Estimated Value:*

Major Defense Equipment *	$1.353 billion
Other	$ .526 billion
TOTAL	$1.879 billion

* as defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 14,500 KMU–556C/B Joint Direct Attack Munitions (JDAM) tail kits consisting of 10,000 for Mk–84; 500 for Mk–83; and 4,000 for Mk–82; 3,500 Mk–82 bombs; 4,500 Mk–83 bombs; 50 BLU–113 bombs; 4,100 GBU–39 Small Diameter bombs; 1,500 Mk–83 Paveway kits; 700 BLU–109 Paveway kits; 3,000 AGM–114K/R Hellfire Missiles, 250 AIM–120C–7 Advanced Medium Range Air-to-Air Missiles; and 500 DSU–38A/B Detector Laser Illuminated Target kits for JDAMs.

(iv) *Military Department:* Air Force (YAB)

(v) *Prior Related Cases, if any:*

FMS case YEQ–$34M–9Feb00
FMS case YET–$22M–9Sep02
FMS case YEV–$18M–16Jul04
FMS case YEX–$18M–14Jul04
FMS case AMD–$3M–6Jul06
FMS case AMF–$4M–18Jul06
FMS case AMG–$44M–18Jul06
FMS case AMH–$3M–25Jul06
FMS case AMI–$12M–23Jul06
FMS case AMJ–$18M–25Jul06
FMS case AMK–$6M–25Jul06
FMS case AML–$5M–5Oct06
FMS case AMM–$6M–8Jul06
FMS case AMN–$60M–5Oct06
FMS case AMP–$10M–31Aug06
FMS case AMQ–$26–5Oct06
FMS case AMR–$1M–15Sep06
FMS case AMS–$14M–5Mar07
FMS case AMV–$25M–20Jun07
FMS case QDQ–$1M–21Jul06
FMS case ABF–$109M–13Nov14
FMS case QEG–$86M–20Jun13
FMS case ZWX–$47M–29Aug14

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* 18 May 2015

Policy Justification

Israel—Joint Direct Attack Munition Tail Kits and Munitions

The Government of Israel has requested a possible sale of 14,500 KMU–556C/B Joint Direct Attack Munitions (JDAM) tail kits consisting of 10,000 for Mk–84; 500 for Mk–83; and 4,000 for Mk–82; 3,500 Mk–82 bombs; 4,500 Mk–83 bombs; 50 BLU–113 bombs; 4,100 GBU–39 Small Diameter bombs; 1,500 Mk–83 Paveway kits; 700 BLU–109 Paveway kits; 3,000 AGM–114K/R Hellfire Missiles, 250 AIM–120C Advanced Medium Range Air-to-Air Missiles; and 500 DSU–38A/B Detector Laser Illuminated Target kits for JDAMs. The total estimated cost $1.879 billion.

The United States is committed to the security of Israel, and it is vital to U.S. national interests to assist Israel to develop and maintain a strong and ready self-defense capability. This proposed sale is consistent with those objectives.

The proposed sale of this equipment will provide Israel the ability to support its self-defense needs. These munitions will enable Israel to maintain operational capability of its existing systems and will enhance Israel's interoperability with the United States. Israel, which already has these munitions in its inventory, will have no difficulty absorbing the additional munitions into its armed forces.

The proposed sale of these munitions will not alter the basic military balance in the region.

The principal contractors will be The Boeing Company in St. Charles, Missouri; Lockheed-Martin Company in Archbald, Pennsylvania; General Dynamics in Garland, Texas; Elwood National Forge Co. in Irvine, Pennsylvania; and Raytheon Missile Systems in Tucson, Arizona. There are no known offset agreements in connection with this proposed sale.

Implementation of this proposed sale will require travel of U.S. Government or contractor representatives to Israel on a temporary basis for program technical support and management oversight.

There is no adverse impact on U.S. defense readiness as a result of this sale.

Transmittal No. 15–36

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The Joint Direct Attack Munition (JDAM) is a guidance tail kit that converts unguided free-fall bombs into accurate, adverse weather ''smart'' munitions. With the addition of a new tail section that contains an inertial navigational system and a global positioning system guidance control unit, JDAM improves the accuracy of unguided, general-purpose bombs in any weather condition. JDAM can be launched from very low to very high altitudes in a dive, toss and loft, or in straight and level flight with an on-axis or off-axis delivery. JDAM enables multiple weapons to be directed against single or multiple targets on a single pass. The JDAM All Up Round (AUR) and all of its components are Unclassified, and technical data for JDAM is classified up to Secret.

2. The GBU–39 Small Diameter Bomb (SDB) is a 250-lb class precision guided munition that is intended to provide aircraft with an ability to carry a high number of bombs. The weapon offers day- or night-, adverse weather-, precision-engagement capability against pre-planned fixed or stationary soft, non-hardened, and hardened targets, and provides greater than 50 Nautical Miles of standoff range. Aircraft are able to carry four SDBs in place of one 2,000-lb bomb. The SDB is equipped with a Global Positioning Satellite (GPS)-aided inertial navigation system. The SDB and all of its components are Unclassified; technical data are classified up to Secret.

3. The AIM–120C–7 Advanced Medium Range Air-to-Air Missile (AMRAAM) is a radar guided missile featuring digital technology and micro-miniature solid-state electronics. AMRAAM capabilities include look-down/shoot-down, multiple launches against multiple targets, resistance to electronic countermeasures, and interception of high- and low-flying and maneuvering targets. The AMRAAM All Up Round (AUR) is classified Confidential, major components and subsystems range from Unclassified to Confidential, and technical data and other documentation are classified up to Secret.

4. The DSU–38A/B is a laser-illuminated target detector that adds a Precision Laser Guidance Set (PLGS) to inventory JDAMs, giving the weapon system optional semi-active laser guidance in addition to its other Global Positioning System/Inrertial Navigation System (GPS/INS) guidance modes. The DSU–38A/B is a DSU–33 form-factored passive laser seeker that can be easily installed in the field to the front of existing JDAM weapons and is connected to the Guidance Set via an externally mounted strap-on harness kit. The DSU–38 provides an additional capability to engage mobile targets moving up to 70 mph. The addition of the DSU–38 Laser sensor combined with additional cabling and mounting

hardware turns a standard GBU–38 JDAM into a GBU–54 Laser JDAM. The DSU–38 hardware is Unclassified; technical data and other documentation are classified up to Secret.

5. The AGM–114R Hellfire II is an air-to-ground missile used against heavy and light armored targets, thin-skinned vehicles, urban structures, bunkers, caves and personnel. The missile is Inertial Measurement Unit (IMU) based, with a variable delay fuse, improved safety and reliability. The highest level of release for the Hellfire missile is Secret, based upon the software. The highest level of classified information that could be disclosed by a proposed sale or by testing of the end item is Secret; the highest level that must be disclosed for production, maintenance, or training is Confidential. Reverse engineering could reveal confidential information. Vulnerability data, countermeasures, vulnerability/susceptibility analyses, and threat definitions are classified Secret or Confidential.

6. If a technologically advanced adversary obtained knowledge of the specific hardware and software elements in the systems described above, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

7. A determination has been made that Government of Israel can provide substantially the same degree of protection of the sensitive technology associated with these systems as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

8. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Israel.

[FR Doc. 2015–13478 Filed 6–2–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 15–17]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 15–17 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 29, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

MAY 20 2015

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 15-17, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Saudi Arabia for defense articles and services estimated to cost $1.9 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 15–17

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

(i) *Prospective Purchaser:* Saudi Arabia

(ii) *Total Estimated Value:*

Major Defense Equipment *	$1.25 billion
Other	$ .65 billion
Total	$1.90 billion

* as defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* ten (10) MH–60R multi-mission helicopters with fourteen (14) APS–153(V) Multi-Mode radars (10 installed, 2 spares and 2 for testing); twenty-four T–700 GE 401 C engines (20 installed and 4 spares); twelve (12) APX–123 Identification Friend or Foe transponders (10 installed and 2 spares); fourteen (14) AN/AAS–44C(V) Multi-Spectral Targeting Systems Forward Looking Infrared Radars (10 installed, 2 spares, and 2 for testing); twenty-six (26) Embedded Global Positioning System/Inertial Navigation Systems with Selective Availability/Anti-Spoofing Module (20 installed and 6 spares); Link-16 capability; one-thousand (1,000) AN/SSQ–36/53/62 Sonobuoys; thirty-eight (38) AGM–114R Hellfire II missiles; five (5) AGM–114 M36–E9 Captive Air Training missiles; four (4) AGM–114Q Hellfire Training Missiles; three-hundred eighty (380) Advanced Precision Kill Weapons System rockets; twelve (12) M–240D crew served weapons; and twelve (12) GAU–21 crew served weapons. Also included are spare engine containers; facilities study and design; spare and repair parts; support and test equipment; communication equipment; aerial refueling services; ferry support; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistical and program support.

(iv) *Military Department:* Navy (SBU, GBQ, TCZ) Army (HEW).

(v) *Prior Related Cases, if any:* None.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

(viii) *Date Report Delivered to Congress:* 20 May 2015.

POLICY JUSTIFICATION

Kingdom of Saudi Arabia—MH–60R Multi-Mission Helicopters

The Government of Saudi Arabia has requested a sale of ten (10) MH–60R multi-mission helicopters fourteen (14) APS–153(V) Multi-Mode radars (10 installed, 2 spares and 2 for testing); twenty-four T–700 GE 401 C engines (20 installed and 4 spares); twelve (12) APX–123 Identification Friend or Foe transponders (10 installed and 2 spares); fourteen (14) AN/AAS–44C(V) Multi-Spectral Targeting Systems Forward Looking Infrared Radars (10 installed, 2 spares, and 2 for testing); twenty-six (26) Embedded Global Positioning System/Inertial Navigation Systems with Selective Availability/Anti-Spoofing Module (20 installed and 6 spares); and Link-16 capability; one-thousand (1,000) AN/SSQ–36/53/62 Sonobuoys; thirty-eight (38) AGM–114R Hellfire II missiles; five (5) AGM–114 M36–E9 Captive Air Training missiles; four (4) AGM–114Q Hellfire Training Missiles; three-hundred eighty (380) Advanced Precision Kill Weapons System rockets; twelve (12) M–240D crew served weapons; and twelve (12) GAU–21 crew served weapons. Also included are spare engine containers; facilities study and design; spare and repair parts; support and test equipment; communication equipment; aerial refueling services; ferry support; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistical and program support. The estimated cost is $1.9 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a strategic regional partner, which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The proposed sale will improve Saudi Arabia's capability to meet current and future threats from enemy weapon systems. The MH–60R Multi-Mission Helicopter will provide the capability to identify, engage, and defeat maritime security threats along with the ability to perform secondary missions including vertical replenishment, search and rescue, and communications relay. Saudi Arabia will use the enhanced capability as a deterrent to regional threats and to strengthen its homeland defense.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Sikorsky Aircraft Corporation in Stratford, Connecticut; and Lockheed Martin Corporation in Owego, New York. There are no known offset agreements in connection with this potential sale.

Implementation of this proposed sale will require the assignment of additional U.S. Government and/or contractor representatives to Saudi Arabia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 15–17

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

Annex—Item No. vii

(vii) *Sensitivity of Technology*

1. The MH–60R Multi-Mission Helicopter focuses primarily on anti-submarine and anti-surface warfare missions. The MH–60R carries several sensors and data links to enhance its ability to work in a network centric battle group and as an extension of its home ship/main operating base. The mission equipment subsystem consists of the following sensors and subsystems: An acoustics systems consisting of a dipping sonar and sonobuoys, Multi-Mode Radar (MMR) with integral Identification Friend or Foe (IFF) interrogator, Electronic Support Measures (ESM), Integrated Self-Defense (ISD), and Multi-Spectral Targeting System (MTS). The aircraft processes sensor data onboard, and transmits data via Common Data Link (CDL) (also referred to as Hawklink), or Link-16. It can carry AGM–114A/B/K/R Hellfire missiles, as well as Mk 46 or Mk 54 torpedoes to engage surface and sub-surface targets. The Saudi MH–60R platform will include provisions for both the Mk 46 and the Mk 54 light weight torpedo. The MH–60R weapons system is classified up to Secret. Unless otherwise noted below, MH–60R hardware and support equipment, test equipment and maintenance spares are unclassified except when electrical power is applied to hardware containing volatile data storage. Technical data and documentation for MH–60R weapons systems (to include sub-systems and weapons listed below) are classified up to Secret. The sensitive technologies include:

a. The AGM–114R HELLFIRE missile is an air-to-surface missile with a multi-mission, multi-target, precision strike

capability. The HELLLFIRE can be launched from multiple air platforms and is the primary precision weapon for the United States Army. The highest level for release of the AGM–114R HELLFIRE II is Secret, based upon the software. The highest level of classified information that could be disclosed by a proposed sale or by testing of the end item is Secret; the highest level that must be disclosed for production, maintenance, or training is Confidential. Reverse engineering could reveal Confidential information. Vulnerability data, countermeasures, vulnerability/susceptibility analyses, and threat definitions are classified Secret or Confidential.

b. Advanced Precision Kill Weapons System (APKWS) laser guided rocket to counter the fast attack craft and fast inshore attack craft threat. APKWS hardware is Unclassified.

c. Communications security devices contain sensitive encryption algorithms and keying material. The purchasing country has previously been released and utilizes COMSEC devices in accordance with set procedures and without issue. COMSEC devices will be classified up to Secret when keys are loaded.

d. Identification Friend or Foe (IFF) (KIV–77) contains embedded security devices containing sensitive encryption algorithms and keying material. The purchasing country will utilize COMSEC devices in accordance with set procedures. The AN/APX–123 is classified up to Secret.

e. GPS/PPS/SAASM—Global Positioning System (GPS) provides a space-based Global Navigation Satellite System (GNSS) that has reliable location and time information in all weather and at all times and anywhere on or near the Earth when and where there is an unobstructed line of sight to four or more GPS satellites. Selective Availability/Anti-Spoofing Module (SAASM) (AN/PSN–11) is used by military GPS receivers to allow decryption of precision GPS coordinates. In addition, the GPS Antenna System (GAS–1) provides protection from enemy manipulation of the GPS system. The GPS hardware is Unclassified. When electrical power is applied, the system is classified up to Secret.

f. Ku-Band CDL (AN/ARQ–59; also referred to as Hawklink) and Link-16 capability to enable network centric capabilities, and improve data communications leading to a Common Operating Picture (COP). Link-16 implementation will be consistent with capabilities already in operation with Saudi Arabian defense forces. CDL implementation will utilize commercial encryption. The AN/ARQ–59 hardware is unclassified when COMSEC module is not loaded with a key, when a key is loaded it is classified up to Secret. The Link-16 hardware is Unclassified. When electrical power is applied it is classified up to Secret.

g. Acoustics algorithms are used to process dipping sonar and sonobuoy data for target tracking and for the Acoustics Mission Planner (AMP), which is a tactical aid employed to optimize the deployment of sonobuoys and the dipping sonar. Acoustics hardware is Unclassified. The acoustics system is classified up to Secret when environmental and threat databases are loaded and/or the system is processing acoustic data.

h. The AN/APS–153 multi-mode radar with an integrated IFF and Inverse Synthetic Aperture (ISAR) provides target surveillance/detection capability. The AN/APS–153 hardware is unclassified. When electrical power is applied and mission data loaded, the AN/APS–153 is classified up to Secret.

i. The AN/ALQ–210 (ESM) system identifies the location of an emitter. The ability of the system to identify specific emitters depends on the data provided by Saudi Arabia. The AN/ALQ–210 hardware is Unclassified. When electrical power is applied and mission data loaded, the AN/ALQ–210 system is classified up to Secret.

j. The AN/AAS–44C(V) Forward Looking Infrared Radar (FLIR) uses the Multi-spectral Targeting System (MTS) that allows it to operate in day/night and adverse weather conditions. Imagery is provided by an Infrared sensor, a color/monochrome DTV, and a Low-Light TV. The AN/AAS–44C(V) hardware is Unclassified. When electrical power is applied, the AN/AAS–44C(V) is classified up to Secret.

k. Ultra High Frequency/Very High Frequency (UHF/VHF) Radios (ARC 210) contain embedded sensitive encryption algorithms and keying material. The purchasing country will utilize COMSEC devices in accordance with set procedures. The ARC–210 hardware is Unclassified. When electrical power is applied and mission data loaded, the ARC–210 is classified up to Secret.

l. Satellite Communications Demand Assigned Multiple Access (SATCOM DAMA) and Single Channel Ground to Air Radio Systems (SINCGARS), which provide increased, interoperable communications capabilities with US forces. SATCOM DAMA and SINCGARS hardware is Unclassified. When electrical power is applied and mission data loaded these systems are classified up to Secret.

2. All the mission data, including sensitive parameters, is loaded from an off board station before each flight and does not stay with the aircraft after electrical power has been removed. Sensitive technologies are protected as defined in the program protection and anti-tamper plans. The mission data and off board station are classified up to Secret.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to Saudi Arabia.

[FR Doc. 2015–13497 Filed 6–2–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (Judicial Proceedings Panel); Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal Advisory Committee meeting of the Judicial Proceedings since Fiscal Year 2012 Amendments Panel (''the Judicial Proceedings Panel'' or ''the Panel''). The meeting is open to the public.

DATES: A meeting of the Judicial Proceedings Panel will be held on Thursday, June 18, 2015. The Public Session will begin at 9:00 a.m. and end at 5:00 p.m.

ADDRESSES: The George Washington University, School of Law, Faculty Conference Center, 2000 H St. NW., Washington, DC 20052.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Carson, Judicial Proceedings Panel,

One Liberty Center, 875 N. Randolph Street, Suite 150, Arlington, VA 22203. Email: *whs.pentagon.em.mbx.judicial-panel@mail.mil.* Phone: (703) 693–3849. Web site: *http://jpp.whs.mil.*

SUPPLEMENTARY INFORMATION: This public meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: In Section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239), as amended, Congress tasked the Judicial Proceedings Panel to conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice involving adult sexual assault and related offenses since the amendments made to the Uniform Code of Military Justice by section 541 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81; 125 Stat. 1404), for the purpose of developing recommendations for improvements to such proceedings. At this meeting, the Panel will consider the issues of social and professional retaliation against individuals who report incidents of sexual assault within the military, as well as restitution and compensation for victims. The Panel is interested in written and oral comments from the public, including non-governmental organizations, relevant to these issues or any of the Panel's tasks.

Agenda

- 8:30–9:00 Administrative Work *(41 CFR 102–3.160, not subject to notice & open meeting requirements)*
- 9:00–10:30 SVC Perspectives on Retaliation Against Victims of Sexual Assault Crimes in the Military *(public meeting begins)*
  - —*Presenters: Service SVCs and VLCs*
- 10:30–12:00 Deliberations on Prevention and Response to Retaliation
- 12:00–12:30 Lunch
- 12:30–1:00 Administrative Work *(41 CFR 102–3.160, not subject to notice & open meeting requirements)*
- 1:00–2:00 Review of Relevant UCMJ Provisions, Fines, and Forfeitures and Further Deliberations on Restitution as an Authorized Punishment at Court-Martial *(public meeting resumes)*
  - —*Presenters: Subject matter experts on UCMJ, Fines and Forfeitures*
- 2:00–3:30 Overview of the Continuation of Care for Former Active-Duty Service Members and Dependents who are Victims of Sexual Assault
  - —*Presenters: Subject matter experts from DoD, Defense Health Agency, Veterans Health Administration and Veterans Benefits Administration*
- 3:30–4:30 Deliberations on Developing a DoD Uniform Crime Victim Compensation Program with Consultation from Claims System Experts
  - —*Presenters: Subject matter experts on military claims and crime victim compensation boards*
- 4:30–4:45 Recommendations Regarding Restitution and Compensation
- 4:45–5:00 Public Comment

Availability of Materials for the Meeting: A copy of the June 18, 2015 meeting agenda or any updates to the agenda, to include individual speakers not identified at the time of this notice, as well as other materials presented related to the meeting, may be obtained at the meeting or from the Panel's Web site at *http://jpp.whs.mil.*

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Julie Carson at *whs.pentagon.em.mbx.judicial-panel@mail.mil* at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Procedures for Providing Public Comments: Pursuant to 41 CFR 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Panel about its mission and topics pertaining to this public session. Written comments must be received by Ms. Julie Carson at least five (5) business days prior to the meeting date so that they may be made available to the Judicial Proceedings Panel for their consideration prior to the meeting. Written comments should be submitted via email to Ms. Carson at *whs.pentagon.em.mbx.judicial-panel@mail.mil* in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the Judicial Proceedings Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection. If members of the public are interested in making an oral statement, a written statement must be submitted along with a request to provide an oral statement. Oral presentations by members of the public will be permitted between 4:45 p.m. and 5:00 p.m. on June 18, 2015 in front of the Panel. The number of oral presentations to be made will depend on the number of requests received from members of the public on a first-come basis. After reviewing the requests for oral presentation, the Chairperson and the Designated Federal Officer will, having determined the statement to be relevant to the Panel's mission, allot five minutes to persons desiring to make an oral presentation.

Committee's Designated Federal Officer: The Panel's Designated Federal Officer is Ms. Maria Fried, Judicial Proceedings Panel, 1600 Defense Pentagon, Room 3B747, Washington, DC 20301–1600.

Dated: May 28, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–13400 Filed 6–2–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0058]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics 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 August 3, 2015.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

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

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of Economic Adjustment, 2231 Crystal Drive, Suite 520, Arlington, Virginia 22202, ATTN: Nia Hope, or call at 571–213–6791.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Application Information Public Schools on Military Installations; OMB Control Number 0790–0006.

Needs and Uses: This is a request for information to qualify for noncompetitive funds. OEA is authorized to provide up to $945 million ''to make grants, conclude cooperative agreements, or supplement other Federal funds to construct, renovate, repair, or expand elementary and secondary public schools on military installations in order to address capacity or facility condition deficiencies at such schools.'' Local Education Agencies (LEAs) representing the schools with the most serious capacity and facility condition deficiencies will be invited to submit a request for funding. Only LEAs that operate a public school on a military installation, and receive a written invitation from OEA, may request funds under this program. LEAs that are invited to apply will be asked by OEA to submit a project proposal within 90 days using the Application for Federal Assistance Standard Form 424 (OMB Number: 4040–0004). Proposal information listed in the **Federal Register** notice will supplement the application and assist OEA in determining compliance with legal and programmatic requirements. Grant awards will be made to successful applicants until the available funds are exhausted.

Affected Public: State, local, or tribal government.

Annual Burden Hours: 1,100 hours.

Number of Respondents: 50.

Responses per Respondent: 1.

Annual Responses: 50.

Average Burden per Response: 22 hours.

Frequency: On occasion.

Dated: May 29, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–13454 Filed 6–2–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Native American-Serving Nontribal Institutions Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY:

Overview Information: Native American-Serving Nontribal Institutions (NASNTI) Program

Notice inviting applications for new awards for fiscal year (FY) 2015.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.031X.

DATES: Applications Available: June 3, 2015.

Deadline for Transmittal of Applications: July 6, 2015.

Deadline for Intergovernmental Review: September 1, 2015.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The NASNTI Program provides grants to eligible institutions of higher education (IHEs) that have an undergraduate enrollment of at least 10 percent Native American students to assist such institutions to plan, develop, undertake, and carry out activities to improve and expand such institutions' capacity to serve Native American and low-income individuals.

Background: We encourage applicants to read carefully the *Selection Criteria* section of this notice. Consistent with the Department's increasing emphasis in recent years on promoting evidence-based practices through our grant competitions, the Secretary will evaluate applications on the extent to which the proposed project is supported by a logic model that meets the evidence standard of ''strong theory'' (as defined in this notice). Resources to assist applicants in creating a logic model can be found here: *http://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014007.pdf.*

Priorities: This notice contains one absolute priority, two competitive preference priorities, and one invitational priority. The absolute priority is from the Department's notice of final supplemental priorities and definitions for discretionary grant programs (Supplemental Priorities), published in the **Federal Register** on December 10, 2014 (79 FR 73425). Competitive Preference Priority 1 is from section 320(c)(2)(H) of the Higher Education Act of 1965, as amended (HEA). Competitive Preference Priority 2 is from the Supplemental Priorities.

Absolute Priority: For FY 2015 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Projects that are designed to increase the number and proportion of high-need students (as defined in this notice) who are academically prepared for, enroll in, or complete on time college, other postsecondary education, or other career and technical education.

Competitive Preference Priorities: For FY 2015 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award an application up to three additional points for each priority, for a total of up to six additional points, depending on how well the application meets each of these priorities.

These priorities are:

Competitive Preference Priority 1 (up to 3 additional points).

Academic tutoring and counseling programs and student support services.

Competitive Preference Priority 2 (up to 3 additional points).

Projects that are designed to leverage technology through implementing high-quality accessible digital tools, assessments, and materials that are

aligned with rigorous college- and career-ready standards.

Invitational Priority: For FY 2015 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Projects that support activities that strengthen Native American language preservation and revitalization.

Definitions: The following definitions are from the Supplemental Priorities and from 34 CFR 77.1 and apply to the priorities and selection criteria in this notice:

High-minority school means a school as that term is defined by a local educational agency (LEA), which must define the term in a manner consistent with its State's Teacher Equity Plan, as required by section 1111(b)(8)(C) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). The applicant must provide the definition(s) of high-minority schools used in its application.

High-need students means students who are at risk of educational failure or otherwise in need of special assistance and support, such as students who are living in poverty, who attend high-minority schools, who are far below grade level, who have left school before receiving a regular high school diploma, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are English learners.

Logic model (also referred to as theory of action) means a well-specified conceptual framework that identifies key components of the proposed process, product, strategy, or practice (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the relationships among the key components and outcomes, theoretically and operationally.

Note: In developing logic models, applicants may want to use resources such as the Pacific Education Laboratory's Education Logic Model Application (*http://relpacific.mcrel.org/*resources/elm-app or *http://files.eric.ed.gov/fulltext/ED544779.pdf)* to help design their logic models.

Regular high school diploma means the standard high school diploma that is awarded to students in the State and that is fully aligned with the State's academic content standards or a higher diploma and does not include a General Education Development credential, certificate of attendance, or any alternative award.

Strong theory means a rationale for the proposed process, product, strategy, or practice that includes a logic model.

Program Authority: Title III, part A, section 319 of the HEA (20 U.S.C. 1059f).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 607. (e) The Supplemental Priorities.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $3,113,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2016 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $300,000–$400,000 per year.

Estimated Average Size of Awards: $350,000 per year.

Maximum Award: We will reject any application that proposes a budget exceeding $400,000 for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* (a) An IHE is eligible to receive funds under the NASNTI Program if it qualifies as a Native American-Serving Nontribal Institution. At the time of application, IHEs applying for funds under the NASNTI Program must have an enrollment of undergraduate students that is at least 10 percent Native American, as defined as follows:

Native American means a person who is of a tribe, people, or culture that is indigenous to the United States.

At the time of submission of their applications, applicants must certify their total undergraduate headcount enrollment and that 10 percent of the IHE's enrollment is Native American. An assurance form, which is included in the application materials for this competition, must be signed by an official for the applicant and submitted.

To qualify as an eligible institution under the NASNTI Program, an institution must also be—

(i) Accredited or pre-accredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(ii) Legally authorized by the State in which it is located to be a junior or community college or to provide an educational program for which it awards a bachelor's degree; and

(iii) Designated as an ''eligible institution'' by demonstrating that it has: (A) an enrollment of needy students as described in 34 CFR 607.3; and (B) below average educational and general expenditures per full-time equivalent (FTE) undergraduate student as described in 34 CFR 607.4.

Note: The notice for applying for designation as an eligible institution was published in the **Federal Register** on November 3, 2014 (79 FR 65197) and applications were due on December 22, 2014. Only institutions that submitted applications by the deadline date and that the Department determined are eligible may apply for a grant.

(b) A grantee under the Developing Hispanic-Serving Institutions (HSI) Program, which is authorized by title V, part A of the HEA, may not receive a grant under any HEA, title III, part A program, including the NASNTI Program. Further, a current HSI Program grantee may not give up its HSI grant in order to receive a grant under any title III, part A program.

An eligible HSI that is not a current grantee under the HSI Program may apply for a FY 2015 grant under all title III, part A programs for which it is eligible, as well as under the HSI Program. However, a successful applicant may receive only one grant.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching unless funds are used for an endowment.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Grant funds must be used to supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds (34 CFR 607.30(b)).

IV. Application and Submission Information

1. *Address to Request Application Package:* Bora Mpinja or Don Crews, U.S. Department of Education, 1990 K Street NW., 6th floor, Washington, DC 20006–8513. You may contact these individuals at the following email addresses or telephone numbers: *Bora.Mpinja@ed.gov;* (202) 502–7629, *Don.Crews@ed.gov;* (202) 502–7574.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

You can also obtain an application via the Internet using the following address: *www.Grants.gov.*

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting one of the program contact people listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria, the absolute priority, the competitive preference priorities, and the invitational priority that reviewers use to evaluate your application. We have established mandatory page limits. You must limit the section of the application narrative that addresses:

- The selection criteria to no more than 50 pages.
- The absolute priority to no more than three pages.
- A competitive preference priority, if you are addressing one or both, to no more than three pages (for a total of six pages if you address both).
- The invitational priority to no more than two pages, if you address it.

Accordingly, under no circumstances may the application narrative exceed 61 pages.

Please include a separate heading for the absolute priority and for each competitive preference priority and invitational priority that you address.

For the purpose of determining compliance with the page limits, each page on which there are words will be counted as one full page. Applicants must use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1'' margins at the top, bottom, and both sides. Page numbers and an identifier may be within the 1″ margins.
- Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, and captions and all text in charts, tables, figures, and graphs. These items may be single-spaced. Charts, tables, figures, and graphs in the application narrative count toward the page limits.
- Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch). However, you may use a 10-point font in charts, tables, figures, graphs, footnotes, and endnotes.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance (SF 424); the Supplemental Information for SF 424 Form; Part II, the Budget Information Summary Form (ED Form 524); and Part IV, the assurances and certifications. The page limit also does not apply to the table of contents, the one-page abstract, the resumes, the bibliography, or the letters of support. If you include any attachments or appendices, these items will be counted as part of the application narrative for purposes of the page-limit requirement. You must include your complete response to the selection criteria and priorities in the application narrative.

We will reject your application if you exceed the page limits.

3. *Submission Dates and Times:*

Applications Available: June 3, 2015.

Deadline for Transmittal of Applications: July 6, 2015.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 1, 2015.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the

information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under the NASNTI Program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the NASNTI Program, CFDA number 84.031X, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the NASNTI Program at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.031, not 84.031X).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues With the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact one of the people listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem

affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Bora Mpinja, U.S. Department of Education, 1990 K Street NW., Room 6023, Washington, DC 20006–8513. FAX: (202) 502–7681.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.031X), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.031X), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The following selection criteria for this program are from 34 CFR 75.210. We will award up to 100 points to an application under the selection criteria; the total possible points for each selection criterion are noted in parentheses.

a. *Need for project.* (Maximum 20 points) The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers:

1. The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project. (10 points)

2. The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals. (5 points)

3. The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (5 points)

b. *Quality of the project design.* (Maximum 25 points) The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers:

1. The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (10 points)

2. The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (5 points)

3. The extent to which the proposed project is supported by strong theory (as defined in this notice). (10 points)

c. *Quality of project services.* (Maximum 10 points) The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers:

1. The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services. (5 points)

2. The extent to which the services to be provided by the proposed project

reflect up-to-date knowledge from research and effective practice. (5 points)

d. *Quality of project personnel.* (Maximum 10 points) The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

In addition, the Secretary considers:

1. The qualifications, including relevant training and experience, of the project director or principal investigator. (5 points)

2. The qualifications, including relevant training and experience, of key project personnel. (5 points)

e. *Adequacy of resources.* (Maximum 5 points) The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers:

1. The extent to which the budget is adequate to support the proposed project. (3 points)

2. The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (2 points)

f. *Quality of the management plan.* (Maximum 15 points) The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers:

1. The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (10 points)

2. The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (2.5 points)

3. The adequacy of mechanisms for ensuring high-quality products and services from the proposed project. (2.5 points)

g. *Quality of the project evaluation.* (Maximum 15 points) The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers:

1. The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (5 points)

2. The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (5 points)

3. The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Awards will be made in rank order according to the average score received from a panel of three non-Federal reviewers.

3. *Tie-breaker.* In tie-breaking situations, we award one additional point to an application from an IHE that has an endowment fund of which the current market value, per FTE enrolled student, is less than the average current market value of the endowment funds, per FTE enrolled student, at comparable institutions that offer similar instruction. We also award one additional point to an application from an IHE that has expenditures for library materials per FTE enrolled student that are less than the average expenditures for library materials per FTE enrolled student at comparable institutions that offer similar instruction. We also award one additional point to an application from an IHE that proposes to carry out one or more of the following activities—

(1) Faculty development;

(2) Funds and administrative management;

(3) Development and improvement of academic programs;

(4) Acquisition of equipment for use in strengthening management and academic programs;

(5) Joint use of facilities; and

(6) Student services.

For the purpose of these funding considerations, we use 2012–2013 data. If a tie remains after applying the tie-breaker mechanism above, priority will be given to applications from IHEs that have the lowest endowment values per FTE enrolled student.

4. *Special Conditions:* Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary

under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the NASNTI Program:

a. The percentage change, over the five-year period, in the number of full-time degree-seeking undergraduates enrolled at NASNTIs (**Note:** This is a long-term measure that will be used to periodically gauge performance);

b. The percentage of first-time, full-time degree-seeking undergraduate students at two-year NASNTIs who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same NASNTI;

c. The percentage of first-time, full-time degree-seeking undergraduate students enrolled at four-year NASNTIs who graduate within six years of enrollment; and

d. The percentage of first-time, full-time degree-seeking undergraduate students enrolled at two-year NASNTIs who graduate within three years of enrollment.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application. In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Bora Mpinja or Don Crews, U.S. Department of Education, 1990 K Street NW., 6th floor, Washington, DC 20006–8513. You may contact these individuals at the following email addresses or telephone numbers: *Bora.Mpinja@ed.gov*; (202) 502–7629, *Don.Crews@ed.gov*; (202) 502–7574.

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

Applicants should periodically check the Department's Web site for the title III, part A programs for further information. The address is: *www.ed.gov/programs/nasnti/index.html.*

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to either of the program contacts listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Delegation of Authority: The Secretary of Education has delegated authority to Jamienne S. Studley, Deputy Under Secretary, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: May 29, 2015.

Jamienne S. Studley,

Deputy Under Secretary.

[FR Doc. 2015–13480 Filed 6–2–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Catalog of Federal Domestic Assistance Number: 84.220A, 84.229A, 84.015A, and 84.016A]

Authorization of Subgrants

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: Pursuant to the Education Department General Administrative Regulations, this notice authorizes institutions of higher education and consortia of institutions of higher education that are grant recipients under the Centers for International Business Education (CIBE) Program (CFDA 84.220A), Language Resource Centers (LRC) Program (CFDA 84.229A), National Resource Centers (NRC) Program (CFDA 84.015A), and the Undergraduate International Studies and Foreign Language (UISFL) Program (CFDA 84.016A) to make subgrants, subject to the limitations described in this notice. The subgrants must support project activities, including, but not limited to, the development of international business training programs, the development of area studies, international studies, and world language courses, teacher training workshops, the dissemination of instructional materials, faculty development opportunities, and outreach.

DATES: *Effective:* June 3, 2015.

FOR FURTHER INFORMATION CONTACT: Cheryl E. Gibbs, U.S. Department of Education, 1990 K Street NW., Room 6087, Washington, DC 20006. Telephone: (202) 502–7634 or by email: *cheryl.gibbs@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Programs: Through Title VI, Part A and Part B of the Higher Education Act of 1965, as amended (HEA), eligible institutions of higher education or consortia of institutions of higher education receive funding to implement projects to strengthen institutional and national capacity in area studies, international studies, world languages, and the international context in which business is transacted. Institutions design and implement projects to meet the goal of producing graduates and trained personnel with knowledge and expertise in area and international studies, world languages, and international business.

Parts A and B of Title VI of the HEA do not authorize grantees to make subgrants. Through this notice, pursuant to 34 CFR 75.708(b), we authorize grantees under the CIBE, NRC, LRC, and UISFL programs to make subgrants under certain circumstances.

Program Authority: 20 U.S.C. 1122, 1123, 1124, 1130–1, and 1132–1137.

Applicable Regulations: (a) The Education Department General Administrative Regulations 34 CFR parts 75, 77, 79, 82, 86, 97, 98, 99. (b) The OMB Guidelines to Agencies on Government wide Debarment and

Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474. (c) The International Education Programs—General Provisions in 34 CFR part 655. (d) The NRC Program regulations in 34 CFR part 656. (e) The LRC Program regulations in 34 CFR part 658. (f) The UISFL Program regulations in 34 CFR part 669.

Eligible Entities for Subgrants: Eligible entities for subgrants are the non-Federal entities with whom the HEA, Title VI grantee institutions are in collaboration with to conduct the activities in the Title VI funded applications. The non-Federal entities or subrecipients include, but are not limited to, community colleges, Minority-Serving Institutions, local educational agencies, State educational agencies, school districts, and elementary, middle, or secondary schools. An individual at a non-Federal entity who receives a benefit from the CIBE, LRC, NRC or UISFL program does not qualify as an eligible subrecipient.

Discussion: International and Foreign Language Education (IFLE), Office of Postsecondary Education authorizes grantees to make subgrants to support a more efficient, effective, and seamless delivery of international education activities to non-Federal entities. These include activities to meet the fiscal year 2014 competitive preference priorities through which grantees establish partnerships with community colleges, Minority-Serving Institutions, and teacher education programs, in addition to the other activities identified in the HEA and program regulations. The current absence of subgranting authority limits the extent to which the program grantees and non-Federal entities can collaborate to conduct the activities described in funded applications.

Requirements: Grantees in the CIBE, NRC, LRC, and UISFL programs may make subgrants only to directly carry out project activities described in their applications. Consistent with 34 CFR 75.708(d), grantees must ensure that subgrants are awarded on the basis of the approved budget that is consistent with the grantee's approved application and all applicable Federal statutory, regulatory, and other requirements. Grantees under these programs must ensure that every subgrant includes any conditions required by Federal statutes and executive orders and their implementing regulations. Grantees must ensure that subgrantees are aware of the requirements imposed upon them by Federal statutes and regulations, including the Federal anti-discrimination laws in 34 CFR 75.500 and enforced by the Department.

Note: This notice does *not* solicit applications.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Delegation of Authority: The Secretary of Education has delegated authority to Jamienne S. Studley, Deputy Under Secretary, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: May 29, 2015.

Jamienne S. Studley,

Deputy Under Secretary.

[FR Doc. 2015–13481 Filed 6–2–15; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0022 FRL–9928–24]

Pesticide Product Registration; Receipt of Applications for New Uses; Correction and Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction and reopening of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of April 15, 2015, concerning Pesticide Product Registration; Receipt of Applications for New Uses. The notice inadvertently identified the applications listed as being new active ingredients rather than new uses. This document corrects that error and also reopens the comment period for an additional 30 days. EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments, identified by the docket identification (ID) listed in the body of this document, must be received on or before July 6, 2015.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of April 15, 2015 (80 FR 20223) (FRL–9924–89).

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

The Agency included in the April 15, 2015 **Federal Register** notice a list of those who may be potentially affected by this action.

B. How can I get copies of this document and other related information?

The dockets for these actions, identified by docket identification (ID) numbers EPA–HQ–OPP–2015–0180 for Cyprodinil; EPA–HQ–OPP–2015–0014 for Mefenoxam; EPA–HQ–OPP–2015–0179 for Flutriafol; EPA–HQ–OPP–2014–0922 for Zoxamide; and EPA–HQ–OPP–2014–0232 for Novaluron, are available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 204600–0001. The public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

C. Why is the comment period being reopened?

This document reopens the public comment period for the Pesticide Product Registration; Receipt of Applications for New Uses notice, which was published in the **Federal Register** of April 15, 2015. EPA is hereby reopening the comment period 30 days because EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provision of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

II. What does this correction do?

FR Doc. 2015–08478 published in the **Federal Register** of April 15, 2015 (80 FR 20222) (FRL–9924–89) is corrected to read as follows:

1. On page 20222, third column, under the document entitled ''Pesticide Product Registration; Receipt of Applications for New Uses'', under the heading SUMMARY, the first paragraph, third line, correct ''active ingredients'' to read ''new uses''.

2. On page 20223, first column, 7 lines from the bottom of the page, correct ''active ingredients'' to read ''new uses''.

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 22, 2015.

Daniel J. Rosenblatt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2015–13423 Filed 6–2–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–1017; FRL–9926–88]

Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 of Unit III., pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective June 3, 2015.

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; email address: *nevola.joseph@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2009–1017, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request.

III. What action is the agency taking?

This notice announces the cancellation, as requested by registrants, of products registered under FIFRA section 3 (7 U.S.C. 136a). These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

EPA Registration No.	Product name	Chemical name
000279–09556	Intruder Residual Cylinder with Cyfluthrin	Piperonyl butoxide, Pyrethrins, and Cyfluthrin.
000769–00881	Pratt 25–5 ULV Mosquito Adulticide Concentrate	Pyrethrins and Piperonyl butoxide.
002693–00214	Micron Extra P-Blue	Tolylfluanid and Cuprous oxide.
002693–00215	Ultra P-Blue	Cuprous oxide and Tolylfluanid.
002724–00779	Permethrin Plus Home and Carpet Spray	Permethrin, MGK 264, and Pyriproxyfen.
004787–00043	Malathion Technical	Malathion.
004787–00046	Atrapa 8E	Malathion.
005382–00046	Chlorite Plus CD–2	Sodium chlorite.
005481–00350	Metam Sodium	Metam sodium.
005481–00418	Metam Sodium Soil Fumigant For All Crops	Metam sodium.
005481–00420	AMVAC Metam	Metam sodium.
005481–00446	Metacide 42	Metam sodium.
007969–00081	Pyramin DF Herbicide	Pyrazon.
007969–00108	Pyramin Super Herbicide	Pyrazon.
010088–00097	Insect Repellent Towel	MGK 264, MGK 326, and Diethyl toluamide.
010163–00174	Fireban Fire Ant Insecticide	Phosmet.

TABLE 1—PRODUCT CANCELLATIONS—Continued

EPA Registration No.	Product name	Chemical name
010163–00224	Ambush 0.5% Bait	Permethrin.
011603–00045	Nitrapyrin Technical	Nitrapyrin.
021164–00003	DURA KLOR	Sodium chlorite.
021164–00005	AKTA KLOR 80	Sodium chlorite.
035559–00002	Diesel STA–BIL	1,3,2-Dioxaborinane, 2,2'-((1-methyl-1,3-propanediyl) bis(oxy))bis(4-methyl- and 1,3,2-Dioxaborinane, 2,2'-oxybis(4,4,6-trimethyl-.
042750–00259	Glufosinate-Ammonium TGAI	Glufosinate-Ammonium.
047158–00002	Synergy 201	Poly(oxy-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl (dimethylimino)-1,2-ethanediyl dichloride).
059639–00028	Orthene Tree and Ornamental Spray	Acephate.
059639–00086	Orthene 90 WSP	Acephate.
059639–00089	Orthene 75 WSP (Insecticide in a Water Soluble Bag).	Acephate.
062190–00028	Chemonite Part B	Cuprous oxide.
065217–00001	Biobor JF	1,3,2-Dioxaborinane, 2,2'-((1-methyl-1,3-propanediyl) bis(oxy))bis(4-methyl- and 1,3,2-Dioxaborinane, 2,2'-oxybis(4,4,6-trimethyl-.
066222–00108	Bromoxynil and Atrazine Herbicide	Atrazine and Bromoxynil octanoate.
066222–00119	Bromoxynil 2EC Herbicide	Bromoxynil octanoate.
066222–00120	Bromoxynil and MCPA Herbicide	MCPA, 2-ethylhexyl ester and Bromoxynil octanoate.
069361–00029	Pendim Weed and Feed	Pendimethalin.
069361–00030	Pendimethalin Technical	Pendimethalin.
069361–00031	Pendim 3.3 EC Herbicide	Pendimethalin.
069361–00032	Pendim H_2O Herbicide	Pendimethalin.
069461–00002	Revablue	Poly(oxy-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl (dimethylimino)-1,2-ethanediyl dichloride).
071368–00070	Bromoxynil Technical	Bromoxynil.
071368–00071	Bromox Octanoic Acid Technical	Bromoxynil octanoate.
071995–00003	Kleeraway Grass & Weed Killer 2	Sodium acifluorfen and Glyphosate-isopropylammonium.
073801–00001	Deltamethrin Technical	Deltamethrin.
073801–00003	Sulfentrazone Technical	Sulfentrazone.
073801–00004	Deltamethrin 4.75% SC	Deltamethrin.
089118–00001	VCP–01 10WG	Bifenthrin.
CA–090010	Ethrel Brand Ethephon Plant Regulator	Ethephon.
HI–840004	AMCHEM Ethrel Pineapple Growth Regulator	Ethephon.
MA–090002	B–CAP 35 Antimicrobial Agent	Hydrogen peroxide.
PA–080004	B–CAP 50 Antimicrobial Agent	Hydrogen peroxide.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS

EPA company No.	Company name and address
279	FMC Corp. Agricultural Products Group, 1735 Market Street, RM 1978, Philadelphia, PA 19103.
769	Value Gardens Supply, LLC, Agent: AllPro Vector Group, 640 Griswold Street, Suite 200, Northville, MI 48167.
2693	AkzoNobel, Agent: International Paint, LLC, 2270 Morris Ave., Union, NJ 07083.
2724	Wellmark International, 1501 E. Woodfield Road, Suite 200 West, Schaumburg, IL 60173.
4787	Cheminova A/S, Agent: Cheminova Inc., 1600 Wilson Blvd., Suite 700, Arlington, VA 22209.
5382, 21164	Basic Chemicals Company, LLC, 5005 LBJ Freeway, Dallas, TX 75244.
5481	AMVAC Chemical Corporation, 4695 MacArthur Court, Suite 1200, Newport Beach, CA 92660–1706.
7969	BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528.
10088	Athea Laboratories Inc., P.O. Box 240014, Milwaukee, WI 53224.
10163	Gowan Company, P.O. Box 5569, Yuma, AZ 85366.
11603	ADAMA, Agent: MANA, Inc., 3120 Highwoods Blvd, Suite 100, Raleigh, NC 27604.
35559	Gold Eagle Co., Agent: Delta Analytical Corp., 12510 Prosperity Drive, Suite 160, Silver Spring, MD 20904.
42750	Albaugh, LLC, P.O. Box 2127, Valdosta, GA 31604–2127.
47158	Industrial Water Consulting, Inc., P.O. Box 36238, Indianapolis, IN 46236.
59639	Valent U.S.A. Corporation, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596.
62190	Arch Wood Protection, Inc., 360 Interstate North Parkway, Suite 450, Atlanta, GA 30339.
65217	Hammonds Fuel Additives, Inc., Agent: Delta Analytical Corp., 12510 Prosperity Drive, Suite 160, Silver Spring, MD 20904.
66222	Makhteshim Agan Of North America, Inc., 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
69361	Repar Corporation, Agent: Mandava Associates, LLC, 1050 Conn. Ave. NW., Suite 1000, Washington, DC 20036.
69461	Laboratoire Pareva, Agent: Technology Sciences Group Inc., 1150 18th Street NW., Suite 1000, Washington, DC 20036.
71368	Nufarm Inc., Agent: Nufarm Americas, Inc., 4020 Aerial Center Parkway, Suite 101, Morrisville, NC 27560.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS—Continued

EPA company No.	Company name and address
71995	Monsanto Company, 1300 I Street NW., Suite 450 East, Washington, DC 20005.
73801	Tagos Chemicals India, LTD., Agent: Biologic, Inc., 115 Obtuse Hill Road, Brookfield, CT 06804.
89118	Vive CorpProtection, Inc., Agent: OMC Ag Consulting, 828 Tanglewood Ln., East Lansing, MI 48823.
CA–090010, HI–840004	Bayer CropScience, LP, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709.
MA–090002, PA–080004	PeroxyChem, LLC, 2005 Market Street, Suite 3200, Philadelphia, PA 19103.

This cancellation order follows a notice of receipt of voluntary cancellation requests received from the registrants that issued in the **Federal Register** of March 12, 2015 (80 FR 12996) (FRL–9923–27). In the March 2015 document, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests.

IV. Summary of Public Comments Received and Agency Response to Comments

The comment period closed on April 13, 2015. EPA received three comments. The comments agreed with the product cancellations. For this reason, the Agency does not believe that the comments submitted during the comment period merit further review or a denial of the requests for voluntary cancellation.

Further, the registrants did not withdraw their requests.

V. Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)), EPA hereby approves the requested cancellations of the registrations identified in Table 1 of Unit III. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit III. are canceled. The effective date of the cancellations that are the subject of this order is June 3, 2015. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit III. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

A. For Products (069361–00030, 073801–00003, and 089118–00001)

The registrants have indicated to the Agency via written response that there are no existing stocks because no production has ever occurred. Therefore, no existing stocks date is necessary. Registrants are prohibited from selling or distributing the existing stocks of products listed in Table 1 of Unit III., except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal. In addition, because no production has ever occurred, persons other than the registrants are prohibited from selling, distributing, or using the existing stocks.

B. For the Product (010163–00174)

The registrant has indicated to the Agency via written response that they will not sell or distribute any existing stocks after December 31, 2014, and as of that date will no longer have any current stock. Therefore, no existing stocks date for the registrant is necessary. The registrant is prohibited from selling or distributing existing stocks of the product listed in Table 1 of Unit III., except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal. Persons other than the registrant may sell, distribute, or use the existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled product.

C. For Products (059639–00028, 059639–00086, and 059639–00089)

Since the notice in the **Federal Register** of March 12, 2015 (80 FR 12996) (FRL–9923–27), EPA received clarification from the registrant which indicates that the manufacture and distribution for these products ended about 6 to 7 years ago. Therefore, no existing stocks date is necessary for the registrant. The registrant is prohibited from selling or distributing the existing stocks of products listed in Table 1 of Unit III., except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal. In addition, because 6 to 7 years has passed, the Agency believes that existing stocks have been exhausted and no existing stocks date is necessary for persons other than the registrant. Persons other than the registrant are prohibited from selling, distributing, or using the existing stocks.

D. For All Other Products Identified in Table 1 of Unit III

The registrants may continue to sell and distribute existing stocks of products listed in Table 1 of Unit III. until June 2, 2016, which is 1 year after the publication of this Cancellation Order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1 of Unit III. except for export in accordance with FIFRA section 17 (7 U.S.C. 136o), or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1 of Unit III. until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 14, 2015.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2015–13513 Filed 6–2–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL—9928–70–OAR]

Alternative Method for Calculating Off-Cycle Credits Under the Light-Duty Vehicle Greenhouse Gas Emissions Program: Applications From Fiat Chrysler Automobiles, Ford Motor Company, and General Motors Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is requesting comment on applications from Fiat Chrysler Automobiles LLC (''FCA''), Ford Motor Company (Ford) and General Motors Corporation (GM) for off-cycle carbon dioxide (CO_2) credits under EPA's light-duty vehicle greenhouse gas emissions standards. ''Off-cycle'' emission reductions can be achieved by employing technologies that result in real-world benefits, but where that benefit is not adequately or entirely captured on the test procedures used by manufacturers to demonstrate compliance with emission standards. EPA's light-duty vehicle greenhouse gas program acknowledges these benefits by giving automobile manufacturers several options for generating ''off-cycle'' carbon dioxide (CO_2) credits. Under the regulations, a manufacturer may apply for CO_2 credits for technologies that result in off-cycle benefits. In these cases, a manufacturer must provide EPA with a proposed methodology for determining the real-world off-cycle benefit. FCA and Ford have submitted applications that describe methodologies for determining off-cycle credits from high efficiency exterior lighting, solar reflective glass/glazing, solar reflective paint, and active seat ventilation. Ford's application also proposes methodologies for determining the off-cycle benefits from active aerodynamic improvements (grill shutters), active transmission warm-up, active engine warm-up technologies, and engine idle stop-start. GM's application proposes a methodology to determine the real-world benefits of an air conditioning compressor with variable crankcase suction valve technology. Pursuant to applicable regulations, EPA is making descriptions of the manufacturers' off-cycle credit calculation methodologies available for public comment.

DATES: Comments must be received on or before July 6, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2015–0282, by one of the following methods:

- *http://www.regulations.gov:* Follow the On-Line Instructions for Submitting Comments.
- *Email: a-and-r-docket@epa.gov.*
- Fax: (202) 566–1741.
- *Mail:* Air and Radiation Docket, Docket ID No. EPA–HQ– OAR–2015–0282, U.S. Environmental Protection Agency, Mailcode: 22821T, 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20460. Attention Air and Radiation Docket ID No. EPA–HQ– OAR–2015–0282. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Online Instructions for Submitting Comments: Direct your comments to Docket ID No. Attention Air and Radiation Docket ID No. EPA–HQ–OAR–2015–0282. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Roberts French, Environmental Protection Specialist, Office of Transportation and Air Quality, Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105. Telephone: (734) 214–4380. Fax: (734) 214–4869. Email address: *french.roberts@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

EPA's light-duty vehicle greenhouse gas (GHG) program provides three pathways by which a manufacturer may accrue off-cycle carbon dioxide (CO_2) credits for those technologies that achieve CO_2 reductions in the real world but where those reductions are not adequately or entirely captured on the test used to determine compliance with the CO_2 standards, and which are not otherwise reflected in the standards' stringency. The first pathway is a predetermined list of credit values for specific off-cycle technologies that may be used beginning in model year 2014.[1] This pathway allows manufacturers to use conservative credit values established by EPA for a wide range of technologies, with minimal data submittal or testing requirements. In cases where additional laboratory testing can demonstrate emission benefits, a second pathway allows manufacturers to use a broader array of emission tests (known as ''5-cycle'' testing because the methodology uses five different testing procedures) to demonstrate and justify off-cycle CO_2 credits.[2] The additional emission tests allow emission benefits to be demonstrated over some elements of real-world driving not captured by the GHG compliance tests, including high speeds, hard accelerations, and cold temperatures. These first two methodologies were completely defined through notice and comment rulemaking and therefore no additional process is necessary for manufacturers to use these methods. The third and last pathway allows manufacturers to seek EPA approval to use an alternative methodology for determining the off-cycle CO_2 credits.[3] This option is only available if the benefit of the technology cannot be adequately demonstrated

[1] See 40 CFR 86.1869–12(b).
[2] See 40 CFR 86.1869–12(c).
[3] See 40 CFR 86.1869–12(d).

using the 5-cycle methodology. Manufacturers may also use this option for model years prior to 2014 to demonstrate off-cycle CO_2 reductions for technologies that are on the predetermined list, or to demonstrate reductions that exceed those available via use of the predetermined list.

Under the regulations, a manufacturer seeking to demonstrate off-cycle credits with an alternative methodology (*i.e.,* under the third pathway described above) must describe a methodology that meets the following criteria:

- Use modeling, on-road testing, on-road data collection, or other approved analytical or engineering methods;
- Be robust, verifiable, and capable of demonstrating the real-world emissions benefit with strong statistical significance;
- Result in a demonstration of baseline and controlled emissions over a wide range of driving conditions and number of vehicles such that issues of data uncertainty are minimized;
- Result in data on a model type basis unless the manufacturer demonstrates that another basis is appropriate and adequate.

Further, the regulations specify the following requirements regarding an application for off-cycle CO_2 credits:

- A manufacturer requesting off-cycle credits must develop a methodology for demonstrating and determining the benefit of the off-cycle technology, and carry out any necessary testing and analysis required to support that methodology.
- A manufacturer requesting off-cycle credits must conduct testing and/or prepare engineering analyses that demonstrate the in-use durability of the technology for the full useful life of the vehicle.
- The application must contain a detailed description of the off-cycle technology and how it functions to reduce CO_2 emissions under conditions not represented on the compliance tests.
- The application must contain a list of the vehicle model(s) which will be equipped with the technology.
- The application must contain a detailed description of the test vehicles selected and an engineering analysis that supports the selection of those vehicles for testing.
- The application must contain all testing and/or simulation data required under the regulations, plus any other data the manufacturer has considered in the analysis.

Finally, the alternative methodology must be approved by EPA prior to the manufacturer using it to generate credits. As part of the review process defined by regulation, the alternative methodology submitted to EPA for consideration must be made available for public comment.[4] EPA will consider public comments as part of its final decision to approve or deny the request for off-cycle credits.

II. Off-Cycle Credit Applications

A. Fiat Chrysler Automobiles

Using the alternative methodology approach discussed above, Fiat Chrysler Automobiles (FCA) is applying for credits for model years prior to 2014, and thus prior to when the list of default credits becomes available. FCA has applied for off-cycle credits using the alternative demonstration methodology pathway for the following technologies: High efficiency exterior lighting, solar reflective glass/glazing, solar reflective paint, and active seat ventilation. The application covers 2009–2013 model year vehicles. All of these technologies are described in the predetermined list of credits available in the 2014 and later model years. The methodologies described by FCA are generally consistent with those used by EPA to establish the predetermined list of credits in the regulations, and would result in the same credit values as described in the regulations. The magnitude of these credits is determined by specification or calculations in the regulations based on vehicle-specific measurements (*e.g.,* the area of glass or the lighting locations using the specified technologies), but would be no higher than the following established regulatory caps:

Technology	Off-Cycle Credit—Cars (grams/mile)	Off-Cycle Credit—Trucks (grams/mile)
High efficiency lighting	1.0	1.0
Solar reflective glass/glazing	2.9	3.9
Solar reflective paint	0.4	0.5
Active seat ventilation	1.0	1.3

B. Ford Motor Company

Using the alternative methodology approach discussed above, Ford Motor Company (Ford) is applying for credits for model years prior to 2014, and thus prior to when the list of default credits becomes available. Ford has applied for off-cycle credits using the alternative demonstration methodology pathway for the following technologies: High efficiency exterior lighting, solar reflective glass/glazing, solar reflective paint, active seat ventilation, active aerodynamics, active transmission warm-up, active engine warm-up, and engine idle start-stop. All of these technologies are described in the predetermined list of credits available in the 2014 and later model years. The application covers 2012 and 2013 model year vehicles. The methodologies described by Ford are generally equivalent to those used by EPA to establish the predetermined list of credits in the regulations, and would result in the same credit values as described in the regulations. The magnitude of these credits is determined by specification or calculations in the regulations based on vehicle-specific measurements (*e.g.,* the area of glass or the lighting locations using the specified technologies), but would be no higher than the following established regulatory caps:

Technology	Off-cycle credit—cars (grams/mile)	Off-cycle credit—trucks (grams/mile)
High efficiency lighting	1.0	1.0
Solar reflective glass/glazing	2.9	3.9
Solar reflective paint	0.4	0.5

[4] See 40 CFR 86.1869–12(d)(2).

Technology	Off-cycle credit—cars (grams/mile)	Off-cycle credit—trucks (grams/mile)
Active seat ventilation	1.0	1.3
Active aerodynamics	Based on measured reduction in the coefficient of drag	
Active transmission warm-up	1.5	3.2
Active engine warm-up	1.5	3.2
Engine idle start-stop	2.5	4.4

C. General Motors Corporation

Using the alternative methodology approach discussed above, GM is applying for credits for model years 2013 through 2015. These credits are for a component of the air conditioning system that results in air conditioning efficiency credits beyond those provided in the regulations. GM has applied for off-cycle credits for the Denso SAS air conditioner compressor with variable crankcase suction valve technology. GM is requesting an off-cycle GHG credit of 1.1 grams CO_2 per mile for this technology. EPA currently provides Mobile Air Conditioner (MAC) GHG credits for reduced reheat using an externally-controlled variable displacement compressor (EVDC), which provides significant efficiency improvements compared to the baseline fixed displacement compressors that were the norm at the time EPA created the GHG program. Under the 2012–2016 light-duty GHG program, the credit for using an EVDC is 1.7 grams of CO_2 per mile. GM has a new EVDC design from Denso that further improves the efficiency of the MAC compressor through the addition of a variable crankcase suction valve (variable CS valve). The Denso SAS compressor improves the internal valve system within the compressor to reduce the internal refrigerant flow necessary throughout the range of displacements that the compressor may use during its operating cycle. The variable CS valve can provide a larger mass flow under maximum capacity and compressor start-up conditions, when high flow is ideal, then reduce to smaller openings with reduced mass flow in mid or low capacity conditions. The refrigerant exiting the crankcase is optimized across the range of operating conditions, creating benefits for the energy consumption of the MAC system.

The ''5-cycle'' methodology would not adequately measure the real world GHG reduction benefits of either the EVDC or the variable CS valve. Only one of the five tests is conducted with the air conditioner on and that test cycle represents worse case conditions (*e.g.,* high temperature, solar load, and humidity) and would not represent the real world benefits of the technology. Therefore, GM has chosen to determine the appropriate off-cycle credits through use of an alternative methodology.

GM worked with Denso to perform bench testing of EDVC with and without the variable CS valve and quantified the difference. Based on this analysis, GM determined an off-cycle credit of 1.1 grams of CO_2 per mile were appropriate. GM substantiated these results by also performing vehicle tests using the AC17 test procedure.

III. EPA Decision Process

EPA has reviewed the applications for completeness and is now making the applications available for public review and comment as required by the regulations. The off-cycle credit applications submitted by FCA, Ford, and GM (with confidential business information redacted) have been placed in the public docket (see **ADDRESSES** section above) and on EPA's Web site at *http://www.epa.gov/otaq/regs/ld-hwy/greenhouse/ld-ghg.htm.* EPA is providing a 30-day comment period on the applications for off-cycle credits described in this notice, as specified by the regulations. The manufacturers may submit a written rebuttal of comments for EPA's consideration, or may revise an application in response to comments. After reviewing any public comments and any rebuttal of comments submitted by manufacturers, EPA will make a final decision regarding the credit requests. EPA will make its decision available to the public by placing a decision document (or multiple decision documents) in the docket and on EPA's Web site at *http://www.epa.gov/otaq/regs/ld-hwy/greenhouse/ld-ghg.htm.* While the broad methodologies used by these manufacturers could potentially be used for other vehicles and by other manufacturers, the vehicle specific data needed to demonstrate the off-cycle emissions reductions would likely be different. In such cases, a new application would be required, including an opportunity for public comment.

Dated: May 27, 2015.

Byron Bunker,

Director, Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2015–13503 Filed 6–2–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0168]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Disclosure Regarding Additional Risks in Direct-to-Consumer Prescription Drug Television Advertisements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled, ''Disclosure Regarding Additional Risks in Direct-to-Consumer Prescription Drug Television Advertisements'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On January 15, 2015, the Agency submitted a proposed collection of information entitled, ''Disclosure Regarding Additional Risks in Direct-to-Consumer Prescription Drug Television Advertisements'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control

number. OMB has now approved the information collection and has assigned OMB control number 0910–0785. The approval expires on May 31, 2018. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: May 29, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–13473 Filed 6–2–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0313]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Industry, Researchers, Patient Groups, and FDA Staff on Meetings With the Office of Orphan Products Development

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled, ''Guidance for Industry, Researchers, Patient Groups, and FDA Staff on Meetings with the Office of Orphan Products Development'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On March 4, 2015, the Agency submitted a proposed collection of information entitled, ''Guidance for Industry, Researchers, Patient Groups, and FDA Staff on Meetings with the Office of Orphan Products Development'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0787. The approval expires on May 31, 2018. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: May 29, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–13472 Filed 6–2–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0882]

Generic Drug User Fees; Stakeholder Meetings on Generic Drug User Fee Amendments of 2012 Reauthorization; Request for Notification of Stakeholder Intention To Participate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for notification of participation.

SUMMARY: The Food and Drug Administration (FDA) is issuing this notice to request that public stakeholders, including patient and consumer advocacy groups, health care professionals, and scientific and academic experts, notify FDA of their intent to participate in periodic consultation meetings on the reauthorization of the Generic Drug User Fee Amendments of 2012 (GDUFA). The statutory authority for GDUFA expires at the end of September 2017. At that time, new legislation will be required for FDA to continue collecting user fees for the generic drug program. The Federal Food, Drug, and Cosmetic Act (the FD&C Act) requires that FDA consult with a range of stakeholders in developing recommendations for the next GDUFA program. The FD&C Act also requires that FDA hold continued discussions with patient and consumer advocacy groups at least monthly during FDA's negotiations with the regulated industry. The purpose of this request for notification is to ensure continuity and progress in these monthly discussions by establishing consistent stakeholder representation.

DATES: Submit notification of intention to participate by August 14, 2015.

ADDRESSES: Submit notification of intention to participate in monthly stakeholder meetings by email to *GenericDrugPolicy@fda.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Connie Wisner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1718, Silver Spring, MD 20993–0002, 240–402–7946, *Connie.Wisner@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA is requesting that public stakeholders, including patient and consumer advocacy groups, health care professionals, and scientific and academic experts, notify the Agency of their intent to participate in periodic consultation meetings on the reauthorization of GDUFA. GDUFA authorizes FDA to collect fees from drug companies that submit marketing applications for certain generic human drug applications, certain drug master files, and certain facilities. GDUFA requires that generic drug manufacturers pay user fees to finance critical and measurable generic drug program enhancements. The statutory authority for GDUFA expires at the end of September 2017. Without new legislation, FDA will no longer be able to collect user fees for future fiscal years to fund the human generic drug review process. Section 744C(d) (21 U.S.C. 379j–43(d)) of the FD&C Act requires that FDA consult with a range of stakeholders in developing recommendations for the next GDUFA program, including representatives from patient and consumer groups, health care professionals, and scientific and academic experts. FDA will initiate this process on June 15, 2015, by holding a public meeting at which stakeholders and other members of the public will be given an opportunity to present their views on reauthorization (80 FR 22204). The FD&C Act further requires that FDA continue meeting with these stakeholders at least once every month during negotiations with the regulated industry to continue discussions of stakeholder views on the reauthorization.

FDA is issuing this **Federal Register** notice to request that stakeholder representatives from patient and consumer groups, health care professional associations, as well as scientific and academic experts notify FDA of their intent to participate in periodic consultation meetings on GDUFA reauthorization. FDA believes that consistent stakeholder representation at these meetings will be important to ensuring progress in these discussions. If you wish to participate in this part of the reauthorization process, please designate one or more representatives from your organization who will commit to attending these meetings and preparing for the discussions as needed. Stakeholders who identify themselves through this

notice will be included in all stakeholder discussions while FDA negotiates with the regulated industry. Stakeholders who decide to participate in these monthly meetings at a later time may still participate in remaining monthly meetings by notifying FDA (see **ADDRESSES**). These stakeholder discussions will satisfy the requirement in section 744C(d)(3) of the FD&C Act.

II. Notification of Intent To Participate in Periodic Consultation Meetings

If you intend to participate in continued periodic stakeholder consultation meetings regarding GDUFA reauthorization, please provide notification by email to *GenericDrugPolicy@fda.hhs.gov* by August 14, 2015. Your email should contain complete contact information, including name, title, affiliation, address, email address, phone number, and notice of any special accommodations required because of disability. Stakeholders will receive confirmation and additional information about the first meeting once FDA receives their notification.

Dated: May 29, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–13465 Filed 6–2–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0194]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Biosimilars User Fee Cover Sheet; Form FDA 3792

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 6, 2015.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0718. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Biosimilars User Fee Cover Sheet; Form FDA 3792

OMB Control Number 0910–0718—Extension

The Patient Protection and Affordable Care Act (Pub. L. 111–148) contains a subtitle called the Biologics Price Competition and Innovation Act of 2009 (Title VII Subtitle A) (BPCI Act) that amends the Public Health Service Act (42 U.S.C. 262) (PHS Act) and other statutes to create an abbreviated approval pathway for biological products shown to be biosimilar to or interchangeable with an FDA-licensed reference biological product. Section 351(k) of the PHS Act, added by the BPCI Act, allows a company to submit an application for licensure of a biosimilar or interchangeable biological product. The BPCI Act also amends section 735 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379g) to include 351(k) applications in the definition of ''human drug application'' for the purposes of the prescription drug user fee provisions. The BPCI Act directs FDA to develop recommendations for a biosimilar biological product user fee program for fiscal years 2013 through 2017. FDA's recommendations for a biosimilar biological product user fee program were submitted to Congress on January 13, 2012.

FDA's biosimilar biological product user fee program requires FDA to assess and collect user fees for certain meetings concerning biosimilar biological product development (BPD meetings), investigational new drug applications (INDs) intended to support a biosimilar biological product application, and biosimilar biological product applications and supplements. Form FDA 3792, the Biosimilars User Fee Cover Sheet, requests the minimum necessary information to determine the amount of the fee required, and to account for and track user fees. The form provides a cross-reference of the fees submitted for a submission with the actual submission by using a unique number tracking system. The information collected is used by FDA's Center for Drug Evaluation and Research and Center for Biologics Evaluation and Research to initiate the administrative screening of biosimilar biological product INDs, applications, and supplements, and to account for and track user fees associated with BPD meetings.

In the **Federal Register** of January 27, 2015 (80 FR 4272), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

Respondents to this collection of information are manufacturers of biosimilar biological product candidates. Based on the number of Form FDA 3792s we have received, we estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA form No.	No. of respondents	No. of responses per respondent	Total annual responses	Average burden per response	Total hours
Biosimilars User Fee Cover Sheet; Form FDA 3792	20	1	20	0.50 (30 minutes)	10

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

Dated: May 29, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–13471 Filed 6–2–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1459]

Memorandum of Understanding Addressing Certain Distributions of Compounded Human Drug Products Between the States and the Food and Drug Administration; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or Agency) is extending the comment period in the notice of availability that appeared in the **Federal Register** of February 19, 2015. In that notice of availability, FDA requested comments on a draft standard memorandum of understanding (MOU) entitled ''Memorandum of Understanding Addressing Certain Distributions of Compounded Human Drug Products Between the State of [insert State] and the U.S. Food and Drug Administration.'' The draft standard MOU describes the responsibilities of any State that chooses to sign the MOU in investigating and responding to complaints related to compounded human drug products distributed outside the State and in addressing the interstate distribution of inordinate amounts of compounded human drug products. The Agency is taking this action to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period in the notice of availability published on February 19, 2015 (80 FR 8874) which includes comment on information collection issues under the Paperwork Reduction Act of 1995 (the PRA). Submit either electronic or written comments on the draft standard MOU or on information collection issues under the PRA by July 20, 2015.

ADDRESSES: Submit written requests for single copies of the MOU to Edisa Gozun, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, suite 5100, Silver Spring, MD 20993–0002. Send one self-addressed label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft standard MOU.

Submit electronic comments on the new draft standard MOU or on the collection of information to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Edisa Gozun, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, suite 5100, Silver Spring, MD 20993–0002, 301–796–3110.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 19, 2015 (80 FR 8874), FDA published a notice of availability of a draft standard MOU entitled ''Memorandum of Understanding Addressing Certain Distributions of Compounded Human Drug Products Between the State of [insert State] and the U.S. Food and Drug Administration'' with a 120-day comment period to request comments on the draft standard MOU. The draft standard MOU describes the responsibilities of any State that chooses to sign the MOU in: (1) Investigating and responding to complaints related to compounded human drug products distributed outside the State and (2) addressing the interstate distribution of inordinate amounts of compounded human drug products. Comments were also requested on information collection issues under the PRA. The notice of availability also announced the withdrawal, effective February 19, 2015, of an earlier draft standard MOU entitled ''Memorandum of Understanding on Interstate Distribution of Compounded Drug Products'' that published on January 21, 1999 (64 FR 3301). The January 1999 draft standard MOU is superseded by the February 2015 draft standard MOU.

The Agency is extending the comment period both for the draft standard MOU and for information collection issues under the PRA for 30 days, until July 20, 2015. The Agency believes that a 30-day extension allows adequate time for interested persons to submit comments without significantly delaying resolution of these important issues.

II. Request for Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

III. Electronic Access

Persons with access to the Internet may obtain the draft standard MOU at *http://www.regulations.gov.*

Dated: May 29, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–13466 Filed 6–2–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Graduate Psychology Education Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Class Deviation from Competition Requirements for Graduate Psychology Education Program from Open to Limited Competition.

SUMMARY: The Health Resources and Services Administration (HRSA) is issuing a limited competition for awards among the 40 current Graduate Psychology Education (GPE) Program grantees whose project periods end June 30, 2016. No more than $1,000,000 will be made available in federal fiscal year (FY) 2015 in the form of 1-year project period grants. These awards are specifically for interprofessional training of doctoral psychology graduate students and interns to address the psychological needs of military personnel, veterans, and their families in civilian and community-based settings, including those in rural areas. An estimated five grants will be awarded with a ceiling amount of $190,000 per grant for 1 year. These funds will be used to establish, expand, and/or enhance activities that were funded under the FY 2013 GPE Program.

Program funds are to be used for stipend support for interns and doctoral students, faculty development, curriculum and instructional design, program content enhancement, program infrastructure development, and the

supervision and training support of interns.

SUPPLEMENTARY INFORMATION:

Eligible Grant Recipients:

Grant number	Organization name	City	State	FY 2014 funds awarded
D40HP26855	ADLER SCHOOL OF PROFESSIONAL PSYCHOLOGY, INC.	Chicago	IL	$160,470.00
D40HP02597	BOARD OF REGENTS/UNIV OF NEBRASKA MED CTR	Omaha	NE	190,000.00
D40HP26856	CARSON CENTER FOR HUMAN SERVICES INC	Westfield	MA	179,555.00
D40HP26374	CHEROKEE HEALTH SYSTEMS	Knoxville	TN	123,536.00
D40HP26857	CHILDREN'S HEALTHCARE OF CALIFORNIA	Orange	CA	155,880.00
D40HP25714	CHILDRENS HOSPITAL OF PHILADELPHIA	Philadelphia	PA	152,421.00
D40HP26858	DENVER HEALTH AND HOSPITALS AUTHORITY	Denver	CO	136,747.00
D40HP26859	EASTERN VIRGINIA MEDICAL SCHOOL	Norfolk	VA	189,166.00
D40HP26910	FAIRLEIGH DICKINSON UNIVERSITY	Teaneck	NJ	169,605.00
D40HP26911	FORDHAM UNIVERSITY	Bronx	NY	134,111.00
D40HP26860	GEORGIA HEALTH SCIENCES UNIVERSITY RESEARCH INSTITUTE, INC.	Augusta	GA	147,726.00
D40HP19643	GEORGIA STATE UNIVERSITY RESEARCH FOUNDATION	Atlanta	GA	186,287.00
D40HP25715	HENRY FORD HEALTH SYSTEM	Detroit	MI	171,524.00
D40HP26861	I OLA LAHUI, INC.	Honolulu	HI	184,312.00
D40HP25716	INDIAN HEALTH CARE RESOURCE CENTER OF TULSA INC	Tulsa	OK	146,717.00
D40HP26862	MARSHALL UNIVERSITY RESEARCH CORPORATION	Huntington	WV	189,346.00
D40HP25774	MEDICAL UNIVERSITY OF SOUTH CAROLINA	Charleston	SC	142,568.00
D40HP25718	NEMOURS FOUNDATION, THE	Wilmington	DE	128,386.00
D40HP26863	NEW MEXICO STATE UNIVERSITY	Las Cruces	NM	190,000.00
D40HP26864	NEW YORK UNIVERSITY (INC)	New York	NY	148,799.00
D40HP25719	NORTHWESTERN UNIVERSITY	Evanston	IL	184,188.00
D40HP26865	OREGON HEALTH & SCIENCE UNIVERSITY	Portland	OR	173,199.00
D40HP26866	REGENTS OF THE UNIVERSITY OF COLORADO, THE	Colorado Springs	CO	161,425.00
D40HP26912	TEACHERS COLLEGE, COLUMBIA UNIVERSITY	New York	NY	171,037.00
D40HP28075	THE CHILDRENS HOSPITAL LOS ANGELES	Los Angeles	CA	162,845.00
D40HP26868	UNIVERSITY OF CALIFORNIA, DAVIS	Davis	CA	190,000.00
D40HP25720	UNIVERSITY OF MARYLAND	Baltimore	MD	189,206.00
D40HP26869	UNIVERSITY OF MISSOURI SYSTEM	Kansas City	MO	167,413.00
D40HP25721	UNIVERSITY OF NEVADA, RENO	Reno	NV	149,521.00
D40HP26870	UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL	Chapel Hill	NC	51,731.00
D40HP25722	UNIVERSITY OF NORTH CAROLINA AT GREENSBORO	Greensboro	NC	186,189.00
D40HP19636	UNIVERSITY OF NORTH DAKOTA	Grand Forks	ND	189,972.00
D40HP26871	UNIVERSITY OF OKLAHOMA	Oklahoma City	OK	166,967.00
D40HP02600	UNIVERSITY OF ROCHESTER MEDICAL CENTER	Rochester	NY	187,141.00
D40HP25723	UNIVERSITY OF TEXAS AT AUSTIN	Austin	TX	146,904.00
D40HP19642	UNIVERSITY OF WASHINGTON	Seattle	WA	153,005.00
D40HP26872	VILLAGE FOR FAMILIES & CHILDREN, THE	Hartford	CT	139,123.00
D40HP25724	VIRGINIA COMMONWEALTH UNIVERSITY	Richmond	VA	165,967.00
D40HP26873	WAYNE STATE UNIVERSITY (INC)	Detroit	MI	185,046.00
D40HP26874	WIDENER UNIVERSITY	Chester	PA	190,000.00

Amount of Competitive Awards: Ceiling up to $190,000 per grant.

Period of Supplemental Funding: Project Period July 1, 2015, to June 30, 2016.

CFDA Number: 93.191.

Authority: Title VII, Sections 750 and 755(b)(1)(J) of the Public Health Service (PHS) Act (42 U.S.C. 294 and 42 U.S.C. 294e(b)(1)(J)).

Justification: The FY 2015 Appropriations Bill included funds for the GPE Program specifically to address the psychological needs of military personnel, veterans, and their families in civilian and community-based settings, including those in rural areas. Current grants have existing structures and expertise in place that would require minimal start-up time for new grant implementation. For internship programs, there is only one opportunity to fill the slots as the Association of Postdoctoral Internship Centers' (APPIC) match for interns is in February. Internships begin in July/August, and if awards are made early enough, current grantees may be able to identify ''unmatched students.''

FOR FURTHER INFORMATION CONTACT: Cynthia Harne, Public Health Analyst, Division of Nursing and Public Health, Behavioral and Public Health Branch, Bureau of Health Workforce, HRSA, 5600 Fishers Lane, Room 9–89, Rockville, Maryland 20857, phone (301) 443–7661, fax (301) 443–0791, or email *charne@hrsa.gov.*

Dated: May 28, 2015.

James Macrae,

Acting Administrator.

[FR Doc. 2015–13461 Filed 6–2–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is

publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place NW., Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists, for each covered childhood vaccine, the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on April 1, 2015, through April 30, 2015. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading ''For Further Information Contact''), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: May 27, 2015.

James Macrae,

Acting Administrator.

List of Petitions Filed

1. Jorge Perez and Teresa Perez on behalf of J. P., Mount Pleasant, Wisconsin, Court of Federal Claims No: 15–0331V
2. Jennifer Crossing, Macungie, Pennsylvania, Court of Federal Claims No: 15–0337V
3. Holly Snyder, Quakertown, Pennsylvania, Court of Federal Claims No: 15–0338V
4. Adrian Chanderdat, Dallas, Texas, Court of Federal Claims No: 15–0341V
5. Katie Davis on behalf of Mason Gannuscio, Fontana, California, Court of Federal Claims No: 15–0344V
6. Paula Kwon, Concord, Massachusetts, Court of Federal Claims No: 15–0346V
7. Arika Browne, Anchorage, Alaska, Court of Federal Claims No: 15–0349V
8. Daniel Drach, Wheaton, Illinois, Court of Federal Claims No: 15–0350V
9. Wendy A. Adams, Charlotte, North Carolina, Court of Federal Claims No: 15–0352V
10. Rosa Hernandez, Washington, District of Columbia, Court of Federal Claims No: 15–0356V
11. Vera Ivanchuk and Andrey Ivanchuk on behalf of Y. I., Summerville, South Carolina, Court of Federal Claims No: 15–0357V
12. Carmen Ramirez on behalf of Luis Arroyo Ramirez, Rancho Cucamonga, California, Court of Federal Claims No: 15–0361V
13. Elias Maciel and Kelly Vilela Maciel on behalf of B. M., Vienna, Virginia, Court of Federal Claims No: 15–0362V
14. Bradley J. Richardson, Fort Worth, Texas, Court of Federal Claims No: 15–0366V
15. James Parker, Raymore, Missouri, Court of Federal Claims No: 15–0368V
16. Carmen Moreno Lozano, Ventura, California, Court of Federal Claims No: 15–0369V
17. Briana Grappo, Los Angeles, California, Court of Federal Claims No: 15–0372V
18. Jennifer Reid, Thomaston, Georgia, Court of Federal Claims No: 15–0375V
19. Teena Boykin, Tyler, Texas, Court of Federal Claims No: 15–0376V
20. Berna Mallett, Fremont, California, Court of Federal Claims No: 15–0377V
21. Majed Eilan and Shams Eilan on behalf of A. E., Allentown, Pennsylvania, Court of Federal Claims No: 15–0381V
22. Phetsamai Khampo, Seattle, Washington, Court of Federal Claims No: 15–0382V
23. Henry Roder, Santa Ana, California, Court of Federal Claims No: 15–0383V

24. David Kaanoi, Jr., Honolulu, Hawaii, Court of Federal Claims No: 15–0385V
25. Katya Sido, Arlington, Texas, Court of Federal Claims No: 15–0386V
26. Peter Wells, Arlington Heights, Illinois, Court of Federal Claims No: 15–0387V
27. Garth R. Jackson, Seattle, Washington, Court of Federal Claims No: 15–0391V
28. Lara Felker, Bellevue, Washington, Court of Federal Claims No: 15–0392V
29. Danielle Sutley, New Orleans, Louisiana, Court of Federal Claims No: 15–0393V
30. Robert Horner, Roswell, New Mexico, Court of Federal Claims No: 15–0395V
31. Yvonne Hocking, Tempe, Arizona, Court of Federal Claims No: 15–0396V
32. Troy Turner, Los Angeles, California, Court of Federal Claims No: 15–0397V
33. Frenchell Henson, Dallas, Texas, Court of Federal Claims No: 15–0398V
34. Tahlia Spector, M.D., Sylmar, California, Court of Federal Claims No: 15–0401V
35. Dvora Ghitza, Boston, Massachusetts, Court of Federal Claims No: 15–0404V
36. Naomi McMurtry, Bolingbrook, Illinois, Court of Federal Claims No: 15–0405V
37. Marissa Arevalo on behalf of R. M. R., Peoria, Illinois, Court of Federal Claims No: 15–0406V
38. Michael A. Mancesri, Yakima, Washington, Court of Federal Claims No: 15–0412V
39. Marissa Arevalo on behalf of R. M. R., Peoria, Illinois, Court of Federal Claims No: 15–0414V
40. Katelyn Roach, Phoenix, Arizona, Court of Federal Claims No: 15–0422V
41. David Lightbourne, Long Beach, California, Court of Federal Claims No: 15–0423V
42. Snezana Stankovic on behalf of David Stankovic, Bethesda, Maryland, Court of Federal Claims No: 15–0424V
43. Rose M. Porges, Greensboro, North Carolina, Court of Federal Claims No: 15–0427V
44. Jo Ann Dreas, St. Louis, Missouri, Court of Federal Claims No: 15–0428V
45. Sherry C. Johnson, Greensboro, North Carolina, Court of Federal Claims No: 15–0431V
46. Maria Esther Garcia, Delano, California, Court of Federal Claims No: 15–0432V
47. Chris Juday, Kokomo, Indiana, Court of Federal Claims No: 15–0433V

[FR Doc. 2015–13462 Filed 6–2–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Collaborating Efforts in Children's Health Research Review Committee.

Date: June 24, 2015.

Time: 8:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications

Place: Sheraton Imperial Hotel and Convention Center, 4700 Emperor Boulevard, Durham, NC 27703.

Contact Person: Linda K. Bass, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307, *bass@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Data Gathering and Assessment Review Committee.

Date: June 24–25, 2015.

Time: 1:30 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Imperial Hotel and Convention Center, 4700 Emperor Boulevard, Durham, NC 27703.

Contact Person: Alfonso R. Latoni, Ph.D., Chief, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919–541–7571, *alfonso.latoni@nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Environmental Evaluation and Support Review Committee.

Date: June 25–26, 2015.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Imperial Hotel and Convention Center, 4700 Emperor Boulevard, Durham, NC 27703.

Contact Person: Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, (919) 541–0670, *worth@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: May 27, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–13405 Filed 6–2–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel—Breast Cancer Consortium Review.

Date: June 25, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications

Place: DoubleTree by Hilton, 4810 Page Creek Lane, Durham, NC 27703.

Contact Person: Sally Eckert-Tilotta, Ph.D. Scientific Review Officer, Nat. Institute of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, Research Triangle Park, NC 27709 (919) 541–1446 *eckertt1@niehs.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: May 27, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–13404 Filed 6–2–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review: Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting. The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; BMITA Special Panel.

Date: June 12, 2015.

Time: 11:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ruth Grossman, DDS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, Bethesda, MD 20892, (301) 435–2409, *grossmanrs@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 29, 2015.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–13490 Filed 6–2–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review: Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings. The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Clinical and Integrative Cardiovascular Sciences Study Section.

Date: June 25–26, 2015.

Time: 7 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Yuanna Cheng, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301) 435–1195, *Chengy5@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Development, Functions and Immune-Mediated Diseases.

Date: June 25, 2015.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle NW., Washington, DC 20005.

Contact Person: Patrick K. Lai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892, 301–435–1052, *laip@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Development, Functions and Immune-Mediated Diseases.

Date: June 26, 2015.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle NW., Washington, DC 20005.

Contact Person: Patrick K. Lai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892, 301–435–1052, *laip@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Psycho/Neuropathology, Life Span Development, and STEM Education.

Date: June 29–30, 2015.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: John H. Newman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3222, MSC 7808, Bethesda, MD 20892, (301) 435–0628, *newmanjh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Musculoskeletal Sciences.

Date: July 1, 2015.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Aftab A. Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–237–9931, *ansaria@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Developmental Risk Prevention, Aging and Social Behavior.

Date: July 2, 2015.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Weijia Ni, Ph.D., Chief/Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3100, MSC 7808, Bethesda, MD 20892, (301) 594–3292, *niw@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 29, 2015.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–13491 Filed 6–2–15; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel—Research Workforce R25 Review.

Date: June 9, 2015.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Ernest W. Lyons, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056, *lyonse@ninds.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel—R25 NIH Summer Research Experience Programs Review.

Date: June 11, 2015.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Ernest W. Lyons, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056, *lyonse@ninds.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel—Blueprint Neurotherapeutics Network (BPN).

Date: June 17, 2015.

Time: 9:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: Hotel Palomar, 2121 P Street NW., Washington, DC 20037.

Contact Person: Joel A. Saydoff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Room 3205, Bethesda, MD 20892, 301–435–9223, *joel.saydoff@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group—Neurological Sciences and Disorders C.

Date: June 23–24, 2015.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Grand Riverfront Hotel, 71 E. Wacker Drive, Chicago, IL 60601.

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–0660, *benzingw@mail.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: May 27, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–13403 Filed 6–2–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health: Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; BRAIN Initiative: Development and Validation of Novel Tools to Analyze Cell-Specific and Circuit-Specific Processes in the Brain.

Date: June 21–22, 2015.

Time: 6 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 700 F Street NW., Washington, DC 20001.

Contact Person: Megan Kinnane, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9609, Rockville, MD 20852–9609, 301–402–6807, *libbeym@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; MH Services Conflict.

Date: June 23, 2015.

Time: 9 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Karen Gavin-Evans, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6153, MSC 9606, Bethesda, MD 20892, 301–451–2356, *gavinevanskm@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; National Cooperative Reprogrammed Cell Research Groups (NCRCRG) to Study Mental Illness (U19).

Date: June 24, 2015.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Vinod Charles, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: May 28, 2015.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–13493 Filed 6–2–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health: Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Brain Somatic Mosaicism (U01).

Date: June 26, 2015.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–9734, *millerda@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; BRAIN Initiative: Planning for Next Generation Human Brain Imagining (R24).

Date: June 29, 2015.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 700 F Street NW., Washington, DC 20001.

Contact Person: Vinod Charles, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Confirmatory Efficacy Clinical Trials of Non-Pharmacological Interventions for Mental Disorders.

Date: June 30, 2015.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marcy Ellen Burstein, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6143, MSC 9606, Bethesda, MD 20892–9606,≤301–443–9699, *bursteinme@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: May 29, 2015.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–13492 Filed 6–2–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases: Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group; Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: June 25–26, 2015.

Time: 7:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Rockville & Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Helen Lin, Ph.D., Scientific Review Officer, National Institutes of Health/NIAMS, 6701 Democracy Blvd., Suite 800, Plaza One, Bethesda, MD 20817, 301–594–4952 *linh1@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 28, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–13494 Filed 6–2–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Evaluation of the Science Education Partnership Award (SEPA) Program, OD

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function 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) 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.

To Submit Comments and for Further Information: To submit comments in writing, request more information on the proposed project, or to obtain a copy of the data collection plans and instruments, contact Tony Beck, Ph.D., Office of Science Education/SEPA, Office of Research Infrastructure Programs, Division of Program Coordination, Planning, and Strategic Initiatives, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Room 206, Bethesda, MD 20892 or call non-toll-free number 301–435–0805 or email your request, including your address to: *beckl@mail.nih.gov.*

DATES: *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: Evaluation of the Science Education Partnership Award (SEPA) Program, 0925–NEW, the Office of Science Education/SEPA, within the Office of the Research Infrastructure

Programs (ORIP), an office of the Division of Program Coordination, Planning, and Strategic Initiatives (DPCPSI), within the Office of the Director (OD) at the National Institutes of Health (NIH).

Need and Use of Information Collection: The Science Education Partnership Award Program is a program in the Office of the Research Infrastructure Programs within the Division of Program Coordination, Planning, and Strategic Initiatives. The program provides 5-year grants for PK–12 educational projects, science centers, and museum exhibits to increase students' interest in pursuing science-related careers, deliver topical and interactive information about NIH-funded medical research, and cultivate an understanding about healthy living habits among the general public. SEPA is undertaking an evaluation to examine the extent to which SEPA grants awarded from 2004 through 2014 have met goals related to project structure, partnership formation, and evaluation quality. The evaluation will utilize archival grant project data (*e.g.,* SEPA solicitations, project proposals, annual and final reports, and summative evaluations). The evaluation will also collect new data to (1) determine the extent to which the SEPA portfolio is aligned with the program's overall goals; (2) assess how the SEPA Program has contributed to the creation and/or enrichment of beneficial productive partnerships; and (3) determine the extent to which the SEPA Program is generating a rigorous evidence-based system that provides high-quality evaluations to inform the knowledge base. The goal of this process evaluation is to provide SEPA, program staff, the NIH, and other interested stakeholders with information about how the program is operating, the extent to which projects address the program's multiple goals, and the extent to which project-level evaluations are informing and enhancing the quality of work in the field. OMB approval is requested for one year. There are no costs to respondents other than their time. The total estimated annualized burden hours are 523.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Web survey	PI	156	1	30/60	78
Telephone script to schedule interview		34	1	5/60	3
Telephone interview		34	1	60/60	34
Telephone script to schedule site visit		34	1	5/60	3
Site visit interview		6	1	90/60	9
Web survey	Project Partner	312	1	30/60	156
Telephone script to schedule interview		74	1	5/60	7
Telephone interview		74	1	60/60	74
Telephone script to schedule site visit		74	1	5/60	7
Site visit interview		6	1	90/60	9
Telephone script to schedule site visit	Other Key Staff	90	1	5/60	8
Site visit interview		90	1	90/60	135

Dated: May 27, 2015.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2015–13458 Filed 6–2–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review: Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings. The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR13–195 Preclinical Research on Model Organisms to Predict Treatment Outcomes for Disorders Associated with Intellectual and Developmental Disabilities.

Date: June 23, 2015.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402–4411, *tianbi@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular Targets for Cancer Intervention.

Date: June 28–29, 2015.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Careen K Tang-Toth, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–3504, *tothct@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Genes, Genomes, and Genetics.

Date: June 29–30, 2015.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 2620 Hotel, 2620 Jones Street, San Francisco, CA 94133.

Contact Person: Marie-Jose Belanger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7804, Bethesda, MD 20892, *belangerm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Basic and Integrative Bioengineering.

Date: June 29, 2015.

Time: 8 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Arlington Capital View, 2850 South Potomac Avenue, Arlington, VA 22202.

Contact Person: Feng Tao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 6184, MSC 7849, Bethesda, MD 20892, *feng.tao@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Physiology and Pathobiology of Musculoskeletal, Oral and Skin Systems.

Date: June 30, 2015.

Time: 10 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Anshumali Chaudhari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 28, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–13495 Filed 6–2–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases: Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group; Arthritis and Musculoskeletal and Skin Diseases Clinical Trials Review Committee.

Date: June 23, 2015.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Charles H Washabaugh, Ph.D., Scientific Review Officer, Scientific Review Branch, NIAMS/NIH, 6701 Democracy Boulevard, Suite 816, Bethesda, MD 20892, 301–594–4952 *washabac@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 28, 2015.

Caroyln Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–13496 Filed 6–2–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0029]

Agency Information Collection Activities: Application for Foreign-Trade Zone Admission and/or Status Designation, and Application for Foreign-Trade Zone Activity Permit

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application for Foreign-Trade Zone Admission and/or Status Designation (CBP Forms 214, 214A, 214B, and 214C) and Application for Foreign-Trade Zone Activity Permit (CBP Form 216). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before July 6, 2015 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (80 FR 16417) on March 27, 2015, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the 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 estimates 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, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Application for Foreign-Trade Zone Admission and/or Status Designation, and Application for Foreign-Trade Zone Activity Permit.

OMB Number: 1651–0029.

Form Numbers: 214, 214A, 214B, 214C, and 216.

Abstract: Foreign trade zones (FTZs) are geographical enclaves located within the geographical limits of the United States but for tariff purposes are considered to be outside the United States. Imported merchandise may be brought into FTZs for storage, manipulation, manufacture or other processing and subsequent removal for exportation, consumption in the United

States, or destruction. A company bringing goods into an FTZ has a choice of zone status (privileged/non-privileged foreign, domestic, or zone-restricted), which affects the way such goods are treated by Customs and Border Protection (CBP) and treated for tariff purposes upon entry into the customs territory of the U.S.

CBP Forms 214, 214A, 214B, and 214C, which make up the *Application for Foreign-Trade Zone Admission and/or Status Designation,* are used by companies that bring merchandise into an FTZ to register the admission of such merchandise into FTZs and to apply for the appropriate zone status. CBP Form 216, *Foreign-Trade Zone Activity Permit,* is used by companies to request approval to manipulate, manufacture, exhibit, or destroy merchandise in an FTZ.

These FTZ forms are authorized by 19 U.S.C. 81 and provided for by 19 CFR 146.22, 146.32, 146.39, 146.40, 146.41, 146.44, 146.52, 146.53, and 146.66. These forms are accessible at: *http://www.cbp.gov/newsroom/publications/forms.*

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to CBP Forms 214, 214A, 214B, 214C, and 216.

Type of Review: Extension (without change).

Affected Public: Businesses.

Form 214, Application for Foreign-Trade Zone Admission and/or Status Designation

Estimated Number of Respondents: 6,749.

Estimated Number of Annual Responses per Respondent: 25.

Estimated Total Annual Responses: 168,725.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 42,181.

Form 216, Application for Foreign-Trade Zone Activity Permit

Estimated Number of Respondents: 2,500.

Estimated Number of Annual Responses per Respondent: 10.

Estimated Total Annual Responses: 25,000.

Estimated Time Per Response: 10 minutes.

Estimated Total Annual Burden Hours: 4,167.

Dated: May 27, 2015.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2015–13487 Filed 6–2–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[156A2100DD/AAKC001030/A0A501010.999900 253G]

Land Acquisitions; Soboba Band of Luiseno Indians of California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final agency determination.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire approximately 410.23 +/− acres of land in trust for the Soboba Band of Luiseno Indians, California, for gaming and other purposes on May 19, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Bureau of Indian Affairs, MS–3657 MIB, 1849 C Street NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1, and is published to comply with the requirements of 25 CFR 151.12(c)(2)(ii) that notice of the decision to acquire land in trust be promptly provided in the **Federal Register**.

On May 19, 2015, the Assistant Secretary—Indian Affairs issued a decision to accept approximately 410.23+/− acres of land into trust for the Soboba Band of Luiseno Indians, California (Tribe), under the authority of the Indian Reorganization Act of 1934, 25 U.S.C. 465. The Assistant Secretary—Indian Affairs determined that the Tribe's request also meets the requirements of the Indian Gaming Regulatory Act's ''contiguous'' exemption, 25 U.S.C. 2719(a)(1), to the general prohibition contained in 25 U.S.C. 2719(a) on gaming on lands acquired in trust after October 17, 1988.

The 410.23 acres are located in San Jacinto, Riverside County, California, and are described as follows:

Legal Description

Parcel 1: (APN's: 433–120–023–6; 433–140–030–4 and 433–140–001–8)

Those portions of Parcels 1 and 2 of Parcel Map 19805 in the County of Riverside, State of California, as shown by map on file in book 123 pages 22 through 25, inclusive of Parcel maps, records of Riverside County, California, lying easterly and southerly of a line described as follows:

Beginning at the southwesterly corner of said Parcel 1;
Thence north 34°06′54″ west, 625.58 feet;
Thence north 9°42′03″ west, 501.82 feet;
Thence north 14°28′46″ west, 437.72 feet;
Thence north 26°20′47″ west, 510.16 feet;
Thence south 86°35′25″ east, 371.92 feet;
Thence north 83°12′23″ east, 792.55 feet to the northeasterly corner of said Parcel 1.

Parcel 2: (APN's: 433–140–024–9; 433–140–026–1 and 433–140–020–5)

That portion of lots 1 and 3 of the Jose A. Estudillo Subdivision of Tract VII of the Rancho San Jacinto Viejo, as shown by map on file in book 6 page 304 of maps, records of San Diego County, California, described as follows:

Beginning at a point on the southerly line of said lot 1, designated as S.J. 35 on above mentioned map, said point being also the northwest corner of the Indian reservation, in the northwest quarter of section 31, township 4 south, range 1 east, San Bernardino base and meridian;
Thence north 43°00′west, 20 chains;
Thence north 38°30′west, 7.50 chains;
Thence north 31°30′west, 11 chains;
Thence north 11°50′west, 17.11 chains;
Thence north 11°50′west, 4.46 chains, more or less, to a point on the San Bernardino base and meridian line, 151 feet north of the quarter section between sections 25 and 30 in township 4 south, range 1 east, San Bernardino base and meridian;
Thence north 13°45′west to the northwesterly line of said lot 3, said line also being the southeasterly line of an avenue, 80 feet wide, as shown on said map;
Thence south 42° west, on said southeasterly line of said avenue, to the southwesterly line of said Tract VII;
Thence south 45° east, 56.40 chains, on said southwesterly line, to the most southerly corner of said lot 3;
Thence north 41°50′east on the southeasterly line of said lots 3 and 1,

41.65 chains, to the point of beginning;

Excepting therefrom that portion in the highway known as Soboba Springs Road, as described in deed recorded in book 263 page 144 and in book 276 page 140, respectively, both of deeds, records of Riverside County, California;

Also excepting therefrom Parcel 4020–122a, as shown on record of survey, on file in book 33 pages 48 through 62, inclusive of records of survey, records of Riverside County, California;

Also excepting therefrom Parcel 4020–122c, as shown on record of survey, on file in book 46 page 15 of records of survey, records of Riverside County, California;

Also excepting therefrom that portion lying northwesterly of the southeasterly line of Soboba Road (now shown as Main Street), as shown on record of survey, on file in book 33 page 57 of records of survey, records of Riverside County, California;

Also excepting therefrom that portion described as follows:

That portion of lot 3 of Jose A. Estudillo's Subdivision of Tract VII in Rancho San Jacinto Viejo, as shown by map on file in book 6 page 304 of maps, records of San Diego County, California, being more particularly described as follows:

Commencing at the center line intersection of Main Street and Soboba Road, as said intersection is shown by record of survey, on file in book 46 page 15 of records of survey, records of Riverside County, California;

Thence south 49°59′10″ west along said center line of Main Street, a distance of 1,149.16 feet to the true point of beginning;

Thence south 40°00′50″ east, a distance of 329.48 feet;

Thence north 51°54′9″ east, a distance of 65.00 feet;

Thence south 47°38′27″ east, a distance of 71.67 feet to the beginning of a non-tangent curve concave southerly and having a radius of 166.00 feet, a radial line to the beginning of said non-tangent curve bears north 47°38′27″ west;

Thence easterly along said curve through an angle of 60°07′37″, a distance of 174.20 feet;

Thence tangent to said curve south 77°30′50″ east, a distance of 540.15 feet to the beginning of a tangent curve concave southwesterly and having a radius of 416.00 feet;

Thence southeasterly along said curve through an angle of 38°29′43″, a distance of 279.50 feet to the beginning of a compound curve concave westerly and having a radius of 508.00 feet, a radial line to the beginning of said compound curve bears north 50°58′53″ east;

Thence southerly along said compound curve through an angle of 51°30′17″, a distance of 456.65 feet;

Thence tangent to said curve south 12°29′10″ west, a distance of 144.32 feet to the beginning of a tangent curve concave northwesterly and having a radius of 508.00 feet;

Thence southwesterly along said curve through an angle of 37°16′11″, a distance of 330.44 feet;

Thence tangent to said curve south 49°45′21″ west, a distance of 512.52 feet to the beginning of a tangent curve concave northerly and having a radius of 453.00 feet;

Thence southwesterly, westerly and northwesterly along said curve through an angle of 99°31′25″, a distance of 786.87 feet;

Thence tangent to said curve north 30°43′14″ west, a distance of 865.52 feet to the beginning of a tangent curve concave northeasterly and having a radius of 508.00 feet;

Thence northwesterly along said curve through an angle of 20°04′30″ a distance of 177.99 feet to the beginning of a compound curve easterly and having a radius of 131.00 feet, a radial line to the beginning of said compound curve bears south 79°21′16″ west;

Thence northerly along said compound curve through an angle of 29°08′43″, a distance of 66.64 feet; thence north 71°30′01″ west, a distance of 113.40 feet to an intersection with the southeasterly line of Parcel No. 4020–122c, as shown on the aforesaid record of survey (southeasterly line of that portion of Parcel No. 4020–122c which is adjacent to Main Street);

Thence north 46°16′14″ east along said southeasterly line a distance of 43.21 feet to an angle point on said southeasterly line;

Thence continuing along said southeasterly line north 49°59′10″ east, a distance of 370.16 feet;

Thence north 40°00′50″ west, a distance of 50.00 feet to an intersection with the aforesaid center line of Main Street;

Thence north 49°59′10″ east along said center line, a distance of 340.35 feet to the true point of beginning.

Parcel 3: (APN'S: 433–140–042–5; 433–140–044–7; 433–140–045–8; 433–140–046–9; 433–140–047–0; 433–140–048–1 and 433–140–049–2)

Lots 1 through 6 inclusive of Tract No. 21943, as shown by map on file in book 239 page(s) 90 through 94 inclusive, of maps, records of Riverside County, California.

Parcel 3a

That portion of that certain 80.00 foot wide avenue, vacated, lying between lots 3 and 4 of the Jose A. Estudillo Subdivision of Tract VII of the Rancho San Jacinto Viejo, as shown by map on file in book 6 page(s) 304 of maps, records of San Diego County, California, described as follows:

Beginning at the most westerly corner of Parcel 3 of Parcel Map No. 19805, as shown by Parcel map on file in book 123 pages 22 through 25 inclusive of parcel maps, records of Riverside County, California, said corner being also an angle point in the boundary line of said Parcel Map No. 19805, and a point on the southeasterly right of way line of said vacated avenue;

Thence north 41°52′18″ east along said boundary line and southeasterly right of way line, a distance of 750.94 feet to an angle point in said boundary line;

Thence north 19°48′26″ west along said boundary line, a distance of 45.44 feet to an intersection with the center line of said vacated avenue;

Thence south 41°52′18″ west along said center line, a distance of 750.25 feet;

Thence south 19°03′01″ east, a distance of 45.77 feet to the point of beginning;

Excepting therefrom that portion lying within Tract No. 21943, as shown by map on file in book 239 page(s) 90 through 94 inclusive of maps, records of Riverside County, California.

Parcel 3b

An easement inuring to the benefit of parcels 3 and 3a for the purpose of drainage, desilting facilities, slopes, pedestrian and golf cart circulation, vehicular access, and/or utilities, (including, without limitation, the construction, installation and maintenance of improvements for sewer, water, telephone, gas, electrical and any other utility services), as set forth in and limited by that certain easement agreement made as of September 23, 1983, between Daon Corporation, a Delaware Corporation and Diet Center Incorporated, an Idaho Corporation, recorded September 24, 1982 as Instrument No. 165704 of official records of Riverside County, California.

Parcel 4: (APN: 433–120–008–3)

That portion of lot 4 of the San Diego Jose A Estudillos Subdivision of Tract 7 of Rancho San Jacinto Viejo, as per the map thereof record in book 6, page(s) 304 of miscellaneous maps in the office of the county recorder of said county and state, consisting of seven and eighty-seven hundredths (7.87) acres, more or less, as more particularly described as follows:

Beginning at a point on the southeasterly line of said lot 4, at the most southerly corner of certain 100-acre parcel shown on the record of survey recorded in book 9, page(s) 31 of records of survey, in the office of the county recorder of said county and state; thence north 19°41′west, 1003.81 feet on the southwesterly line of said 100-acre parcel to the northwesterly line of said lot 4; thence southwesterly along the northwesterly line of said lot 4, 431.40 feet; thence south 21°09′50″ east, 990.44 feet to a point on the southeasterly line of said lot 4; thence northeasterly along the southeasterly line of said lot 4, 402.50 feet to the point of beginning;

Excepting therefrom, that portion granted to the Riverside County Flood Control and Water Conservation District by a deed recorded August 20, 1964 as Instrument No. 102297 of official records of said county and state.

Parcel 5: (APN: 433–120–009–4)

That portion of lot 4 of the San Diego Jose A Estudillos Subdivision of Tract 7 of Rancho San Jacinto Viejo, as per the map thereof recorded in book 6, page(s) 304 of miscellaneous maps in the office of the county recorder of said county and state, consisting of two and three-tenths (2.30) acres, more or less, as more particularly described as follows:

Beginning at a three (3) inch by three (3) inch by twenty-four (24) inch white redwood stake at the most southerly corner of that certain 100-acre parcel shown on the record of survey recorded in book 9, page(s) 31 of records of survey, in the office of the county recorded of said county and state; thence north 19°41′30″ west, 352.0 feet along the southwesterly side of said 100-acre parcel; thence north 42°01′30″ east, 352.00 feet to a point; thence south 19°41′30″ east, 352.0 feet to the center of an 80-foot road as shown on the aforesaid record of survey; thence south 42°01′30″ west, 352.0 feet along the center line of said 80-foot road to the point of beginning.

Parcel 6: (APN'S: 433–100–002–5; 433–100–013–5 and 433–100–014–6)

That portion of lots 1, 2, and 3 of Hot Springs Tract, as shown by map on file in book 8 page 5 of maps, records of Riverside County, California, described as follows:

Beginning at the intersection of the northwesterly boundary line of said Hot Springs Tract with the center line of Soboba Road, as said intersection is shown on Parcel Map No. 19805, on file in book 123 pages 22 through 25, inclusive, of parcel maps, records of Riverside County, California;

Thence south 44°46′47″ west, along said northwesterly boundary line of Hot Springs Tract, a distance of 384.21 feet to the most northerly corner of parcel 2 of said Parcel Map No. 19805;

Thence south 46°31′38″ east, a distance of 713.68 feet to an angle point in the boundary line of said parcel 2;

Thence along said boundary line of parcel 2 of the following courses:

South 82°15′51″ east, a distance of 502.62 feet;

North 67°53′54″ east, a distance of 265.29 feet;

North 3°19′39″ east, a distance of 261.00 feet to the southerly right-of-way line of Soboba Road;

Thence north 14°50′16″ east, a distance of 50.00 feet to an intersection with said center line of Soboba Road, said intersection being also a point on a curve concave southwesterly and having a radius of 1,000.00 feet, a radial line to said point bears north 14°50′16″ east;

Thence along said center line the following courses:

Northwesterly along said curve through an angle of 3°22′26″, a distance of 58.89 feet; tangent to said curve north 78°32′10″ west, a distance of 328.16 feet to the beginning of a tangent curve, concave northeasterly and having a radius of 1,200.00 feet; northwesterly along said curve through an angle of 27°42′26″, a distance of 580.30 feet; tangent to said curve north 50°49′44″ west, a distance of 155.60 feet to the point of beginning;

Excepting therefrom that portion lying within Soboba Road, 100 feet wide;

Also excepting therefrom that portion conveyed to Eastern Municipal Water District, by deed recorded March 1, 1968 as Instrument No. 19156 of official records of Riverside County, California.

Parcel no. 7 (APN'S: 433–080–002–4; 433–080–005–7; 433–080–006–8; 433–080–007–9; 433–080–010–1 and 433–080–011–2)

That portion of Tract VI, as shown by map of partition of Rancho San Jacinto Viejo, made under decree of superior court of state of California, in and for the county of San Diego, dated March 9, 1882 and recorded in book 43, page(s) 161 of deeds, San Diego County records, lying northeasterly of Auburn Avenue as shown on map of Olmsteads Subdivision on file in book 4, page(s) 261 of maps, San Diego County records.

Excepting therefrom a strip of land 60 feet wide, for road purposes conveyed to County of Riverside by deed recorded January 5, 1928, in book 722, page(s) 103 of deeds, Riverside County records. Except from those portions of said strip of land 60 feet wide, as abandoned by resolution recorded January 27, 1971 as instrument no. 8535 and conveyed by quitclaim deed recorded January 27, 1971 as instrument no. 8535 and conveyed by quitclaim deed recorded January 27, 1971 as instrument no. 8536 both of official records of said county.

A portion of said property is also shown on map of part of Tract VI, Rancho San Jacinto Viejo, on file in book 6, page(s) 5 of maps, Riverside County records.

Also except therefrom that portion granted to Riverside County Flood Control and Water Conservation District by deed recorded June 30, 1966, as Instrument No. 66–67438 of official records.

Also except therefrom that portion granted to County of Riverside by final order of condemnation recorded January 27, 1971, as Instrument No. 71–8534, of official records.

Also except therefrom a portion of land located in section 24, township 4 south, range 1 west being more particularly described as follows:

Beginning at an angle point in the northerly line of Rancho San Jacinto Viejo SJ 38; Thence south 19°51′35″ east a distance of 608.67 feet to a point on the northerly right of way of Soboba Road as described in Instrument No. 71–8534 rec. January 27, 1971 being 100 feet in width;

Thence, along the northerly line of said Soboba Road the following four (4) courses:

North 50°30′20″ west a distance of 273.08 feet to the beginning of a tangent curve being concave to the northeast having a radius of 1950.00 feet and a central angle of

15°15′31″;
Northwesterly along the arc of said curve a distance of 519.31 feet;
North 35°14′48″ west a distance of 821.57 feet to the beginning of a tangent curve being concave to the southwest having a radius of 1050.00 feet and a central angle of 00°33′54″;
Westerly along the arc of said curve a distance of 10.36 feet to a point on the northerly line of said Rancho San Jacinto Viejo;
Thence south 51°43′19″ east along the said northerly line a distance of 1065.47 feet to the said point of beginning.

Also except therefrom a portion of land located in section 24, township 4 south, range 1 west being more particularly described as follows:
Beginning at the intersection of the northeasterly line of a parcel of land described in Instrument No. 66–67438 rec. June 30, 1966 with the southerly line of said section 24;
Thence, along the northerly line of said Instrument No. 66–67438 the following three (3) courses;
North 19°36′38″ west a distance of 140.57 feet to the beginning of a tangent curve being concave to the southwest having a radius of 2800.00 feet and a central angle of 27°16′49″;
Northwesterly along the arc of said curve a distance of 1333.17 feet;
North 46°53′28″ west a distance of 1481.20 feet to the extension northerly of the northwesterly line of the map of Olmsteds Subdivision of file in book 4, page 261 of maps, San Diego County records;
Thence north 45°09′14″ east along the said extension of said MB 4/261 a distance of 616.61 feet to a point on the southerly right of way of Soboba Road as described in Instrument No. 71–8534 rec. January 27, 1971 being 100 feet in width, said point also being a point on a non-tangent curve being concave to the southwest having a radius of 950.00 feet, a central angle of 12°14′42″ and a radial bearing of north 42°30′29″ east;
Thence, along the southerly line of said Soboba Road the following four (4) courses:
Easterly along the arc of said curve a distance of 203.03 feet;
South 35°14′49″ east a distance of 821.57 feet to the beginning of a tangent curve concave to the northeast having a radius of 2050.00 feet and a central angle of 15°15′31″ feet;
Easterly along the arc of said curve a distance of 545.94 feet;
South 50°30′20″ east a distance of 441.87 feet;
Thence, leaving said southerly line, south 19°51′35″ east a distance of 1254.10 feet to a point on the southerly line of said section 24;
Thence south 89°45′18″ west along the southerly line of said section 24 a distance of 330.00 feet to the said point of beginning.

Parcel no. 8: (APN'S: 430–030–015–0; 430–030–016–1 and 433–030–017–2)

Government lots 5, 6, 7 and 8 in fractional section 24, township 4 south, range 1 west, San Bernardino base and meridian, as shown by United States Government Survey approved May 8, 1885.

Excepting therefrom any portion thereof included in strip of land 60 feet wide for road purposes conveyed to County of Riverside, by deed recorded January 6, 1928, in book 722, page(s) 103 of deeds, Riverside County records.

Also excepting therefrom that portion of said government lots 5 and 6 being more particularly described as follows:
Beginning at the northwest corner of said lot 5;
Thence north 89°45′18″ east along the north line of said lots 5 and 6 a distance of 2468.91 feet to the northeast corner of said lot 6;
Thence south 00°17′20″ west along the east line of said lot 6 a distance of 484.12 feet;
Thence, leaving said easterly line, south 81°58′55″ west a distance of 1599.30 feet to an angle point in the northerly line of Rancho San Jacinto Viejo SJ 38;
Thence north 51°43′19″ west along the said northerly line and southerly line of said lot 5 a distance of 1124.55 feet to the said point of beginning.

Parcel 9: (APN'S: 433–100–015–7; 433–110–013–6; 433–120–031–3; 433–140–022–7; 433–140–031–5 and 433–140–041–4)

Parcels 1, 2 and 3 of parcel map 19805, in the County of Riverside, State of California, as per map recorded in book 123, page(s) 22 through 25, inclusive of parcel maps, in the Office of the County Recorder of said county, together with that portion of lots 1, 2 and 3 of Hot Springs Tract as shown by map on file in book 8, page(s) 5 of maps, said Riverside County, California, lying southerly of the southerly right of way line of Soboba Road, 100.00 feet wide, and together with that portion of lots 3, 4, 5 and 6 of the Jose A. Estudillo Subdivision of Tract VII of the Rancho San Jacinto Viejo as shown by map on file in book 6, page(s) 304 of maps, records of San Diego County, California, and portions of the vacated streets, lying westerly of the westerly right of way line of said Soboba Road, as said portions of Hot Springs Tract and Jose A. Estudillo Subdivision as shown on map of said Parcel Map No. 19805.

Except that portion of said parcels 1 and 2 lying easterly and southerly of a line described as follows:
Beginning at the southwesterly corner of said parcel 1:
Thence north 34°06′54″ west 626.58 feet;
Thence north 09°42′03″ west 501.82 feet;
Thence north 14°28′46″ west 437.72 feet;
Thence north 26°20′47″ west 510.16 feet;
Thence south 86°35′25″ east 371.92 feet;
Thence north 83°12′23″ east 792.55 feet to the northeasterly corner of said parcel 1.

Also except that portion of said parcels 2 and 3 lying westerly of a line described as follows:
Beginning, at the most westerly corner of said parcel 3;
Thence north 41°52′18″ east on the northerly line of said parcel 3, and its prolongation, 712.65 feet to the true point of beginning.
Thence south 16°42′14″ east 25.12 feet;
Thence south 15°25′16″ west 572.24 feet;
Thence south 17°28′52″ east 212.79 feet;
Thence south 21°13′53″ east 215.19 feet;
Thence south 21°25′27″ east 210.69 feet;
Thence south 28°03′31″ east 187.00 feet;
Thence north 14°15′16″ east 33.64 feet to the beginning of a non-tangent curve concave southwesterly and having a radius of 160.00 feet, a radial line to said beginning bears north 30°13′49″ west;
Thence southeasterly on said curve through an angle of 80°12′59″ 224.01 feet;
Thence tangent to said curve south 40°00′50″ east 19.34 feet to an intersection with the southerly line of said Parcel 2, and said line there terminating.

Also except that portion described as follows:
Beginning at the northeast corner of Parcel 1 of said Parcel Map No. 19805, said corner being also a point on the westerly right of way

line of Soboba Road, 100.00 feet wide;
Thence north 12°18′57″ west on said westerly right of way line 532.75 feet to the true point of beginning;
Thence south 77°41′03″ west 100.16 feet to the beginning of a non-tangent curve concave westerly and having a radius of 60.00 feet, radial line to said beginning bears north 73°31′23″ east;
Thence southerly on said curve through an angle of 51°42′49″ 54.15 feet;
Thence south 51°20′39″ east 28.93 feet;
Thence south 04°22′16″ east 73.55 feet;
Thence south 41°52′18″ west 32.15 feet;
Thence south 83°41′40″ west 107.78 feet;
Thence north 88°57′35″ west 45.36 feet;
Thence north 88°36′50″ west 48.41 feet;
Thence north 84°34′50″ west 43.75 feet;
Thence north 84°02′59″ west 566.64 feet;
Thence north 30°06′11″ west 107.84 feet;
Thence north 21°46′31″ west 252.93 feet;
Thence north 14°02′58″ west 172.97 feet;
Thence north 07°00′02″ west 428.12 feet;
Thence north 13°02′49″ east 67.65 feet;
Thence north 48°43′11″ east 63.22 feet;
Thence north 78°07′26″ east 153.05 feet;
Thence north 11°52′34″ west 50.00 feet;
Thence north 56°55′17″ east 44.55 feet;
Thence north 55°17′24″ east 25.00 feet;
Thence north 52°17′37″ east 39.71 feet;
Thence north 48°44′15″ east 39.33 feet;
Thence north 48°35′52″ east 81.72 feet;
Thence north 51°01′00″ east 53.49 feet to the beginning of a non-tangent curve concave southeasterly and having a radius of 47.00 feet, a radial line to said beginning bears north 89°04′52″ west;
Thence northeasterly on said curve through an angle of 90°03′45″ 73.88 feet;
Thence north 00°58′53″ east 20.06 feet;
Thence north 56°37′33″ east 117.65 feet to an intersection with the aforesaid westerly right of way line of Soboba Road, said intersection being also a point on a curve concave southwesterly and having a radius of 950.00 feet, radial line to said point bears north 53°24′10″ east;
Thence or said westerly right of way line of Soboba Road the following courses;
Southeasterly on said curve through an angle of 03°13′23″ 53.44 feet;
Tangent to said curve south 33°22′27″ east 533.59 feet to the beginning of a tangent curve concave southwesterly and having a radius of 1,150.00 feet;
Southeasterly on said curve through an angle of 21°03′30″ 422.67 feet;
Tangent to said curve south 12°18′57″ east 418.24 feet to the true point of beginning.

Also except that portion described as follows:

Beginning at the intersection of the northwesterly boundary line of said Hot Springs Tract with the centerline of Soboba Road, as said intersection is shown on said Parcel Map No. 19805;
Thence south 44°46′47″ west on said northwesterly boundary line of Hot Springs Tract 384.21 feet to the most northerly corner of Parcel 2 of said Parcel Map No. 19805;
Thence south 46°31′38″ east 713.63 feet to an angle point in the boundary line of said Parcel 2;
Thence or said boundary line of Parcel 2 the following courses:
South 82°15′51″ east 502.62 feet;
North 67°53′54″ east 265.29 feet;
North 03°19′39″ east 261.00 feet to the southerly right of way line of said Soboba Road;
Thence north 14°50′16″ east 50.00 feet to an intersection with said centerline of Soboba Road, said intersection being also a point on a curve concave southwesterly and having a radius of 1,000.00 feet, a radial line to said point bears north 14°50′16″ east;
Thence or said centerline the following courses;
Northwesterly on said curve through an angle of 03°22′26″ 58.89 feet;
Tangent to said curve north 78°32′10″ west 328.16 feet to the beginning of a tangent curve concave northeasterly and having a radius of 1,200.00 feet;
Northwesterly on said curve through an angle of 27°42′26″ 580.30 feet;
Tangent to said curve north 50°49′44″ west 155.60 feet to the point of beginning.

Dated: May 22, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2015–12985 Filed 6–2–15; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO301000.L13400000.PQ0000.LXSIGEOT0000.15X]

Renewal of Approved Information Collection; OMB Control No. 1004–0034

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-day notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) to continue the collection of information about transfers and assignments of leases for oil, gas, and geothermal resources. The Office of Management and Budget (OMB) has assigned control number 1004–0034 to this information collection.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. For maximum consideration, written comments should be received on or before July 6, 2015.

ADDRESSES: Please submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0034), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *OIRA_submission@omb.eop.gov.* Please provide a copy of your comments to the BLM. You may do so via mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street, NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at 202–245–0050.

Electronic mail: Jean_Sonneman@blm.gov.

Please indicate ''Attn: 1004–0034'' regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: Jennifer Spencer at 202–912–7146 (oil and gas) or Lorenzo Trimble at 775–861–6567 (geothermal resources). Persons who use a telecommunication device for the deaf may call the Federal Information Relay Service at 1–800–

877–8339, to leave a message for Ms. Spencer or Mr. Trimble. You may also review the information collection request online at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (44 U.S.C. 3501–3521) and OMB regulations at 5 CFR part 1320 provide that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond. In order to obtain and renew an OMB control number, Federal agencies are required to seek public comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d) and 1320.12(a)).

As required at 5 CFR 1320.8(d), the BLM published a 60-day notice in the **Federal Register** on January 8, 2015 (80 FR 1047), and the comment period ended March 9, 2015. The BLM received no comments. The BLM now requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments as directed under **ADDRESSES** and **DATES**. Please refer to OMB control number 1004–0034 in your correspondence. 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.

The following information pertains to this request:

Title: Oil, Gas, and Geothermal Resources: Transfers and Assignments.

OMB Control Number: 1004–0034.

Summary: When a holder of a Federal lease for oil, gas, or geothermal resources assigns the lease or transfers the operating rights, the BLM must collect information about that transaction. Each assignment or transfer is a contract between private parties but must be approved by the BLM under the relevant statutory authority.

Frequency of Collection: On occasion.

Forms:

- Form 3000–3, Assignment of Record Title Interest in a Lease for Oil and Gas or Geothermal Resources; and
- Form 3000–3a, Transfer of Operating Rights (Sublease) in a Lease for Oil and Gas or Geothermal Resources.

Description of Respondents: Lessees who want to assign record title interest or transfer operating rights in a Federal lease for oil and gas or geothermal resources.

Estimated Annual Responses: 14,041.

Estimated Annual Burden Hours: 7,020.5.

Estimated Annual Non-Hour Costs: $1,263,690.

The estimated annual burdens are itemized in the following table:

A. Type of response	B. Number of responses	C. Time per response	D. Total time (Column B × Column C)
Assignment of Record Title Interest/Oil and Gas Leases, 43 CFR 3106.4–1, Form 3000–3.	6,316	30 minutes	3,158 hours.
Assignment of Record Title Interest/Geothermal Resources, 43 CFR 3216.14, Form 3000–3.	28	30 minutes	14 hours.
Transfer of Operating Rights/Oil and Gas Leases, 43 CFR 3106.4–1, Form 3000–3a	7,696	30 minutes	3,848 hours.
Transfer of Operating Rights/Geothermal Resources, 43 CFR 3216.14, Form 3000–3a.	1	30 minutes	30 minutes.
Totals	14,041	.....	7,020.5 hours.

Jean Sonneman,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 2015–13415 Filed 6–2–15; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Allseen Alliance, Inc.

Notice is hereby given that, on May 1, 2015, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), AllSeen Alliance, Inc. (''AllSeen Alliance'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Faber S.p.A., Fabriano, ITALY; Elica S.p.A, Fabriano, ITALY; CenturyLink, Denver, CO; Sichuan Changhong Electric Co., Ltd., Mianyang, Sichuan, PEOPLE'S REPUBLIC OF CHINA; WiSilica, Aliso Viejo, CA; Heaven Fresh Canada Inc., Mississauga, Ontario, CANADA; Cirrent, Burlingame, CA; Ciseco, Wireless Things, Nottingham, UNITED KINGDOM; Covata Limited, Reston, VA; People Power Company, Palo Alto, CA; Seed Labs, San Francisco, CA; Umbrela Smart Inc. (USI), Winnipeg, Manitoba, CANADA; Universal Devices, Inc., Encino, CA; Trend Micro Incorporated, Taipei, TAIWAN; IOOOTA, Bologna, ITALY; Carvoyant, Inc., Odessa, FL; iGloo Software Pty Ltd., West Melbourne, AUSTRALIA; WAYGUM, INC., Dublin, CA; CoCo Communication, Seattle, WA; Allwinner Technology, Co. Ltd., Zhuhai Guangdong, PEOPLE'S REPUBLIC OF CHINA; Unizyx Holding Corporation, Hsinchu, TAIWAN; Discretix Technologies Ltd., Kfar Netter, ISRAEL; Shenzhen Longsys Electronics Co., Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Canon Inc., Tokyo, JAPAN; Renesas Electronics Corporation, Chiyoda-ku, Tokyo, JAPAN; DigCert, Inc., Lehi, UT; TTA (Telecommunications Technology

Association), Seongnam-City, Gyeonggi-do, REPUBLIC OF KOREA; Affectio Inc., Wilmington, DE; Viva Labs AS, Oslo, NORWAY; Homeboy, Mosman, AUSTRALIA; Encored Technologies, Inc., Gangnamgu, Seoul, REPUBLIC OF KOREA; DataArt Solutions, Inc. DBA: DeviceHive, New York, NY; anyractive, Mapo-gu, Seoul, REPUBLIC OF KOREA; WigWag Inc., Austin, TX, Skeed Co. Ltd., Meguro-ku, Tokyo, JAPAN; ASUSTek.Computer Inc., Beitou District, Taipei, TAIWAN; Infobright Inc., Toronto, Ontario, CANADA; and Hisilicon Technologies Co., Ltd., Longgang District, Shenzhen, PEOPLE'S REPUBLIC OF CHINA, have been added as parties to this venture.

Also, Devon alli, Atlanta, GA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AllSeen Alliance intends to file additional written notifications disclosing all changes in membership.

On January 29, 2014, AllSeen Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 4, 2014 (79 FR 12223).

The last notification was filed with the Department on February 9, 2015. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 12, 2015 (80 FR 13026).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–13447 Filed 6–2–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on May 6, 2015, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), DVD Copy Control Association (''DVD CCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Datapulse Technology Limited, Singapore, SINGAPORE; Jaguar Land Rover Limited, Mahwah, NJ; Nagravision SA, Cheseaux-sur-Lausanne, SWITZERLAND; NovoDisc Midia Digital Ltda, Sao Paulo, BRAZIL; and Renesas System Design Co., Ltd., Yokohama, JAPAN, have been added as parties to this venture.

Also, Hakuto Taiwan, Taipei, TAIWAN; Laser Video, Moscow, RUSSIA; Renesas Mobile Corporation, Tokyo, JAPAN, Renesas Micro Systems Co., Ltd., Yokohama, JAPAN; Shenzhen MTC Co., Ltd., Futain District, Shenzhen, PEOPLE'S REPUBLIC OF CHINA; and Tanashin Denki Co., Ltd., Tokyo, JAPAN, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notifications disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on February 6, 2015. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 12, 2015 (80 FR 13026).

[FR Doc. 2015–13446 Filed 6–2–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project No. 2013–10, Pressure Relief Valve (PRV) Stability Research Program

Notice is hereby given that, on April 6, 2015, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum Project No. 2013–10, Pressure Relief Valve (PRV) Stability Research Program (''PERF Project No. 2013–10'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: ExxonMobil Research & Engineering Company, Fairfax, VA; BP Products North America Inc., Naperville, IL; Chevron U.S.A. Inc., a Pennsylvania corporation, acting through its Chevron Energy Technology Company division, Houston, TX; The Dow Chemical Company Midland, Midland, MI; Flint Hills Resources LP, Wichita, KS; Phillips 66 Company, Houston, TX; LyondellBasell Industries, Houston, TX; Marathon Petroleum Company LP, Findlay, OH; Shell Global Solutions (US) Inc., Houston, TX; Valero Energy Corp., San Antonio, TX; Bayer MaterialScience LLC, Pittsburgh, PA; and Siemens Energy, Inc., Houston, TX. The general area of PERF Project No. 2013–10's planned activity is, through cooperative research efforts, to better understand pressure relief valve (PRV) stable operation by creating a model, set of equations, or other tool that can be used by engineers to predict stability (*e.g.* flutter or chatter) for most of the PRV installations (from here on called ''the model''). The model will need to be validated through literature and experimental results.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–13445 Filed 6–2–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Termination, Suspension, Reduction, or Increase in Benefit Payments

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) revision titled, ''Notice of Termination, Suspension, Reduction, or Increase in Benefit Payments,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before July 6, 2015.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201502-1240-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–6881 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue, NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Notice of Termination, Suspension, Reduction, or Increase in Benefit Payments information collection. Coal mine operators, their representatives, and their insurers who have been identified as responsible for paying Black Lung benefits to an eligible miner or an eligible surviving dependent of the miner are called Responsible Operators (ROs). An RO who pays benefits to a beneficiary is required to report any change in the benefit amount to the Division of Coal Mine Workers' Compensation within the OWCP. Form CM–908, when properly completed and submitted, notifies the agency of the change in the beneficiary's benefit amount and the reason for the change. This information collection has been classified as a revision, because of minor enhancements to Form CM–908; however, no changes to the content in the form of the form are proposed. Federal Mine Safety and Health Act of 1977 section 432 authorizes this information collection. *See* 30 U.S.C. 942.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1240–0030. The current approval is scheduled to expire on August 31, 2015; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 18, 2015 (80 FR 8699).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0030. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OWCP.

Title of Collection: Notice of Termination, Suspension, Reduction, or Increase in Benefit Payments.

OMB Control Number: 1240–0030.

Affected Public: Private Sector—businesses or other for profits.

Total Estimated Number of Respondents: 325.

Total Estimated Number of Responses: 5,000.

Total Estimated Annual Time Burden: 1,000 hours.

Total Estimated Annual Other Costs Burden: $5,200.

Dated: May 27, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–13395 Filed 6–2–15; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2015–0014]

Maritime Advisory Committee for Occupational Safety and Health (MACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for nomination of members to serve on the Maritime Advisory Committee for Occupational Safety and Health.

SUMMARY: OSHA invites interested persons to submit nominations for membership on the Maritime Advisory Committee for Occupational Safety and Health.

DATES: You must submit nominations for MACOSH membership (POSTMARKED, SENT, TRANSMITTED, OR RECEIVED) by July 20, 2015.

ADDRESSES: You may submit nominations and supporting materials by one of the following methods:

Electronically: You may submit nominations, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for submitting nominations;

Facsimile: If your nomination and supporting materials, including attachments, do not exceed 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648;

Regular mail, express mail, hand delivery, and messenger or courier

service: You may submit nominations and supporting materials to the OSHA Docket Office, Docket No. OSHA–2015–0014, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (express mail, hand (courier) delivery, and messenger service) are accepted during the Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2015–0014). Because of security-related procedures, submissions by regular mail may result in a significant delay in receipt. Please contact the OSHA Docket Office for information about security procedures for making submissions by express mail, hand (courier) delivery, and messenger service.

OSHA will post submissions in response to this **Federal Register** notice, including personal information provided, without change at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

Docket: To read or download submissions in response to this **Federal Register** notice, go to Docket No. OSHA–2015–0014 at *http://www.regulations.gov.* All documents in the docket are available in the *http://www.regulations.gov* index; however, some documents (*e.g.,* copyrighted material) are not publicly available to read or download through that Web page. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general information about MACOSH: Ms. Amy Wangdahl, Director, Office of Maritime and Agriculture, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2086; email *wangdahl.amy@dol.gov.*

For copies of this Federal Register notice: Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available at OSHA's Web page at: *www.osha.gov.*

SUPPLEMENTARY INFORMATION: The Assistant Secretary of Labor for Occupational Safety and Health invites interested persons to submit nominations for membership on MACOSH.

Background

The Secretary of Labor renewed the MACOSH charter for two years on April 30, 2015. MACOSH is a Federal Advisory Committee established under the authority of the Occupational Safety and Health Act (OSH Act) (29 U.S.C. 651 *et seq.*), the Federal Advisory Committee Act (FACA) 5 U.S.C. App. 2, and regulations issued pursuant to those statutes (29 CFR part 1912, 41 CFR part 102–3). The Committee advises the Secretary of Labor on matters relating to occupational safety and health programs, enforcement, new initiatives, and standards for the maritime industries of the United States, which include longshoring, marine terminals, commercial fishing, and shipyard employment. OSHA invites persons interested in serving on MACOSH to submit their names for consideration for Committee membership.

MACOSH reports to the Secretary of Labor through OSHA, and functions solely as an advisory body. MACOSH provides recommendations and advice to the Department of Labor and OSHA on various policy issues pertaining to safe and healthful employment in the maritime industries. The Secretary of Labor consults with MACOSH on various subjects, including: Ways to increase the effectiveness of safety and health standards that apply to the maritime industries, injury and illness prevention, the use of stakeholder partnerships to improve training and outreach initiatives, and ways to increase the national dialogue on occupational safety and health. In addition, MACOSH provides advice on enforcement initiatives that will improve the working conditions and the safety and health of workers in the maritime industries. The Committee meets approximately two times per year. Committee members serve without compensation, but OSHA provides travel and per diem expenses. Members serve a two-year term, which begins from the date of appointment by the Secretary of Labor. The current MACOSH membership term expires on January 16, 2016.

MACOSH Membership

MACOSH consists of not more than 15 members appointed by the Secretary of Labor. The Agency seeks committed MACOSH members who have a strong interest in the safety and health of workers in the maritime industries. The U.S. Department of Labor is committed to equal opportunity in the workplace. The Secretary of Labor will appoint members to create a broad-based, balanced and diverse committee reflecting the shipyard, longshoring, and commercial fishing industries, and representing affected interests such as employers, employees, safety and health professional organizations, government organizations with interests or activities related to the maritime industry, academia, and the public.

Nominations of new members or resubmissions of former or current members will be accepted in all categories of membership. Interested persons may nominate themselves or submit the name of another person whom they believe to be interested in, and qualified to serve on, MACOSH. Nominations may also be submitted by organizations from one of the categories listed above.

Submission Requirements

Nominations must include the following information:

(1) Nominee's contact information and current employment or position;

(2) Nominee's resume or curriculum vitae, including prior membership on MACOSH and other relevant organizations and associations;

(3) Maritime industry interest (*e.g.,* employer, employee, public, safety and health professional organization, state safety and health agency, academia) that the nominee is qualified to represent;

(4) A summary of the background, experience, and qualifications that addresses the nominee's suitability for membership; and

(5) A statement that the nominee is aware of the nomination, is willing to regularly attend and participate in MACOSH meetings, and has no conflicts of interest that would preclude membership on MACOSH.

OSHA will conduct a basic background check of candidates before their appointment to MACOSH. The background check will involve accessing publicly available, Internet-based sources.

Member Selection

The Secretary of Labor will select MACOSH members based on their experience, knowledge, and competence in the field of occupational safety and health, particularly in the maritime industries. Information received through this nomination process, and other relevant sources of information, will assist the Secretary of Labor in appointing members to MACOSH. In selecting MACOSH members, the

Secretary of Labor will consider individuals nominated in response to this **Federal Register** notice, as well as other qualified individuals. OSHA will publish a list of MACOSH members in the **Federal Register**.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by 29 U.S.C. 655(b)(1) and 656(b), 5 U.S.C. App. 2, Secretary of Labor's Order No. 1–2012 (77 FR 3912), and 29 CFR part 1912.

Signed at Washington, DC, on May 27, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015–13399 Filed 6–2–15; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2015–0013]

National Advisory Committee on Occupational Safety and Health (NACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Announcement of a NACOSH meeting.

SUMMARY: NACOSH will meet June 18, 2015, in Washington, DC. In conjunction with the committee meeting, the NACOSH Temporary Workers Work Group will meet June 17, 2015.

DATES: *NACOSH meeting:* NACOSH will meet from 9 a.m. to 5 p.m., Thursday, June 18, 2015.

NACOSH Work Group meeting: The NACOSH Temporary Workers Work Group will meet from 1 to 4 p.m., Wednesday, June 17.

Comments, requests to speak, speaker presentations, and requests for special accommodations: You must submit (postmark, send, transmit) comments, requests to address NACOSH, speaker presentations, and requests for special accommodations for the NACOSH and NACOSH Work Group meetings by June 9, 2015.

ADDRESSES: *NACOSH and NACOSH Work Group meetings:* NACOSH and the NACOSH Work Group will meet in Room N–4437 A/B/C, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Submission of comments, requests to speak and speaker presentations: You may submit comments and requests to speak at the NACOSH meeting, identified by docket number for this **Federal Register** notice (Docket No. OSHA–2015–0013), by one of the following methods:

Electronically: You may submit materials, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for making submissions.

Facsimile: If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Regular mail, express mail, hand delivery, or messenger/courier service (hard copy): You may submit your materials to the OSHA Docket Office, Docket No. OSHA–2015–0013, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350 (TTY (887) 889–5627). OSHA's Docket Office accepts deliveries (hand deliveries, express mail, and messenger/courier service) during normal business hours, 8:15 a.m. to 4:45 p.m. e.t., weekdays.

Requests for special accommodations: Please submit requests for special accommodations to attend the NACOSH and NACOSH Work Group meetings by email, telephone, or hard copy to Ms. Gretta Jameson, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999 (TTY (887) 889–5627); email *jameson.grettah@dol.gov.*

Instructions: Your submissions must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2015–0013). Due to security-related procedures, receipt of submissions by regular mail may experience significant delays. Please contact the OSHA Docket Office for information about security procedures for making submissions by hand delivery, express delivery, or messenger/courier service. For additional information about submissions, see the **SUPPLEMENTARY INFORMATION** section of this notice.

OSHA will post in the public docket, without change, any comments, requests to speak, and speaker presentations, including any personal information that you provide. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999 (TTY (877) 889–5627); email *meilinger.francis2@dol.gov.*

For general information: Ms. Michelle Walker, Director, OSHA Technical Data Center, Directorate of Technical Support and Emergency Management, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350 (TTY (877) 889–5627); email *walker.michelle@dol.gov.*

SUPPLEMENTARY INFORMATION:

NACOSH meeting: NACOSH will meet Thursday, June 18, 2015, in Washington, DC. Some NACOSH members may attend the meeting by teleconference. NACOSH meetings are open to the public.

NACOSH was established by Section 7(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651, 656) to advise, consult with and make recommendations to the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the OSH Act. NACOSH is a continuing advisory committee of indefinite duration.

NACOSH operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), its implementing regulations (41 CFR part 102–3), and OSHA's regulations on NACOSH (29 CFR part 1912a).

The tentative agenda for the NACOSH meeting includes:

- An update from the Assistant Secretary of Labor for Occupational Safety and Health on key OSHA initiatives, including the severe injury reporting rule;
- Remarks from the Director of the National Institute for Occupational Safety and Health;
- NACOSH Emergency Response Subcommittee; and
- Report from the NACOSH Temporary Workers Workgroup on developing best practice language for protecting temporary workers as part of employers' injury and illness prevention programs.

OSHA transcribes and prepares detailed minutes of NACOSH meetings. OSHA posts the transcripts and minutes in the public docket along with written comments, speaker presentations, and other materials submitted to NACOSH or presented at NACOSH meetings.

NACOSH Work Group meeting: The NACOSH Temporary Workers Work Group will meet Wednesday, June 17, 2015. The meeting is open to the public.

The purpose of the meeting is to continue discussions of workplace safety and health issues regarding temporary workers and to develop recommendations for the full Committee's consideration. The issues include gaps in workplace protections for temporary workers, and joint responsibility of host employers and staffing agencies for temporary workers. The NACOSH Work group will present a report and any recommendations to NACOSH at the June 18, 2015, meeting.

Public Participation, Submissions and Access to Public Record

NACOSH and NACOSH Work Group meetings: All NACOSH and NACOSH Work Group meetings are open to the public. Individuals attending NACOSH meetings at the U.S. Department of Labor must enter the building at the Visitors' Entrance at 3rd and C Streets, NW., and pass through building security. Attendees must have valid government-issued photo identification (*e.g.,* driver's license) to enter the building. For additional information about building security measures for attending NACOSH and NACOSH Work Group meetings, please contact Ms. Jameson (see **ADDRESSES** section).

Individuals requesting special accommodations to attend the NACOSH and NACOSH Work Group meetings should contact Ms. Jameson.

Submission of comments: You may submit comments using one of the methods listed in the **ADDRESSES** section. Your submission must include the Agency name and Docket number for this NACOSH meeting (Docket No. OSHA–2015–0013). OSHA will provide copies of your submissions to NACOSH members.

Because of security-related procedures, receipt of submissions by regular mail may experience significant delays. For information about security procedures for submitting materials by hand delivery, express mail, and messenger/courier service, please contact the OSHA Docket Office.

Requests to speak and speaker presentations: If you want to address NACOSH at the meeting you must submit a request to speak, as well as any written or electronic presentation, by June 9, 2015, using one of the methods listed in the **ADDRESSES** section. Your request must state:

- The amount of time requested to speak;
- The interest you represent (*e.g.,* business, organization, affiliation), if any; and
- A brief outline of the presentation.

PowerPoint presentations and other electronic materials must be compatible with PowerPoint 2010 and other Microsoft Office 2010 formats. The NACOSH Chair may grant requests to address NACOSH as time and circumstances permit.

Public docket of NACOSH meetings: OSHA places comments, requests to speak, and speaker presentations, including any personal information you provide, in the public docket, without change. Those documents also may be available online at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting certain personal information such as Social Security numbers and birthdates.

OSHA also places in the public docket meeting transcripts, meeting minutes, documents presented at the NACOSH meeting, and other documents pertaining to NACOSH and NACOSH Work Group meetings. These documents may be available online at *http://www.regulations.gov.*

Access to the public record of NACOSH meetings: To read or download documents in the public docket, go to Docket No. OSHA–2015–0013 at *http://www.regulations.gov.* The index of that Web page lists all of the documents in the public record for this meeting; however, some documents (*e.g.,* copyrighted materials) are not publicly available through that Web page. All documents in the public record, including materials not available through *http://www.regulations.gov,* are available in the OSHA Docket Office. Please contact the OSHA Docket Office for assistance in making submissions to, or obtaining materials from, the public docket.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available on OSHA's Web page at *http://www.osha.gov.*

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by 29 U.S.C. 656; 5 U.S.C. App. 2; 29 CFR part 1912a; 41 CFR part 102–3; and Secretary of Labor's Order No. 1–2012 (77 FR 3912 (1/25/2012)).

Signed at Washington, DC, on May 28, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015–13452 Filed 6–2–15; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

National Council on the Arts 185th Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held at Constitution Center, 400 7th St. SW., Washington, DC 20506. Agenda times are approximate.

DATES: Thursday, June 25, 2015 from 1:00 p.m. to 3:00 p.m. (This session will be closed for discussion of the National Medal of Arts) and Friday, June 26, 2015 from 9:00 a.m. to 11:15 a.m. in Conference Rooms A and B (This session will be open and also will be webcast).

FOR FURTHER INFORMATION CONTACT: Office of Public Affairs, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

SUPPLEMENTARY INFORMATION: The meeting on June 26th will be open to the public on a space available basis. The tentative agenda is as follows: The session will begin at 9:00 a.m. with opening remarks and voting on recommendations for funding and rejection and guidelines, followed by updates from the Chairman. There also will be the following presentations (times are approximate): from 9:30 a.m. to 10:00 a.m.—*Teaser of the First Vignettes from NEA's ''Tell Your Stories'' Campaign* (Jessamyn Sarmiento, Director of Public Affairs, NEA) and from 10:00 a.m. to 11:00 a.m.—*Presentations on Festivals and Community Engagement.* From 11:00–11:15 there will be concluding remarks from the Chairman and announcement of voting results. The meeting will adjourn at 11:15 a.m.

The Friday, June 26th session also will be webcast. To register to watch the webcasting of this open session of the meeting, go to *http://artsgov.adobeconnect.com/nca-june-2015-webcast/event/registration.html.*

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b, and in

accordance with the February 15, 2012 determination of the Chairman. Additionally, discussion concerning purely personal information about individuals, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of Accessibility, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5733, Voice/T.T.Y. 202/682–5496, at least seven (7) days prior to the meeting.

Dated: May 29, 2015.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 2015–13460 Filed 6–2–15; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–247–LA; ASLBP No. 15–942–06–LA–BD01]

Establishment of Atomic Safety and Licensing Board; Entergy Nuclear Operations, Inc.

Pursuant to delegation by the Commission, *see* 37 FR 28710 (Dec. 29, 1972), and the Commission's regulations, *see, e.g.,* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

ENTERGY NUCLEAR OPERATIONS, INC.

(Indian Point Nuclear Generating Station, Unit 2)

This proceeding involves an application by Entergy Nuclear Operations, Inc. for a license amendment for Indian Point Nuclear Generating Station, Unit 2, which is located in Westchester County, New York. In response to a notice filed in the **Federal Register**, *see* 80 FR 13902, 13905 (Mar. 17, 2015), the State of New York filed a hearing request on May 18, 2015.

The Board is comprised of the following administrative judges:

E. Roy Hawkens, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Dr. Gary S. Arnold, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Dr. Sue H. Abreu, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule. *See* 10 CFR 2.302.

Dated: May 28, 2015.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel, Rockville, Maryland.

[FR Doc. 2015–13505 Filed 6–2–15; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2015–79; Order No. 2517]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Expedited Package Services 3 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 4, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On May 27, 2015, the Postal Service filed notice that it has entered into an additional Global Expedited Package Services 3 (GEPS 3) negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket No. CP2015–79 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than June 4, 2015. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Curtis E. Kidd to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2015–79 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than June 4, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2015–13413 Filed 6–2–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2015–78; Order No. 2516]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Expedited Package Services 3 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 4, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, May 27, 2015 (Notice).

the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On May 27, 2015, the Postal Service filed notice that it has entered into an additional Global Expedited Package Services 3 (GEPS 3) negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket No. CP2015–78 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than June 4, 2015. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2015–78 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than June 4, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, May 27, 2015 (Notice).

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2015–13412 Filed 6–2–15; 8:45 am]

BILLING CODE 7710–FW–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Nanotechnology-Related Public Webinars

AGENCY: National Nanotechnology Coordination Office, Office of Science and Technology Policy.

ACTION: Notice of public webinars.

SUMMARY: The National Nanotechnology Coordination Office (NNCO), on behalf of the Nanoscale Science, Engineering, and Technology (NSET) Subcommittee of the Committee on Technology, National Science and Technology Council (NSTC), will hold webinars periodically to share information with the general public and the nanotechnology research and development community. Topics covered may include announcements of new National Nanotechnology Initiative activities, discussions of technical subjects, introductions to resources available for specific areas such as education or sensors development, or other areas of potential interest to the nanotechnology community. The first webinar will be held June 25, 2015, to promote resources available on the newly developed Sensors Nanotechnology Signature Initiative (NSI) Web Portal (*www.nano.gov/SensorsNSIPortal*).

DATES: The NNCO will hold multiple webinars between the publication of this Notice and December 31, 2015. The first webinar will be held on June 25, 2015, from 12 p.m. to 1 p.m. EDT.

ADDRESSES: These free, web-based events are open to the public. For current information about the webinars, please visit *www.nano.gov/PublicWebinars.* Many webinars will be broadcast via AdobeConnect, which requires the installation of a free plug-in on a computer or of a free app on a mobile device.

Submitting Questions: Some webinars may include question-and-answer segments in which questions of interest may be submitted to *webinar@nnco.nano.gov* beginning one week prior to the event through the close of the webinar. During the question-and-answer segments of the webinars, submitted questions will be considered in the order received and may be posted on the NNI Web site (*www.nano.gov*). A moderator will identify relevant questions and pose them to the speaker(s). Due to time constraints, not all questions may be addressed during the webinars. The moderator reserves the right to group similar questions and to skip questions, as appropriate. The Public Webinar page on nano.gov (*www.nano.gov/PublicWebinars*) will indicate which webinars will include question-and-answer segments.

Registration: Registration is required for every webinar and is on a first-come, first-served basis. Registration will open approximately two weeks prior to each event and will be capped at 200 participants or as space limitations dictate. Individuals planning to attend the webinar can find registration information at *www.nano.gov/PublicWebinars.*

FOR FURTHER INFORMATION CONTACT: Stacey Standridge, 703–292–8103, *sstandridge@nnco.nano.gov.*

Cristin Dorgelo,

Chief of Staff.

[FR Doc. 2015–13178 Filed 6–2–15; 8:45 am]

BILLING CODE 3270–F5–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75063; File No. SR–SCCP–2015–01]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing of Proposed Rule Change To Amend the Amended and Restated Certificate of Incorporation and By-Laws of The NASDAQ OMX Group, Inc.

May 28, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 19, 2015, Stock Clearing Corporation of Philadelphia (''SCCP'') 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 SCCP. 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

SCCP is filing this proposed rule change with respect to amendments of the Amended and Restated Certificate of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Incorporation (the ''Charter'') and By-Laws (the ''By-Laws'') of its parent corporation, The NASDAQ OMX Group, Inc. (''NASDAQ OMX'' or the ''Company''), to change the name of the Company to Nasdaq, Inc. The proposed amendments will be implemented on a date designated by NASDAQ OMX following approval by the Commission. The text of the proposed rule change is available on SCCP's Web site at *http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/sccp/,* at the principal office of SCCP, 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, SCCP 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. SCCP 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

As part of an ongoing global rebranding initiative, the Company has begun to refer to itself, both internally and externally, as Nasdaq, rather than NASDAQ OMX. For purposes of consistency with its marketing, communications and other materials, the Company has decided to change the legal names of NASDAQ OMX and certain of its subsidiaries to eliminate references to OMX. The Company therefore proposes to amend its Charter and By-Laws to change its legal name from The NASDAQ OMX Group, Inc. to Nasdaq, Inc.

Specifically, the Company proposes to file a Certificate of Amendment to its Charter with the Secretary of State of the State of Delaware to amend Article First of the Charter to reflect the new name. In addition, the Company proposes to amend the title and Article I(f) of the By-Laws to reflect the new name.

2. Statutory Basis

SCCP believes that its proposal is consistent with Section 17A(b)(3)(C) of the Act,[3] in that it assures a fair representation of shareholders and participants in the selection of directors and administration of its affairs. While the proposals relate to the organizational documents of NASDAQ OMX, rather than SCCP, SCCP is indirectly owned by NASDAQ OMX, and therefore, NASDAQ OMX's stockholders have an indirect stake in SCCP. In addition, the participants in SCCP, to the extent any exist, could purchase stock in NASDAQ OMX in the open market, just like any other stockholder.

Specifically, NASDAQ OMX is proposing changes to its Charter and By-Laws to change NASDAQ OMX's legal name to Nasdaq, Inc. SCCP believes that the changes will eliminate confusion that may exist because of NASDAQ OMX's ongoing global rebranding as Nasdaq. As a result, SCCP believes that the proposals assure a fair representation of NASDAQ OMX's stockholders in the selection of directors and administration of NASDAQ OMX's affairs, as well as the affairs of SCCP.

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the proposed rule change relates to the governance of NASDAQ OMX and not to the operations of SCCP, SCCP 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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 SCCP consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–SCCP–2015–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–SCCP–2015–01. 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 the filing also will be available for inspection and copying at the principal office of SCCP. 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–SCCP–2015–01 and should be submitted on or before June 24, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–13449 Filed 6–2–15; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78q–1(b)(3)(C).

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75064; File No. SR–BSECC–2015–001]

Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend the Amended and Restated Certificate of Incorporation and By-Laws of The NASDAQ OMX Group, Inc.

May 28, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 19, 2015, Boston Stock Exchange Clearing Corporation (''BSECC'') 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 BSECC. 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

BSECC is filing this proposed rule change with respect to amendments of the Amended and Restated Certificate of Incorporation (the ''Charter'') and By-Laws (the ''By-Laws'') of its parent corporation, The NASDAQ OMX Group, Inc. (''NASDAQ OMX'' or the ''Company''), to change the name of the Company to Nasdaq, Inc. The proposed amendments will be implemented on a date designated by NASDAQ OMX following approval by the Commission. The text of the proposed rule change is available on BSECC's Web site at *http://nasdaqomxbx.cchwallstreet.com,* at the principal office of BSECC, 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, BSECC 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. BSECC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of an ongoing global rebranding initiative, the Company has begun to refer to itself, both internally and externally, as Nasdaq, rather than NASDAQ OMX. For purposes of consistency with its marketing, communications and other materials, the Company has decided to change the legal names of NASDAQ OMX and certain of its subsidiaries to eliminate references to OMX. The Company therefore proposes to amend its Charter and By-Laws to change its legal name from The NASDAQ OMX Group, Inc. to Nasdaq, Inc.

Specifically, the Company proposes to file a Certificate of Amendment to its Charter with the Secretary of State of the State of Delaware to amend Article First of the Charter to reflect the new name. In addition, the Company proposes to amend the title and Article I(f) of the By-Laws to reflect the new name.

2. Statutory Basis

BSECC believes that its proposal is consistent with Section 17A(b)(3)(C) of the Act,[3] in that it assures a fair representation of shareholders and participants in the selection of directors and administration of its affairs. While the proposals relate to the organizational documents of NASDAQ OMX, rather than BSECC, BSECC is indirectly owned by NASDAQ OMX, and therefore, NASDAQ OMX's stockholders have an indirect stake in BSECC. In addition, the participants in BSECC, to the extent any exist, could purchase stock in NASDAQ OMX in the open market, just like any other stockholder.

Specifically, NASDAQ OMX is proposing changes to its Charter and By-Laws to change NASDAQ OMX's legal name to Nasdaq, Inc. BSECC believes that the changes will eliminate confusion that may exist because of NASDAQ OMX's ongoing global rebranding as Nasdaq. As a result, BSECC believes that the proposals assure a fair representation of NASDAQ OMX's stockholders in the selection of directors and administration of NASDAQ OMX's affairs, as well as the affairs of BSECC.

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the proposed rule change relates to the governance of NASDAQ OMX and not to the operations of BSECC, BSECC 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.

[3] 15 U.S.C. 78q–1(b)(3)(C).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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 BSECC consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BSECC–2015–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSECC–2015–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of BSECC. 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–BSECC–2015–001 and should be submitted on or before June 24, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–13450 Filed 6–2–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75072; File No. SR–NASDAQ–2015–057]

Self-Regulatory Organizations; The NASDAQ Stock Market, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 4626(b)(3)

May 29, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 19, 2015, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.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 aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Introduction

On March 22, 2013, the Commission approved a proposal by Nasdaq to establish a one-time voluntary accommodation policy for claims arising from system difficulties that Nasdaq experienced during the initial public offering (''IPO'') of Facebook, Inc. (''Facebook'' or ''FB'') on May 18, 2012.[3] Rule 4626 limits the liability of Nasdaq and its affiliates with respect to any losses, damages, or other claims arising out of the Nasdaq Market Center or its use and provides for limited accommodations under the conditions specified in the rule.[4] Rule 4626(b)(1) provides that for the aggregate of all claims made by market participants related to the use of the Nasdaq Market Center during a single calendar month, Nasdaq's payments under Rule 4626 shall not exceed the larger of $500,000 or the amount of the recovery obtained by Nasdaq under any applicable insurance policy. Rule 4626(b)(2) states that for the aggregate of all claims made by market participants related to systems malfunctions or errors of the Nasdaq Market Center concerning locked/crossed compliance, trade through protection, market maker quoting, order protection, or firm quote compliance, during a single calendar month Nasdaq's payments under Rule 4626 shall not exceed the larger of $3,000,000 or the amount of the recovery obtained by Nasdaq under any applicable insurance policy. Rule 4626(b)(3) established a methodology for submission, evaluation, and payment of claims associated with the Facebook IPO. The purpose of this proposed rule change is to amend Rule 4626(b)(3) to permit a limited reopening of the process for submitting, evaluating, and paying such claims, in accordance with the terms and conditions described herein.

On May 18, 2012, Nasdaq experienced system difficulties during the Nasdaq Halt and Imbalance Cross Process (the ''Cross'') for the FB IPO. These difficulties delayed the completion of the Cross from 11:05 a.m. until 11:30 a.m.[5] Based on its assessment of the information available at the time, Nasdaq concluded that the system issues would not have any effects beyond the delay itself. In an exercise of its regulatory authority, Nasdaq determined to proceed with the IPO at 11:30 a.m. rather than postpone it.

As a result of the system difficulties, however, certain orders for FB stock that were entered between 11:11:00 a.m. and 11:30:09 a.m. in the expectation of participating in the Cross—and that were not cancelled prior to 11:30:09 a.m.—either did not execute or executed after 1:50 p.m. at prices other than the $42.00 price established by the Cross. (Other orders entered between 11:11:00 a.m. and 11:30:09 a.m., including cancellations, buy orders below $42.00, and sell orders above $42.00, were handled without incident.) System issues also delayed the dissemination of Cross transaction reports from 11:30 a.m. until 1:50 p.m. At 1:50 p.m., Nasdaq system difficulties were completely resolved.

Rule 4626(b)(3) provides that, as a result of these unique circumstances, Nasdaq would accommodate members for losses attributable to the system difficulties on May 18, 2012 in an amount not to exceed $62 million. Rule 4626(b)(3)(A) provides that all claims for such accommodation must arise solely from realized or unrealized direct

[4] 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. 69216 (March 22, 2013), 78 FR 19040 (March 28, 2013) (SR–NASDAQ–2012–090) (''Approval Order''). *See also* Securities Exchange Act Release No. 67507 (July 26, 2012), 77 FR 45706 (August 1, 2012) (SR–NASDAQ–2012–090) (''Proposing Release'').

[4] Rule 4626(a) provides that except as set forth in the accommodation portion of the rule, ''Nasdaq and its affiliates shall not be liable for any losses, damages, or other claims arising out of the Nasdaq Market Center or its use. Any losses, damages, or other claims, related to a failure of the Nasdaq Market Center to deliver, display, transmit, execute, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, Quote/Order, message, or other data entered into, or created by, the Nasdaq Market Center shall be absorbed by the member, or the member sponsoring the customer, that entered the order, Quote/Order, message, or other data into the Nasdaq Market Center.''

[5] All times in this filing are Eastern Time.

trading losses arising from the following specific Cross orders:

(i) SELL Cross orders that were submitted between 11:11 a.m. and 11:30 a.m. on May 18, 2012, that were priced at $42.00 or less, and that did not execute;

(ii) SELL Cross orders that were submitted between 11:11 a.m. and 11:30 a.m. on May 18, 2012, that were priced at $42.00 or less, and that executed at a price below $42.00;

(iii) BUY Cross orders priced at exactly $42.00 and that were executed in the Cross but not immediately confirmed; and

(iv) BUY Cross orders priced above $42.00 and that were executed in the Cross but not immediately confirmed, but only to the extent entered with respect to a customer that was permitted by the member to cancel its order prior to 1:50 p.m. and for which a request to cancel the order was submitted to Nasdaq by the member, also prior to 1:50 p.m.

As originally approved, Rule 4626(b)(3)(D) provided that all claims related to the FB IPO must be submitted in writing not later than 7 days after formal approval of the FB accommodation proposal by the Commission, which occurred on March 22, 2013. In recognition of the fact that the Passover and Good Friday holidays occurred during the week when claim submissions would otherwise be due, Nasdaq submitted an immediately effective proposed rule change to extend the deadline for claim submission until 11:59 p.m. on April 8, 2013.[6] Nasdaq received claims with respect to 75 market participant identifiers (''MPIDs'') within the deadline (the ''2013 Claims''). Nasdaq did not receive any claims after the deadline.

Rule 4626(d)(3)(D) further provides that all claims shall be processed and evaluated by the Financial Industry Regulation Authority (''FINRA''), applying the standards set forth in Rule 4626. FINRA is authorized to request such supplemental information as it deems necessary to assist its evaluation of claims.

Rule 4626(b)(3)(E) required FINRA to provide to the Nasdaq Board of Directors and the Board of Directors of NASDAQ OMX an analysis of the total value of eligible 2013 Claims, and further provided that Nasdaq would file with the Commission a rule proposal setting forth the amount of eligible 2013 Claims under the standards set forth in Rule 4626 and the amount proposed to be paid to members by Nasdaq. This process was completed in 2013,[7] and all valid 2013 Claims were paid on December 31, 2013.

Basis for Reopening the Claim Process Under Rule 4626(b)(3)

On March 15, 2013, UBS Securities LLC (''UBS''), a member of Nasdaq within the meaning of Rule 4626, filed a demand for arbitration against NASDAQ with the American Arbitration Association (''AAA''). In its demand, UBS sought to recover damages alleged to have been caused by Nasdaq in connection with the Facebook IPO. UBS cited provisions of the Services Agreement between Nasdaq and UBS as the basis for pursuing a claim in arbitration.[8] UBS did not file a claim under Rule 4626(b)(3).

On April 4, 2013, Nasdaq filed an action in the Southern District of New York against UBS seeking declaratory and injunctive relief with respect to UBS's demand for arbitration. On April 16, 2013, NASDAQ moved preliminarily to enjoin UBS from proceeding with arbitration, arguing, inter alia, that the Services Agreement did not reflect an agreement by Nasdaq to arbitrate claims covered by Rule 4626. UBS cross-moved to dismiss NASDAQ's complaint and opposed the preliminary injunction motion. On June 18, 2013, the district court granted NASDAQ's motion for a preliminary injunction and denied UBS's cross-motion to dismiss.[9] UBS appealed this decision to the United States Court of Appeals for the Second Circuit (the ''Court of Appeals'').

On October 31, 2014, the Court of Appeals issued a decision affirming the district court's decision.[10] In doing so, the Court of Appeals found that the district court had not erred in (i) exercising federal question jurisdiction over the case; (2) determining that the arbitrability of UBS's claims is a question for decision by the court, rather than an arbitrator; and (3) concluding that UBS's claims are not subject to arbitration given the applicability of Rule 4626.[11] The ruling by the Court of Appeals does not, however, foreclose the possibility of further judicial proceedings by UBS against Nasdaq. Nevertheless, UBS has agreed to forego further proceedings in consideration of Nasdaq's agreement to submit a proposed rule change to amend Rule 4626(b)(3) for the purpose of allowing UBS to submit a claim thereunder. In the interest of ensuring that the administration of Rule 4626 continues to be as fair as possible to all members, Nasdaq is proposing a limited reopening of the claims process not only for UBS, but for all other members that did not file 2013 Claims.[12]

Structure of the Proposed Claim Process

Under the proposed process for submission of new claims, a member that did not submit a claim prior to 11:59 p.m. ET on April 8, 2013 and that is not subject to a release executed and delivered to Nasdaq under Rule 4626(b)(3)(H) may submit a claim under Rule 4626(b)(3) prior to 11:59 p.m. ET on June 19, 2015 (each, a ''2015 Claim'' and collectively, the ''2015 Claims''). All 2015 Claims shall be processed and evaluated by FINRA applying the accommodation standards set forth in paragraphs (b)(3)(A), (B), and (C) of Rule 4626 and as fully described in the Proposing Release, the Approval Order, and the Results Filing.[13] FINRA may request such supplemental information as FINRA deems necessary to assist FINRA's evaluation of 2015 Claims.

As was the case with 2013 Claims, FINRA will establish a working group consisting of FINRA Market Regulation Department analysts and managers (''FB Claims Team''). During the review process, the FB Claims Team will not perform any regulatory services for any Nasdaq market and will not own or have owned FB stock during the period since its IPO. A Steering Committee, composed of members of senior management of FINRA's Market Regulation Department, may provide

[6] Securities Exchange Act Release No. 69250 (March 28, 2013), 78 FR 20160 (April 3, 2013) (SR–NASDAQ–2013–055).

[7] See Securities Exchange Act Release No. 71098 (December 17, 2013), 78 FR 77540 (December 23, 2013) (SR–NASDAQ–2013–152) (the ''Results Filing'').

[8] The Services Agreement is a contract that users of certain NASDAQ OMX systems (including, but not limited to, the Nasdaq Market Center) are required to enter into as a condition of using such systems.

[9] *See NASDAQ OMX Grp., Inc.* v. *UBS Sec. LLC,* 957 F. Supp. 2d 388 (S.D.N.Y. 2013).

[10] *See NASDAQ OMX Grp., Inc.* v. *UBS Sec. LLC,* Docket No. 13–2657–cv (2d Cir. 2014).

[11] On December 29, 2014, the Second Circuit denied a petition for panel rehearing, or in the alternative, rehearing *en banc.*

[12] Members that did file 2013 Claims would not be entitled to file again or to seek reconsideration of their claims. Similarly, any member affiliated with a member that executed and delivered a release of claims under Rule 4626(b)(3)(H) would be barred from filing. See Rule 4626(b)(3)(H) (requiring ''the execution and delivery to Nasdaq of a release by the member of all claims by it or its affiliates against Nasdaq or its affiliates for losses that arise out of, are associated with, or relate in any way to the Facebook, Inc. IPO Cross or to any actions or omissions related in any way to that Cross, including but not limited to the execution or confirmation of orders in Facebook, Inc. on May 18, 2012'').

[13] Nasdaq notes that the Results Filing describes the application of Rule 4626 to several questions that arose during FINRA's review of 2013 Claims, particularly with respect to claims for orders entered under a sponsored access arrangement and claims for BUY Cross Orders priced at exactly $42.00.

guidance to the FB Claims Team on the resolution of procedural and substantive issues arising during the course of the FB claim evaluation process, review the form and content of the review summary forms for each claim, and monitor the overall progress of the claim review effort. However, members of the Steering Committee will not participate in the FB Claim Team's assessment of and decisions to recommend the approval or disapproval of individual claims.

Following the completion of its analysis of 2015 Claims, FINRA shall provide to the Nasdaq Board of Directors and the Board of Directors of The NASDAQ OMX Group, Inc. an analysis of the total value of eligible 2015 Claims.[14] Nasdaq will review FINRA's determinations and determine whether it concurs in them or believes that any changes are required. Nasdaq will thereafter notify members of the value of 2015 Claims and pay valid 2015 Claims in accordance with the following parameters (which are functionally identical to the conditions associated with the payment of 2013 Claims):

- All payments of 2015 Claims will be contingent upon the submission to Nasdaq, not later than 7 days after the member's receiving notice of the value its 2015 Claim, of an attestation detailing:
  - The amount of compensation, accommodation, or other economic benefit provided or to be provided by the member to its customers (other than customers that were brokers or dealers trading for their own account) in respect of trading in Facebook Inc. on May 18, 2012 (''Customer Compensation''), and
  - the extent to which the losses reflected in the ''Member's Share'' [15] with respect to the 2015 Claim were incurred by the member trading for its own account or for the account of a customer that was a broker or dealer trading for its own account (''Covered Proprietary Losses'').

Failure to provide the required attestation within the specified time limit will void the member's eligibility to receive an accommodation with respect to a 2015 Claim. Each member shall be required to maintain books and records that detail the nature and amount Customer Compensation and Covered Proprietary Losses with respect to 2015 Claims.

- All payments of 2015 Claims will be contingent upon the execution and delivery to Nasdaq of a release by the member of all claims by it or its affiliates against Nasdaq or its affiliates for losses that arise out of, are associated with, or relate in any way to the Facebook, Inc. IPO Cross or to any actions or omissions related in any way to that Cross, including but not limited to the execution or confirmation of orders in Facebook, Inc. on May 18, 2012. The member's failure to provide the required release within 14 days after receiving notice of the value its 2015 Claim will void the member's eligibility to receive an accommodation with respect to its 2015 Claim.

Nasdaq is requiring the submission of the attestation with respect to Customer Compensation because, as was the case with respect to 2013 Claims, Nasdaq believes that it is reasonable to make accommodation payments with respect to orders submitted on behalf of a member's customers only if the member has compensated or will compensate its customers in an amount that is at least equal to the amount of the accommodation payment. In addition, Nasdaq will prioritize the payment of accommodation funds used to compensate a member's customers above the payment of funds with respect to proprietary trading losses. However, Nasdaq notes that with respect to 2013 Claims, Nasdaq was able to pay the full amount the 2013 Claims, including proprietary trading losses. Moreover, based on Nasdaq's records with respect to the disposition of shares in the Cross, Nasdaq believes that it will likely be able to pay the full amount of 2015 Claims, including claims with respect to Covered Proprietary Losses. Nevertheless, because Rule 4626 includes an absolute limit of $62 million on the total value of accommodation payments with respect to the FB IPO, and because Nasdaq is not proposing to increase this limit, Nasdaq is proposing a proration mechanism that would be used in the event that the total value of 2015 Claims and 2013 Claims exceeds $62 million.[16] Specifically, accommodation payments for 2015 Claims will be made in two tranches of priority:

- First, if the member has provided Customer Compensation, the member will receive an amount equal to the lesser of the Member's Share or the amount of Customer Compensation (''Tranche A'');
- Second, the member will receive an amount with respect to Covered Proprietary Losses; provided, however, that the sum of payments to a member with respect to 2015 Claims shall not exceed the Member's Share (''Tranche B'').

In the event that the amounts calculated under Tranche A, together with the amounts previously paid with respect to 2013 Claims, exceed $62 million, the accommodation will be prorated among members eligible to receive accommodation under Tranche A based on the size of the amounts payable under Tranche A. In the event that Tranche A is paid in full and the amounts calculated under Tranche B, together with the amounts paid under Tranche A and the amounts previously paid with respect to 2013 Claims, exceed $62 million, the accommodation will be prorated among members eligible to receive accommodation under Tranche B based on the size of the amounts payable under Tranche B. If a member's eligibility to receive funds is voided for any reason under this rule, and the funds payable to other members must be prorated hereunder, the funds available to pay other members will be increased accordingly.

Thus, if the portion of 2015 Claims with respect to Customer Compensation, plus the total amount paid with respect to 2013 Claims, exceeds $62 million, the funds remaining under Rule 4626 will be prorated among members with 2015 Claims with respect to Customer Compensation. Similarly, if the portion of 2015 Claims with respect to Customer Compensation, plus the total amount paid with respect to 2013 Claims does not exceed $62 million, but such amount, together with the portion of 2015 Claims with respect to Covered Proprietary Losses exceeds $62 million, the funds remaining under Rule 4626 after payments with respect to Customer Compensation will be prorated among members with 2015 Claims with respect to Covered Proprietary Losses. Nasdaq believes that this proration mechanism is reasonable because members with 2013 Claims submitted timely claims under the terms of Rule 4626(b)(3) as originally proposed, while members with 2015 Claims are receiving the benefit of a subsequent amendment. Accordingly, to the extent that any proration is required to keep the overall cost of the program under the $62 million limit originally proposed and approved by the Commission, the effects of the proration should be borne solely

[14] In contrast to the process for 2013 Claims, Nasdaq is not proposing to submit a follow-on proposed rule change to report on the results of the 2015 Claim process. Nasdaq believes that such a proposed rule change is unnecessary because the 2015 Claim process will follow the parameters described herein and in the Proposing Release, the Approval Order, and the Report Filing.

[15] As defined in Rule 4626(b)(3)(B), each member's direct trading losses calculated in accordance with Rule 4626(b)(3)(A) and (B) is referred to in Rule 4626 and herein as the ''Member's Share''.

[16] As reported in the Results Filing, the total value of 2013 Claims was $44,029,901.61. Accordingly, the maximum amount available for the payment of 2015 Claims would be $17,970,098.39.

by members with 2015 Claims. As discussed above, however, Nasdaq believes that it is unlikely that any such proration will be required.

All payments of 2015 Claims shall be made in cash. Payments to a member shall be made as soon as practicable following the completion of all analysis and documents required under the rule.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 6(b) of the Act [17] in general, and furthers the objectives of Section 6(b)(5) of the Act [18] in particular, because the proposal is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In the Approval Order, the Commission found that Rule 4626(b)(3) is consistent with the Act because it ''sets forth objective and transparent processes to determine eligible claims and how such claims would be paid to Nasdaq members that elect to participate in the accommodation plan.'' The Commission further determined that providing compensation pursuant to the rule would be in the public interest and that the rule would encourage members to compensate their customers. Similarly, Nasdaq believes that this proposed rule change is consistent with the Act because it will allow additional members to benefit from the accommodation plan. As originally adopted, Rule 4626(b)(3) contains time limits that bar claims submitted after April 8, 2013. These time limits were intended to, and were successful in, encouraging members to submit claims promptly after Commission approval of the proposal, thereby allowing for the efficient administration of the claim process. Although UBS opted to pursue arbitration rather than filing a claim under the rule, Nasdaq believes that it is reasonable to allow it to file a claim under the rule now to resolve the litigation between Nasdaq and UBS. In addition, by reopening the claim process to all members that did not file a 2013 Claim (or that are not otherwise covered by a release executed in connection with the 2013 Claim process), Nasdaq will ensure that the benefits of the proposal are available not only to UBS, but to also to other members that decided not to participate in the 2013 Claim process but that wish to do so now.

Nevertheless, although Nasdaq believes it is unlikely that proration of 2015 Claims in order to keep the total value of all claims within the $62 million limit authorized under the rule will be required, it is reasonable that members making claims under the 2015 Claim process would be required to incur the burden of any such proration that would be required, since such members opted not to file claims within the period originally contemplated by the rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the proposed rule change does not relate to the provision of goods or services, nor does it impose regulatory restrictions on the ability of members to compete. Accordingly, the change does not affect competition in any respect.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [19] and subparagraph (f)(6) of Rule 19b–4 thereunder.[20]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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–NASDAQ–2015–057 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2015–057. 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–NASDAQ–2015–057, and should be submitted on or before June 24, 2015.

[17] 15 U.S.C. 78f(b).

[18] 115 U.S.C. 78f(b)(5).

[19] 115 U.S.C. 78s(b)(3)(A)(iii).

[20] 117 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.[21]

Brent J. Fields,

Secretary.

[FR Doc. 2015–13616 Filed 6–2–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75065; File No. SR–ICEEU–2015–005]

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to CDS Procedures for CDX North America Index CDS Contracts

May 28, 2015.

I. Introduction

On February 12, 2015, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change 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 revise ICE Clear Europe's CDS Procedures, CDS Risk Model Description and CDS End-of-Day Price Discovery Policy to provide the basis for ICE Clear Europe to clear CDX North America Index CDS Contracts (''CDX.NA Contracts''). The proposed rule change also includes revisions to the CDS Procedures that relate to iTraxx Contracts and single name CDS Contracts. The proposed rule change was published for comment in the **Federal Register** on March 2, 2015.[3] On April 16, 2015, the Commission extended the time period in which to either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change to May 31, 2015.[4] The Commission did not receive comment letters regarding the proposed change. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description of the Proposed Rule Change

ICE Clear Europe has submitted proposed amendments to its CDS Procedures to (i) revise the CDS Procedures to add a new section containing contract terms applicable to the CDX.NA Contracts that ICE Clear Europe proposes to accept for clearing; (ii) make conforming changes throughout the CDS Procedures to reference the CDX.NA Contracts; and (iii) make certain other clarifications, corrections and updates to the CDS Procedures (including for iTraxx Contracts and Single Name Contracts), as discussed in more detail herein. ICE Clear Europe has also proposed to make certain modifications to its CDS Risk Model Description and CDS End-of-Day Price Discovery Policy (the ''CDS Pricing Policy'') to accommodate clearing of CDX.NA Contracts, as described herein.

ICE Clear Europe has proposed to amend Paragraphs 1, 4, 6, 9, 10 and 11 of the CDS Procedures, described below. All capitalized terms not defined herein are defined in the ICE Clear Europe Clearing Rules (the ''Rules'').

In paragraph 1 of the CDS Procedures, references will be added to the defined terms ''iTraxx Contract'' and ''CDX.NA Contract,'' as such terms are set out in revised paragraphs 9 and 10 of the CDS Procedures, respectively. The definition of ''Original Annex Date'' will be modified to apply to CDX.NA Contracts in substantially the same manner it applies to iTraxx Contracts. In addition, the definition of ''Protocol Excluded Reference Entity'' in former paragraph 10.3 will be changed to ''Protocol Excluded Corporate Reference Entity'' and moved to paragraph 1, to reflect that such term is only used in the context of corporate reference entities. Accordingly, the definition will be revised to mean an Eligible Single Name Reference Entity that is a Standard European Corporate (as specified in the List of Eligible Single Name Reference Entities) and is an Excluded Reference Entity (as defined in the 2014 CDD Protocol). (Conforming changes will be made to references to that definition throughout the CDS Procedures.) In addition, a correction will be made to the cross-reference in definition of ''New Trade'' to properly refer to the definition set out in the applicable Contract Terms for the relevant contract.

In addition, amendments will be made to use the defined terms ''Component Transaction'' and ''Clearing'' throughout the Procedures in lieu of the undefined terms. Finally, various conforming references to the new or revised defined terms will be made throughout the CDS Procedures, various provisions of the CDS Procedures will be renumbered, and certain cross-references to prior paragraph 1.71 will be corrected.

Various clarifications will be made in Paragraph 9 of the CDS Procedures, which sets out the contract terms for iTraxx Contracts. Specifically, paragraph 9.1 will be modified to clarify that it specifies the additional Contract Terms applicable to all iTraxx Contracts cleared by the Clearing House. Paragraph 9.2(c)(i), which applies to iTraxx Contracts which are governed by the Standard iTraxx 2014 CDS Supplement, will be modified to make certain additional clarifications relating to initial payments and spun-out trades. Paragraph 9.2(c)(i)(B) will be added to reflect current clearing house (and market) practice that initial payments under cleared iTraxx Contracts (other than those for which a bilateral transaction is already recorded in Deriv/SERV) are made on the business day following the trade date (or, if later, the business day following the date of acceptance for clearing). New paragraph 9.2(c)(i)(D), which will address the reference obligation for a spun-out trade following a restructuring credit event, is substantially the same as the corresponding language in paragraph 9.3(c)(i)(D) for contracts subject to the Standard iTraxx Legacy CDS Supplement and was inadvertently omitted from prior amendments. A cross-reference in paragraph 9.2(c)(i)(E) will be updated. New paragraph 9.2(c)(i)(F) will provide that paragraph 5.7 of the Standard iTraxx 2014 CDS Supplement, which contains restrictions on delivery of Credit Event Notices and Successor Notices, does not apply to iTraxx Contracts (as the appropriate restrictions in the context of a cleared transaction are already addressed in the Rules and CDS Procedures, including Rule 1505).

As set forth in paragraph 9.2(c)(ii), changes will also be made to the terms of the iTraxx 2014 Confirmation with respect to iTraxx Contracts that are governed by the Standard iTraxx 2014 CDS Supplement. These amendments will include a clarification that references to the 2014 Credit Derivatives Definitions in the standard supplement and confirmation will be interpreted for cleared contracts as though they have the meaning ascribed to that term in the Rules and Procedures. In addition, a provision that there are no ''Omitted Reference Entities'' for purposes of the standard confirmation will be removed as that term is not used in the standard supplement and confirmation and is therefore unnecessary.

Similar clarifications will be made in paragraph 9.3, which relates to iTraxx Contracts which are governed by the

[21] 117 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. 34–74362 (Feb. 24, 2015), 80 FR 11246 (Mar. 2, 2015) (File No. SR–ICEEU–2015–005).

[4] Securities Exchange Act Release No. 34–74741 (Apr. 16, 2015), 80 FR 22593 (Apr. 22, 2015) (File No. SR–ICEEU–2015–005).

Standard iTraxx Legacy CDS Supplement. Specifically, new paragraph 9.3(c)(i)(B) will contain the same clarification discussed above with respect to the initial payment date for a contract. Paragraph 9.3(c)(i)(D) will contain a correction that the treatment therein of reference obligations for spun-out trades applies for reference entities subject to both Sections A and B of the Standard iTraxx Legacy CDS Supplement (that is, both protocol-excluded and non-excluded entities). Subparagraph (F) will provide that restrictions under the standard supplement as to delivery of Credit Event Notices and Succession Event Notices do not apply, as the issue is otherwise addressed under the Rules and CDS Procedures, as discussed above. In paragraph 9.3(c)(ii)(E), a reference to there being no ''Omitted Reference Entities'' will also be removed for the reasons noted above.

New paragraph 10 of the CDS Procedures will be added to set out the contract terms for CDX.NA Contracts. Paragraph 10.1 will provide that different sub-provisions of paragraph 10 will apply to CDX.NA Contracts depending on whether the Original Annex Date for the relevant index series falls before or after the Protocol Effective Date.

New paragraph 10.2 will apply to CDX.NA Contracts with an Original Annex Date on or after the Protocol Effective Date (*i.e.,* for transactions in the September 2014 or later versions of the index). New definitions will be added to subparagraph (a), including definitions for ''CDX.NA Contract'', ''CDX.NA Publisher'', ''CDX.NA Terms Supplement'', ''Eligible CDX.NA Index'', ''List of Eligible CDX.NA Indices'', and ''Relevant CDX.NA Terms Supplement'', which largely track the analogous definitions in paragraph 9 with respect to iTraxx Europe Contracts. Paragraph 10.2(b) will incorporate defined terms from the Relevant CDX.NA Terms Supplement and also will contain an inconsistency provision which provides that paragraph 10.2 governs over the CDX.NA 2014 CDS Supplement and CDX.NA 2014 Confirmation. Paragraph 10.2(c) will contain certain amendments to the Standard CDX.NA 2014 CDS Supplement and CDX.NA 2014 Confirmation, which are generally consistent with the amendments to the iTraxx 2014 Terms Supplement and iTraxx 2014 Confirmation in paragraph 9.2(c) and are generally designed to accommodate the requirements of clearing and make the standard contract terms consistent with the Rules and Procedures. In addition, paragraph 10.2(c)(i)(E) will address the application of the defined term ''Index Party'' in the standard supplement in the context of a cleared transaction, and paragraphs 10.2(c)(ii)(E)–(F) will be added to refer to certain transaction terms specified in the List of Eligible CDX.NA Indices for the relevant index and tenor. Paragraph 10.2(c)(i)(G) will clarify that as with iTraxx Contracts, de minimis cash settlement under the standard supplement does not apply. Paragraph 10.2(c) will also indicate the transaction terms that must be specified in the submission of a trade for clearing.

New paragraph 10.3 will apply to CDX.NA Contracts with an Original Annex Date before the Protocol Effective Date (*i.e.,* for transactions in older versions of the index). Paragraph 10.3 will contain definitions and provisions generally similar to those in paragraph 10.2, and make comparable amendments to the Standard CDX.NA Legacy CDS Supplement and the CDX.NA Legacy Confirmation.

New paragraph 10.4 will contain procedures for updating the CDX.NA index version following a Credit Event or Succession Event. These provisions will be generally consistent with the comparable provisions for iTraxx contracts in paragraph 9.8. New paragraph 10.4(b) will add a similar procedure for implementing a new version of the CDX.NA standard terms supplement, if and when published, where contracts referencing the old and new versions of the supplement are determined by the Clearing House to be fungible.

Existing paragraph 10, which contains contract terms for Single Name Contracts, will be renumbered as paragraph 11 and cross references will be updated accordingly. In addition, various clarifying amendments will be made to this paragraph. The definitions of ''STEC Contract'' and ''Non-STEC Single Name Contract'' will be amended to clarify that the relevant Reference Entity type will be specified in the List of Eligible Single Name Reference Entities. The definition of ''Single Name Contract Reference Obligations'' will be amended to clarify that the applicable reference obligation will be specified in the List of Eligible Single Name Reference Entities and may differ between 2003-type CDS Contracts and 2014-type CDS Contracts. For 2014-type CDS Contracts, the reference obligation may be designated as the Senior Level Standard Reference Obligation that is specified from time to time on the SRO List published under the 2014 ISDA Definitions.

Paragraph 11.6(a)(i)(C) will be amended by adding a subsection (2) that will make a clarification as to the initial payment date for Single Name Contracts that corresponds to the change in payment date discussed above for iTraxx Contracts. A change will be made in paragraph 11.6(a)(ii) to conform to the changes made to the definition of Single Name Contract Reference Obligation discussed above.

In general, under ICE Clear Europe's proposal, the existing risk methodology that applies to index CDS will also apply to the CDX.NA Contracts. However, ICE Clear Europe proposes to make certain amendments to its CDS Risk Model Description and CDS Pricing Policy to address CDX.NA Contracts.

In the CDS Risk Model Description, the index decomposition offset methodology, which is used to determine portfolio margin benefits from correlated long and short positions, is proposed to be modified to address multi-region risk factors. Under the revised methodology, portfolio margin benefits are provided first for risk factors within the same region. After the same-region risk analysis is completed, any cross-region benefits for index risk factors are determined. Cross-region benefits apply only to index risk factors. The revised description thus addresses scenarios in which margin offsets may be provided between appropriately correlated positions in iTraxx Contracts and positions in CDX.NA Contracts. The revisions also provide that where risk factor profits and losses are calculated in different currencies, they will be converted into the same base currency (Euro) for purposes of calculation of portfolio margin benefits.

ICE Clear Europe also proposes to amend its CDS Pricing Policy to cover the CDX.NA Contracts. The amendments include submission requirements with respect to CDX.NA Contracts and changes to reflect that certain determinations with respect to firm trades for CDX.NA Contracts are made as of the North American end-of-day.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act [5] directs the Commission to approve a proposed rule change of a self-regulatory organization if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such self-regulatory organization. Section

[5] 15 U.S.C. 78s(b)(2)(C).

17A(b)(3)(F) of the Act[6] requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions and, in general, to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with Section 17A of the Act[7] and the rules thereunder applicable to ICE Clear Europe. The proposed rule change will provide for clearing of the CDX.NA Contracts, which are similar to the index CDS Contracts currently cleared by ICE Clear Europe, in accordance with existing rules and procedures. Specifically, the Commission believes that ICE Clear Europe's proposal to clear the CDX.NA Contracts pursuant to its risk management framework, operational procedures, end-of-day pricing policies, settlement procedures and default management policies (as modified by the proposed rule change) is designed to promote the prompt and accurate clearance and settlement of securities transactions, derivative agreements, contracts, and transactions, and in general, to protect investors and the public interest, consistent with Section 17A(b)(3)(F) of the Act.[8] The Commission further believes that the clearing of CDX.NA Contracts in accordance with ICE Clear Europe's existing CDS risk policies (including margin and guaranty fund), as modified by the proposed rule change, is reasonably designed to meet the requirements of Rules 17Ad–22(b)(1)–(3)[9] related to the measurement and management of credit exposures, margin requirements, and the maintenance of sufficient financial resources required for a registered clearing agency acting as a central counterparty for security-based swaps.

Additionally, the Commission believes that the proposed rule change, as it relates to various clarifying and conforming changes with respect to iTraxx Contracts and single name CDS Contracts, is designed to promote the prompt and accurate clearance and settlement of securities transactions and in general, to protect investors and the public interest, consistent with Section 17A(b)(3)(F) of the Act.[10]

The Commission therefore finds that the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions and, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act.[11]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[12] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (File No. SR–ICEEU–2015–005) be, and hereby is, approved.[14]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Brent J. Fields,

Secretary.

[FR Doc. 2015–13451 Filed 6–2–15; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 9161]

Fine Arts Committee Notice of Meeting

The Fine Arts Committee of the Department of State will meet on June 2, 2015 at 9:00 a.m. in the Henry Clay Room of the Harry S. Truman Building, 2201 C Street NW., Washington, DC. The meeting will last until approximately 3:00 p.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting on November 14, 2014 and the announcement of gifts and loans of furnishings as well as financial contributions from January 1, 2014 through December 31, 2014.

Public access to the Department of State is strictly controlled and space is limited. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office at (202) 647–1990 or send an email to *WallaceJA@State.gov* by May 26th to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: May 11, 2015.

Marcee Craighill,

Director & Curator, Fine Arts Committee, Department of State.

[FR Doc. 2015–13470 Filed 6–2–15; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Request To Release Airport Property

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on request to release airport property at the Liberal Mid-America Regional Airport (LBL), Liberal, Kansas.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Liberal Mid-America Regional Airport (LBL), Liberal, Kansas, under the provisions of 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before July 6, 2015.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Lynn D. Martin, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust Room 364, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: Debra S. Giskie, Airport Manager, Liberal Mid-America Regional Airport & Airport Industrial Park, City of Liberal, P.O. Box 2199, Liberal, KS 67901, (620) 626-2207.

FOR FURTHER INFORMATION CONTACT: Lynn D. Martin, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust Room 364, Kansas City, MO 64106, (816) 329–2644, *lynn.martin@faa.gov.* The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release approximately 11.38 acres of airport property at the Liberal Mid-America Regional Airport (LBL) under the provisions of 49 U.S.C. 47107(h)(2). On March 13, 2015, the City of Liberal City Manager requested from the FAA that approximately 11.38 acres of property be released for sale to the City of Liberal. On May 26, 2015, the FAA

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22(b)(1)–(3).

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 15 U.S.C. 78q–1.

[13] 15 U.S.C. 78s(b)(2).

[14] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

determined that the request to release property at Liberal Mid-America Regional Airport (LBL) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this Notice.

The following is a brief overview of the request:

Liberal Mid-America Regional Airport (LBL) is proposing the release of a parcel, totaling 11.38 acres. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject property will result in the surface lands being released at the Liberal Mid-America Regional Airport (LBL), from the conditions of the AIP Grant Agreement Grant Assurances, but retaining any mineral rights. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value for the property, from the City of Liberal and will be subsequently sold to Wal-Mart.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon appointment and request, inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Liberal Mid-America Regional Airport.

Issued in Kansas City, MO, on May 27, 2015.

Jim A. Johnson,

Manager, Airports Division.

[FR Doc. 2015–13502 Filed 6–2–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7165; FMCSA–2006–26066; FMCSA–2007–27515; FMCSA–2009–0054; FMCSA–2009–0086; FMCSA–2010–0354; FMCSA–2011–0024; FMCSA–2013–0022; FMCSA–2013–0024; FMCSA–2013–0026]

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 June 20, 2015. Comments must be received on or before July 6, 2015.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–2000–7165; FMCSA–2006–26066; FMCSA–2007–27515; FMCSA–2009–0054; FMCSA–2009–0086; FMCSA–2010–0354; FMCSA–2011–0024; FMCSA–2013–0022; FMCSA–2013–0024; FMCSA–2013–0026], 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: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Carrier, Driver and Vehicle Safety Standards, 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:

I. 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.

II. 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:

Fred Boggs (WV), Russell A. Bolduc (CT), Charles C. Chapman (NC), Paul M. Christina (PA), Frederick M. DeHoff (IN), James M. Del Sasso (IL), Stephen R. Dykstra (WI), Troy A. Gray (MI), Darryl W. Hardy (AL), Larry M. Hawkins (AZ), Terry L. Lipscomb (AL), Jerry D. Paul (OK), Joseph E. Pfaff (IL), Randel G. Pierce (WI), Garrick D. Pitts (AR), Dustin N. Sullivan (MD).

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.

III. 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 (65 FR 33406; 65 FR 57234; 68 FR 13360; 70 FR 12265; 71 FR 63379; 72 FR 1050; 72 FR 21313; 72 FR 27624; 72 FR 32703; 74 FR 11988; 74 FR 19267; 74 FR 19270; 74 FR 21427; 74 FR 23472; 74 FR 28094; 75 FR 72863; 76 FR 2190; 76 FR 17481; 76 FR 21796; 76 FR 25762; 76 FR 28125; 76 FR 32016; 76 FR 32017; 77 FR 74273; 78 FR 12815; 78 FR 16912; 78 FR 22596; 78 FR 22598; 78 FR 22602; 78 FR 24300; 78 FR 29431; 78 FR 30954; 78 FR 32703; 78 FR 32708; 78 FR 37274). 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.

IV. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2000–7165; FMCSA–2006–26066; FMCSA–2007–27515; FMCSA–2009–0054; FMCSA–2009–0086; FMCSA–2010–0354; FMCSA–2011–0024; FMCSA–2013–0022; FMCSA–2013–0024; FMCSA–2013–0026), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online 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 the Agency can contact you if it has questions regarding your submission.

To submit your comment online, got to *http://www.regulations.gov* and put the docket number, ''FMCSA–2000–7165; FMCSA–2006–26066; FMCSA–2007–27515; FMCSA–2009–0054; FMCSA–2009–0086; FMCSA–2010–0354; FMCSA–2011–0024; FMCSA–2013–0022; FMCSA–2013–0024; FMCSA–2013–0026'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. 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. FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and in the search box insert the docket number, ''FMCSA–2000–7165; FMCSA–2006–26066; FMCSA–2007–27515; FMCSA–2009–0054; FMCSA–2009–0086; FMCSA–2010–0354; FMCSA–2011–0024; FMCSA–2013–0022; FMCSA–2013–0024; FMCSA–2013–0026'' in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued on: May 21, 2015.

Larry W. Minor,

Associate Administration for Policy.

[FR Doc. 2015–13467 Filed 6–2–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0049]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions, request for comments.

SUMMARY: FMCSA announces receipt of applications from 23 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce.

DATES: Comments must be received on or before July 6, 2015. All comments will be investigated by FMCSA. The exemptions will be issued the day after the comment period closes.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2015–0049 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:* 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 numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

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 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.

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FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Carrier, Driver and Vehicle Safety Standards, (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. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-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.'' FMCSA can renew exemptions at the end of each 2-year period. The 23 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

Michael J. Altobelli

Mr. Altobelli, 39, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''Based on the results of his eye examination, Mr. Altobelli has sufficient vision to perform the driving tasks required to operate a commercial vehicle safely.'' Mr. Altobelli reported that he has driven straight trucks for 21 years, accumulating 420,000 miles. He holds a Class B CDL from Connecticut. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Johnny A. Bingham

Mr. Bingham, 46, has had amblyopia strabismus in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2015, his optometrist stated, ''Field of vision in each eye tests 120 degrees in the horizontal meridians, and has sufficient vision to perform the driving tasks he is required to operate a commercial vehicle.'' Mr. Bingham reported that he has driven straight trucks for 8 years, accumulating 4,000 miles, and tractor-trailer combinations for 4 years, accumulating 4,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert A. Buckley

Mr. Buckley, 62, has a retinal detachment in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''Mr. Buckley has maintained a commercial license for over forty years with no driving incidents. In my opinion, there I [*sic*] no reason to believe his driving skills are diminished due to his long standing monovision.'' Mr. Buckley reported that he has driven straight trucks for 45 years, accumulating 900,000 miles. He holds an operator's license from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Allen E. Clark

Mr. Clark, 27, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/30, and in his left eye, 20/60. Following an examination in 2014, his ophthalmologist stated, ''In my medical opinion, given his stable eye examination, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Clark reported that he has driven straight trucks for eight years, accumulating 68,000 miles, and tractor-trailer combinations for five years, accumulating 12,500 miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Don A. Clymer

Mr. Clymer, 69, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''In my opinion, Mr. Clymer has sufficient acuity to operate a commercial vehicle.'' Mr. Clymer reported that he has driven straight trucks for 53 years, accumulating 530,000 miles, and tractor-trailer combinations for 53 years, accumulating 1.33 million miles. He holds an operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Bryan K. Dalton

Mr. Dalton, 51, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''Normal VF no issues driving.'' Mr. Dalton reported that he has driven straight trucks for 35 years, accumulating 87,500 miles, tractor-trailer combinations for 33 years, accumulating 660,000 miles, and buses for 3 years, accumulating 3,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Joseph B. Fry

Mr. Fry, 27, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2015, his optometrist stated, ''With this testing and that performed at the routine eye exam on 1/12/15 the patient has sufficient vision to safely perform the driving tasks required to operate a commercial vehicle.'' Mr. Fry reported that he has driven straight trucks for 4 years, accumulating 10,000 miles, and tractor-trailer combinations for 4 years, accumulating 12,000 miles. He holds a Class A CDL from Kansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David B. Ginther

Mr. Ginther, 58, has had enucleation in his left eye since 2012 due to ocular melanoma. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2015, his optometrist stated, ''U.S. Department of Transportation . . . Provided these findings [*sic*], I certify that Mr. Ginther is able to perform driving tasks with sufficient vision within your standards.'' Mr. Ginther reported that he has driven straight trucks for 40 years, accumulating 600,000 miles, and buses for 4 years, accumulating 8,000 miles. He holds an operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Dominic F. Giordano

Mr. Giordano, 47, has had strabismic amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/30, and in his left eye, 20/150. Following an examination in 2014, his optometrist stated, ''In my opinion, Mr. Giordano has sufficient vision and peripheral field of vision to perform tasks required to operate a commercial vehicle.'' Mr. Giordano reported that he has driven straight trucks for 4 years, accumulating 200,000 miles, and tractor-trailer combinations for 10 years, accumulating 500,000 miles. He holds a Class A CDL from Connecticut. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Thomas E. Groves

Mr. Groves, 53, has had a retinal scar in his right eye since 2013. The visual acuity in his right eye is 20/100, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''Although Mr. Groves has a moderate amount of decreased central vision in the right eye, I believe his overall acuity, depth perception, and peripheral vision is sufficient to safely operate a commercial vehicle.'' Mr. Groves reported that he has driven straight trucks for 15 years, accumulating 1.69 million miles, and tractor-trailer combinations for 20 years, accumulating 3.5 million miles. He holds a Class A CDL from West Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jose J. Guzman-Olguin

Mr. Guzman-Olguin, 47, has had a retinal detachment in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, light perception. Following an examination in 2014, his optometrist stated, ''In my professional opinion, Mr. Guzman is capable of driving a commercial vehicle to the extent his test results conform to the law and with any visual aids that are required by law for monocular driver.'' Mr. Guzman-Olguin reported that he has driven straight trucks for 7 years, accumulating 36,400 miles. He holds an operator's license from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Stephen T. Hines

Mr. Hines, 58, has a prosthetic left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2014, his ophthalmologist stated, ''There is no ocular reason that should prevent you from operating any motor vehicle.'' Mr. Hines reported that he has driven straight trucks for 38 years, accumulating 19,000 miles, and tractor-trailer combinations for 35 years, accumulating 2.1 million miles. He holds a Class A CDL from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James J. Keranen

Mr. Keranen, 43, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''It is my medical opinion that James Keranan has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Keranen reported that he has driven straight trucks for 16 years, accumulating 400,000 miles. He holds a chauffer's license from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Wesley S. Kilpatrick

Mr. Kilpatrick, 36, has had angle closure and a retinal detachment causing a visual field defect in his right eye since 2012. The visual acuity in his right eye is 20/40, and in his left eye, 20/15. Following an examination in 2015, his optometrist stated, ''In my opinion [*sic*], Wes Kilpatrick has sufficient vision to perform any task, including the driving requirements to operate a commercial vehicle.'' Mr. Kilpatrick reported that he has driven straight trucks for 16 years, accumulating 400,000 miles, tractor-trailer combinations for 16 years, accumulating 160,000 miles, and buses for 12 years, accumulating 132,000 miles. He holds an operator's license from Oklahoma. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Herbert S. Lear

Mr. Lear, 60, has had aphakia in his right eye since 1990. The visual acuity in his right eye is 20/250, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''I believe that Mr. Lear has sufficient vision to continue to perform the driving tasks required to operate a commercial vehicle as he has been doing over the past 25 years.'' Mr. Lear reported that he has driven straight trucks for 43 years, accumulating 860,000 miles, and tractor-trailer combinations for 43 years, accumulating 215,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Christopher V. May

Mr. May, 53, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/25, and in his left eye, 20/60. Following an examination in 2014, his optometrist stated, ''In my medical opinion, Mr. Christopher May has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. May reported that he has driven straight trucks for 30 years, accumulating 300,000 miles, and tractor-trailer combinations for 22 years, accumulating 880,000 miles. He holds a Class AM CDL from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Nathan C. Nissen

Mr. Nissen, 35, has corneal scarring and reduced vision in his right eye due to a traumatic incident in 2003. The visual acuity in his right eye is 20/45, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''Based on these findings, I feel Nathan C. Nissen has the visual abilities to continue operating a commercial motor vehicle in interstate commerce because the visual loss in his right eye occurred in 2003 and has been stable since that time.'' Mr. Nissen reported that he has driven straight trucks for 14 years, accumulating 9,800 miles, and tractor-trailer combinations for 14 years, accumulating 700,000 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jeffery Reed

Mr. Reed, 49, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/50. Following an examination in 2014, his optometrist stated, ''U.S. Dept. of Transportation . . . With corrective lenses, I feel that Mr. Reed is safe to drive.'' Mr. Reed reported that he has driven tractor-trailer combinations for 27 years, accumulating 2.83 million miles. He holds an operator's license from Kentucky. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gregory S. Richter, Sr.

Mr. Richter, 59, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2015, his optometrist stated, ''I believe Mr. Richter has sufficient vision to preform [*sic*] the driving tasks required to operate a commercial vehicle.'' Mr. Richter reported that he has driven straight trucks for 35 years, accumulating 1.4 million miles, and tractor-trailer combinations for one year, accumulating 50,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David J. Rotenberger

Mr. Rotenberger, 41, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2014, his optometrist stated, ''Based on the exam findings and the fact the Dave has been driving and operating heavy machinery on the farm for the last 25 years without incident, it is my medical opinion that David Rotenberger has sufficient vision to operate a commercial vehicle for farm use.'' Mr. Rotenberger reported that he has driven straight trucks for 30 years, accumulating 75,000 miles, and tractor-trailer combinations for 25 years, accumulating 625,000 miles. He holds an operator's license from North Dakota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

George Tomecek, Jr.

Mr. Tomecek, 54, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/500, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated that Mr. Tomecek does not have any conditions or diseases that would make him an unsafe driver. Mr. Tomecek reported that he has driven straight trucks for 28 years, accumulating 336,000 miles. He holds a Class B CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Richard G. Vaughn

Mr. Vaughn, 71, has had complete loss of vision in his right eye since 2012 due to a central vein occlusion. The visual acuity in his right eye is hand motion, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''Mr. Vaughn has been driving commercially since his vision loss in 2012. He should have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Vaughn reported that he has driven straight trucks for 8 years, accumulating 80,000 miles, and tractor-trailer combinations for 40 years, accumulating 5.5 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Paul C. Weiss

Mr. Weiss, 56, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/70, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''In my opinion, Mr. Weiss has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Weiss reported that he has driven straight trucks for 38 years, accumulating 3.04 million miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

III. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online 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 the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and put the docket number FMCSA–2015–0049 in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. 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.

FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and insert the docket number FMCSA–2015–0049 in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued On: May 22, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–13486 Filed 6–2–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0092]

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 15 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 June 28, 2015. Comments must be received on or before July 6, 2015.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–2011–0092], 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: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Carrier, Driver and Vehicle Safety Standards, 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:

I. 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.

II. Exemption Decision

This notice addresses 15 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 15 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Christopher L. Bagby (VA), Jan M. Bernath (OH), Joseph L. Butler (IN), Shawn M. Carroll (OK), John C. Dimassa (WA), Mark T. Gileau (CT), Robert A. Goerl, Jr. (PA), Peter D. Gouge (IA), Alan D. Harberts (IA), Paul M. Hinkson (TN), Wendell S. Sehen (OH), Gary E. Valentine (OH), Kevin W. Van Arsdol (CO), Charles Van Dyke (WI), Harlon C. VanBlaricom (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.

III. 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 15 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (76 FR 25766; 76 FR 37885; 78 FR 37270). Each of these 15 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.

IV. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2011–0092), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online 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 the Agency can contact you if it has questions regarding your submission.

To submit your comment online, got to *http://www.regulations.gov* and put the docket number, ''FMCSA–2011–0092'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. 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. FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and in the search box insert the docket number, ''FMCSA–2011–0092'' in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued on: May 22, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–13464 Filed 6–2–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–26367]

Motor Carrier Safety Advisory Committee (MCSAC): Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of meeting.

SUMMARY: FMCSA announces that its MCSAC will meet on Monday and Tuesday, June 15–16, 2015, to complete its recommendations concerning the Agency's Beyond Compliance initiative, provide ideas the Agency should consider for updating its strategic plan, and receive a briefing concerning FMCSA's current research projects. The meeting is open to the public and there will be a period of time at the end of each day for the public to submit oral comments.

Times and Dates: The meeting will be held Monday–Tuesday, June 15–16, 2015, from 9 a.m. to 4:30 p.m., Eastern Daylight Time (EDT), at the Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314. Copies of the MCSAC Task Statement and an agenda for the entire meeting will be made available in advance of the meeting at *http://mcsac.fmcsa.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Senior Policy Advisor, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 385–2395, *mcsac@dot.gov.*

Services for Individuals With Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, please contact Mr. Eran Segev at (617) 494–3174 or *eran.segev@dot.gov* by Wednesday, June 10, 2015.

SUPPLEMENTARY INFORMATION:

I. Background

MCSAC was established to provide FMCSA with advice and recommendations on motor carrier safety programs and motor carrier safety regulations. MCSAC is composed of up to 20 voting representatives from safety advocacy, safety enforcement, labor, and industry stakeholders of motor carrier safety. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities. The Committee operates as a discretionary committee under the authority of the U.S. Department of Transportation (DOT), established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2. See FMCSA's MCSAC Web site for additional information about the committee's activities at *http://mcsac.fmcsa.dot.gov/.*

Voluntary Compliance Task

The truck and motorcoach industries and the DOT have invested significant resources to research, develop, and test strategies and technologies to reduce truck and bus crashes. In September 2014, the Commercial Vehicle Safety Alliance submitted a request to FMCSA to consider initiating a pilot program to investigate the benefits and feasibility of voluntary compliance. Citing research that has been underway for several years, the Agency established an Alternative Compliance initiative the goal of which is to analyze the concept and gather data to support how this concept might be developed and implemented. During its March 2015 meeting, the Agency tasked the MCSAC, with its collective expertise on transportation safety, with identifying options for the motor carrier safety community to promote programs that could improve safety beyond the standards established in FMCSA regulations.

Strategic Plan Discussion

FMCSA is updating its Strategic Plan to align with the new FY2014–FY2018 DOT Strategic Plan that was released in November 2014. The new FMCSA Plan would extend to FY2018; the current Plan ends in FY2016. The revised Plan would include the status on strategies FMCSA employed in the FY2012–FY2016 plan as well as new programs and strategies FMCSA plans to implement by FY2018. FMCSA is presenting an overview of the draft Strategic Plan to the MCSAC to obtain stakeholder feedback. FMCSA plans to publish the updated Strategic Plan by September 30, 2015.

Research and Technology Conversation

FMCSA maintains an active research program to promote the Agency's understanding of factors impacting safe driver behavior and carrier operations. The Agency also examines new technologies for their potential to improve motor carrier safety and the enforcement of commercial motor vehicle safety regulations. At the June 2015 MCSAC meeting, FMCSA plans to present its portfolio of current and planned research activities for committee members' information and comment. FMCSA will also use the opportunity to solicit Committee input on additional areas of safety research.

II. Meeting Participation

Oral comments from the public will be heard during the last half-hour of the meetings each day. Should all public comments be exhausted prior to the end of the specified period, the comment period will close. Members of the public may submit written comments on the topics to be considered during the meeting by Wednesday, June 10, 2015, to Federal Docket Management System (FDMC) Docket Number FMCSA–2006–26367 using any of the following methods:

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

Dated: May 27, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–13482 Filed 6–2–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35929]

Peninsula Corridor Joint Powers Board—Petition for Declaratory Order

By petition filed on May 19, 2015, the Peninsula Corridor Joint Powers Board (Caltrain), operator of the Caltrain commuter rail service between San Jose and San Francisco, Cal., seeks a declaratory order confirming that the requirements of the California Environmental Quality Act (CEQA), as applied to Caltrain, are fully preempted by virtue of 49 U.S. C. 10501(b). Caltrain states that it is a rail carrier subject to the Board's jurisdiction [1] and seeks to install electrical lines over its rail line, a project known as the Peninsula Corridor Electrification Project. Caltrain states that a local city and two interest groups have filed lawsuits against Caltrain in state court, challenging Caltrain's compliance with CEQA. Caltrain argues that the improvements to its rail line and facilities are under the Board's exclusive jurisdiction and that 49 U.S.C.10501(b) preempts the application of CEQA.

Caltrain has requested that the Board issue an expedited declaratory order by June 30, 2015. Caltrain states that a Board order regarding preemption of CEQA issued prior to that date would eliminate controversy in advance of its initial state court appearance. To facilitate expedited consideration, Caltrain states that it has served a copy of its petition on all counsel of record in the state court lawsuits.

The Board has discretionary authority under 5 U.S.C. 554(e) and 49 U.S.C. 721 to issue a declaratory order to eliminate a controversy or remove uncertainty. Here, it is appropriate to institute a declaratory order proceeding so that the Board can consider the issue raised in Caltrain's petition regarding whether 10501(b) would preempt CEQA, as applied to Caltrain and its electrification project. The Board will therefore institute a proceeding to consider the matter. Interested persons may file substantive replies to Caltrain's petition by June 8, 2015.

It is ordered:

1. A declaratory order proceeding is instituted.

2. Interested persons may file substantive replies to Caltrain's petition by June 8, 2015.

3. Notice of the Board's action will be published in the **Federal Register.**

4. This decision is effective on its service date.

Decided: May 29, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. Contee,

Clearance Clerk.

[FR Doc. 2015–13603 Filed 6–2–15; 8:45 am]

BILLING CODE 4915–01–P

[1] Caltrain and its managing agency, the San Mateo County Transit District, acquired the line from Southern Pacific Transportation Company in 1992. *Peninsula Corridor Joint Powers Bd.—Acquis. Exemption—S. Pac. Transp. Co.,* FD 31980 (ICC served Jan. 17, 1992).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35926]

San Joaquin Valley Railroad Co.—Amended Lease and Operation Exemption—Sunset Railway Company

San Joaquin Valley Railroad Co. (SJVR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to continue to lease and operate approximately 19.75 miles of rail line from Sunset Railway Company (Sunset) between milepost 0.05 at Gosford, Cal., and milepost 19.8 at Levee, Cal.

In 1997, SJVR entered into a lease with Sunset under which SJVR leased the line between milepost 0.05 at Gosford and milepost 36.3 at Taft, Cal.[1] The portion of the line between the current endpoint in Levee at milepost 19.8 (previously reported as milepost 20.0) and milepost 36.3 was abandoned by Sunset and discontinued by SJVR.[2] SJVR and Sunset have now reached agreement on an amended and restated lease that would extend the term of the lease through December 21, 2019,[3] and would make other changes to the original lease.

SJVR certifies that neither the amended lease nor the original lease from 1997 include an interchange commitment. Additionally, SJVR certifies that the projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier, but that its projected annual revenues will exceed $5 million. Accordingly, SJVR is required, at least 60 days before this exemption is to become effective, to send notice of the transaction to the national offices of the labor unions with employees on the affected lines, post a copy of the notice at the workplace of the employees on the affected lines, and certify to the Board that it has done so. 49 CFR 1150.42(e).

SJVR, concurrently with its notice of exemption, filed a petition for waiver of the 60-day advance labor notice requirement under 1150.42(e), asserting that: (1) There will be no changes for

[1] *See San Joaquin Valley R.R.—Acquis. & Operation Exemption—Sunset Ry.,* FD 33404 (STB served June 18, 1997) (milepost corrected by decision served on June 27, 1997).

[2] *See Sunset Ry.—Aban. Exemption—in Kern Cnty., Cal.,* AB 170 (Sub-No. 1X) (STB served Dec. 21, 2004).

[3] This amended lease agreement provides for the lease to renew automatically for five successive five-year terms unless either party delivers written notice of its desire not to renew the lease not less than 180 days prior to the end of the initial or any subsequent five-year term.

any employees working on the leased premises because SJVR already leases the line and has been the sole common carrier operator since 1997; and (2) no employees of Sunset have worked on the line since before 1997. SJVR's waiver request will be addressed in a separate decision.

SJVR states that it intends to consummate the transaction on or shortly after the effective date of this transaction. The Board will establish in the decision on the waiver request the earliest date this transaction may be consummated.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than June 10, 2015.

An original and 10 copies of all pleadings, referring to Docket No. FD 35926, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on applicant's representative, Eric M. Hocky, Clark Hill PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: May 29, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. Contee,

Clearance Clerk.

[FR Doc. 2015–13483 Filed 6–2–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35925]

Michael Williams—Continuance in Control Exemption—Boot Hill & Western Railway Holding Co., Inc.

Michael Williams (Williams), a noncarrier individual, has filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2), to continue in control of Boot Hill & Western Railway Holding Co., Inc. (Holding), a noncarrier holding company owned and controlled by Williams, upon its becoming a common carrier.[1] Williams has submitted to the Board a redacted, public version of the Agreement for Sale of Certain Assets, Rights and Obligations of Boot Hill & Western Railway Co., LC (Agreement).[2]

This transaction is related to a concurrently filed verified notice of exemption in *Boot Hill & W. Ry. Holding Co., Inc.—Acquisition and Operation Exemption—Boot Hill & W. Ry.,* Docket FD 35924, wherein Holding seeks Board approval to acquire and operate approximately 10.2 miles of rail line owned by Boot Hill & Western Railway Co., LC (BHWR) extending between milepost 15.8, at or near Wilroads, and milepost 26.0, at Dodge City, in Ford County, Kan.

The transaction may be consummated on June 17, 2015, (the effective date of this notice).[3]

Williams currently owns and controls the following four Class III rail carriers: (1) BG & CM Railroad (76.2 miles of rail line in Idaho); (2) Ozark Valley Railroad (24.99 miles of purchased and leased rail line in Missouri); (3) Dakota Southern Railway Company (operating rights over two track segments in South Dakota); and (4) McCloud Railway (19.6 miles of rail line in California).

Williams certifies that: (1) BHWR does not connect with any other railroads owned and controlled by Williams; (2) the proposed transaction is not part of a series of anticipated transactions that would result in such a connection; and (3) the proposed transaction does not involve a Class I rail carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323 pursuant to 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed by June 10, 2015 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 35925, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Charles H. Montange, Law Offices of Charles H. Montange, 426 NW 162d St., Seattle, WA 98177.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV.*''

Decided: May 29, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina Contee,

Clearance Clerk.

[FR Doc. 2015–13484 Filed 6–2–15; 8:45 am]

BILLING CODE 4915–01–P

[1] By letters filed on May 15 and May 18, 2015, Williams clarified that he intends to continue in control of Holding upon Holding's acquisition and operation of Boot Hill & Western Railway Co., LC.

[2] With his verified notice of exemption, Williams filed under seal an unredacted copy of relevant portions of the Agreement and a motion for protective order to allow limited access to those portions of the agreement. That motion is being addressed separately.

[3] Because, as noted, Williams supplemented his verified notice on May 15 and May 18, 2015, the later date, May 18, 2015 will be considered the filing date of the verified notice.

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2015–0112]

Agency Requests for Reinstatement of a Previously Approved Information Collection(s): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and for Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations

AGENCY: Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval previously approved information collection. This information collection involves the use of various forms necessary because of management and oversight responsibilities of the agency imposed by OMB Circular 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. These forms include Application for Federal Assistance (SF–424), Federal Financial Report (SF–425), Request for Advance or Reimbursement (SF–270), and Outlay Report and Request for Reimbursement for Construction Programs (SF–271).

We are required to publish this notice in the **Federal Register** by the

Paperwork Reduction Act of 1995, Public Law 104–13.

DATES: Written comments should be submitted by July 30, 2015.

ADDRESSES: You may submit comments [identified by Docket No. DOT–OST–2015–0112] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ellen Shields, Associate Director of the Financial Assistance Policy and Oversight Division, M–65, Office of the Senior Procurement Executive, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–4268. Refer to OMB Control Number 2105–0520.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2105–0520

Title: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Form Numbers: SF–424, SF–425, SF–270, and SF–271.

Type of Review: Revision of a previously approved collection.

Background: This is to request the Office of Management and Budget's (OMB) renewed three-year approved clearance for the information collection, entitled, ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards'' OMB Control No. 2105–0520, which is currently due to expire on June 30, 2015. Originally this OMB Control Number was titled: Uniform Administrative Requirements for Grants and Agreements to State and Local Governments and With Institution of Higher Education, Hospitals and Other Non-Profit Organizations (OMB Circulars A–110 and 2 CFR 215). However, on December 26, 2014, OMB issued new guidelines titled: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and these guidelines cover the following data collection standard forms (SF): Application for Federal Assistance (SF–424); Federal Financial Report (SF–425); Request for Advance or Reimbursement (SF–270); and Outlay Report & Request for Reimbursement for Construction Programs (SF–271).

There have also been adjustments to the burden estimates. In 2010, the Department estimated a combined total of 2,704 respondents and 189,280 burden hours. Due to a 35% decrease in appropriations, the Department has revised estimates and now has a combined total of 1,758 respondents and burden hours of 123,060. The estimated cost to respondents and the federal government has decreased by 35% in overhead expenses.

Respondents: Grantees.

Number of Respondents: 1,758.

Number of Responses: 7,030.

Total Annual Burden: 123,060.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC on May 29, 2015.

Ellen Shields,

Associate Director, Financial Assistance Policy and Oversight, Office of the Senior Procurement Executive.

[FR Doc. 2015–13488 Filed 6–2–15; 8:45 am]

BILLING CODE 4910–9X–P

FEDERAL REGISTER

Vol. 80 Wednesday,
No. 106 June 3, 2015

Part II

Department of Energy

10 CFR Part 430
Energy Conservation Program: Energy Conservation Standards for Residential Dehumidifiers; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2012–BT–STD–0027]

RIN 1904–AC81

Energy Conservation Program: Energy Conservation Standards for Residential Dehumidifiers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Proposed Rulemaking and Announcement of Public Meeting.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including residential dehumidifiers. EPCA also requires the U.S. Department of Energy (DOE) to periodically determine whether more-stringent, amended standards would be technologically feasible and economically justified, and would save a significant amount of energy. In this document, DOE proposes amended energy conservation standards for different categories of residential dehumidifiers. This document also announces a public meeting to receive comment on these proposed standards and associated analyses and results.

DATES: *Comments:* DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than August 3, 2015. See section VII, ''Public Participation,'' for details.

Meeting: DOE will hold a public meeting on Tuesday, July 7, 2015, from 9 a.m. to 4 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section VII, ''Public Participation'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

ADDRESSES: The meeting will also be broadcast as a webinar. See section VII, ''Public Participation'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants. 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.

Any comments submitted must identify the NOPR for Energy Conservation Standards for Residential Dehumidifiers, and provide docket number EERE–2012–BT–STD–0027 and/or regulatory information number (RIN) number 1904–AC81. 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: ResDehumidifier2012STD0027@ee.doe.gov*. Include the docket number and/or RIN in the subject line of the message.

3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a 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 Office, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Office of Energy Efficiency and Renewable Energy through the methods listed above and by email to *Chad_S_Whiteman@omb.eop.gov*.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section VII, ''Public Participation.''

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov*. All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/55*. This Web page will contain a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section VII, ''Public Participation,'' for further information on how to submit comments through *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *bryan.berringer@ee.doe.gov*.

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SUPPLEMENTARY INFORMATION:

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I. Synopsis 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.[2] These products include residential dehumidifiers, the subject of this notice.

Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) EPCA also provides that not later than 6 years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking including new proposed energy conservation standards. (42 U.S.C. 6295(m)(1)) Once complete, this rulemaking will satisfy this statutory provision.

In accordance with these and other statutory provisions discussed in this notice, DOE proposes amended energy conservation standards for residential dehumidifiers. The proposed standards, which correspond to trial standard level 3 (described in section V.A), divide residential dehumidifiers into two categories: Portable and whole-home. The proposed minimum allowable integrated energy factor (IEF) standards, which are expressed in liters (L) of moisture removed per kilowatt-hour (kWh), are shown in Table I.1. These proposed standards, if adopted, would apply to all products listed in Table I.1 and manufactured in, or imported into, the United States on or after the date three years after the publication of the final rule for this rulemaking.[3]

TABLE I.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL DEHUMIDIFIERS

Portable dehumidifier product capacity (pints/day)	Minimum IEF (L/kWh)
30.00 or less	1.30
30.01–45.00	1.60
45.01 or more	2.80
Whole-home dehumidifier product case volume (cubic feet)	
8.0 or less	2.09
More than 8.0	3.52

A. Benefits and Costs to Consumers

Table I.2 presents DOE's evaluation of the economic impacts of the proposed standards on consumers of residential dehumidifiers, as measured by the average life-cycle cost (LCC) savings and the payback period (PBP). The average LCC savings are positive for all product classes and the PBP is significantly less than the average lifetimes for portable

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012).

[3] The current energy conservation standards for residential dehumidifiers went into effect on October 1, 2012. EPCA, as amended, provides that a ''manufacturer shall not be required to apply new standards to a product with respect to which other new standards have been required during the prior 6-year period.'' (42 U.S.C. 6295(m)(4)(B)) Thus, the proposed standards could not go into effect until October 1, 2018 at the earliest. DOE anticipates issuing a final rule on amended energy conservation standards for residential dehumidifiers in 2016. To ensure that the amended standards will not go into effect until after October 1, 2018, DOE is not requiring compliance with the new standards until three years after the publication of the final rule.

and whole-home residential dehumidifiers, which are approximately 11 and 19 years, respectively.[4]

TABLE I.2—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF RESIDENTIAL DEHUMIDIFIERS

Product class	Average LCC savings (2013$)	Payback period (years)
Portable Dehumidifier: ≤30.00 pints/day	64	0.2
Portable Dehumidifier: 30.01–45.00 pints/day	99	0.2
Portable Dehumidifier: >45.00 pints/day	147	2.8
Whole-home Dehumidifier: ≤8ft^3	207	1.3
Whole-home Dehumidifier: >8ft^3	416	1.4

DOE's analysis of the impacts of the proposed standards on consumers is described in section IV.F of this NOPR.

B. Impact on Manufacturers

The industry net present value (INPV) is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2015 to 2048). Using a real discount rate of 8.43 percent,[5] DOE estimates that the INPV for manufacturers of residential dehumidifiers is $186.5 million.[6] Under the proposed standards, DOE expects that manufacturers may lose up to 18.7 percent of their INPV, which is approximately $34.9 million. Additionally, based on DOE's interviews with the manufacturers of residential dehumidifiers, DOE does not expect significant impacts on manufacturing capacity or loss of employment for the industry as a whole.

C. National Benefits and Costs

DOE's analyses indicate that the proposed standards would save a significant amount of energy. The lifetime full-fuel-cycle (FFC) energy savings for residential dehumidifiers purchased in the 30-year period that begins in the first full year of compliance with the amended standards (2019–2048) amount to 0.32 quads.[7]

The cumulative net present value (NPV) of total consumer costs and savings for the proposed residential dehumidifier standards ranges from $1.04 billion (at a 7-percent discount rate) to $2.27 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product costs for residential dehumidifiers purchased in 2019–2048.

In addition, the proposed standards would have significant environmental benefits. The energy savings described above (for dehumidifiers purchased in the 2019–2048 period) are estimated to result in cumulative emission reductions of 19.3 million metric tons (Mt)[8] of carbon dioxide (CO_2), 85.9 thousand tons of methane (CH_4), 16.0 thousand tons of sulfur dioxide (SO_2), 28.8 thousand tons of nitrogen oxides (NO_X), 0.3 thousand tons of nitrous oxide (N_2O), and 0.05 ton of mercury (Hg).[9] The cumulative reduction in CO_2 emissions through 2030 amounts to 5.9 Mt, which is equivalent to the emissions resulting from the annual electricity use of 0.8 million homes.

The value of the CO_2 reductions is calculated using a range of values per metric ton of CO_2 (otherwise known as the Social Cost of Carbon, or SCC) developed by a recent Federal interagency process.[10] The derivation of the SCC values is discussed in section IV.L of this notice. Using discount rates appropriate for each set of SCC values, DOE estimates the present monetary value of the CO_2 emissions reduction is between $0.14 billion and $1.93 billion, DOE also estimates the present monetary value of the NO_X emissions reduction, is $0.04 billion at a 7-percent discount rate and $0.10 billion at a 3-percent discount rate.[11]

Table I.3 summarizes the national economic costs and benefits expected to result from the proposed standards for residential dehumidifiers.

[4] Lifetimes are based on: *28th Annual Portrait of the U.S. Appliance Industry*, Appliance Magazine, Sept. 2005, at 65; Toru Kubo, Harvey Sachs, and Steve Nadel, *Opportunities for New Appliance and Equipment Efficiency Standards: Energy and Economic Savings Beyond Current Standards Programs*, American Council for an Energy Efficient Economy (Sept. 2001); Northeast Energy Star Lighting and Appliance, *Dehumidifiers*, (Available at *http://www.myenergystar.com/Dehumidifiers.aspx*) (last visited Nov. 14, 2014).

[5] The real discount rate is the weighted-average cost of capital derived from industry financials and modified based on feedback received during confidential interviews with manufacturers.

[6] All monetary values in this section are expressed in 2013 dollars; discounted values are discounted to 2014 unless explicitly stated otherwise.

[7] A quad is equal to 10^{15} British thermal units (Btu). FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.*, coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, see section IV.H.1

[8] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

[9] DOE calculated emissions reductions relative to the *Annual Energy Outlook 2014* (*AEO 2014*) Reference case, which generally represents current legislation and environmental regulations for which implementing regulations were available as of October 31, 2013.

[10] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866*, Interagency Working Group on Social Cost of Carbon, United States Government (November 2013) (Available at: *http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulatory-impact-analysis.pdf*).

[11] DOE is currently investigating valuation of avoided Hg and SO_2 emissions.

TABLE I.3—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL DEHUMIDIFIERS *

Category	Present value (billion 2013$)	Discount rate (%)
Benefits		
Consumer Operating Cost Savings	1.15	7
	2.49	3
CO_2 Reduction Monetized Value ($12.0/t case) **	0.14	5
CO_2 Reduction Monetized Value ($40.5/t case) **	0.63	3
CO_2 Reduction Monetized Value ($62.4/t case) **	0.99	2.5
CO_2 Reduction Monetized Value ($119/t case) **	1.93	3
NO_X Reduction Monetized Value (at $2,684/ton) †	0.04	7
	0.10	3
Total Benefits ††	1.82	7
	3.21	3
Costs		
Consumer Incremental Installed Costs	0.12	7
	0.22	3
Total Net Benefits		
Including Emissions Reduction Monetized Value ††	1.70	7
	3.00	3

* This table presents the costs and benefits associated with residential dehumidifiers shipped in 2019–2048. These results include benefits to consumers which accrue after 2048 from the products purchased in 2019–2048. The incremental costs account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule.

** The CO_2 values represent global monetized values of the SCC, in 2013$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series used by DOE incorporate an escalation factor.

† The $/ton values used for NO_X are described in section IV.L.2.

†† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to average SCC with 3-percent discount rate ($40.5/t in 2015).

The benefits and costs of today's proposed standards, for products sold in 2019–2048, can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are the sum of: (1) The national economic value of the benefits in reduced operating costs, minus (2) the increase in product purchase and installation costs, plus (3) the value of the benefits of CO_2 and NO_X emission reductions, all annualized.[12]

Although DOE believes that the benefits of operating cost savings and CO_2 emission reductions are both important, two issues should be considered. First, the national operating savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, whereas the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and CO_2 savings are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of residential dehumidifiers shipped in 2019–2048. Because CO_2 emissions have a very long residence time in the atmosphere,[13] the SCC values in future years reflect future CO_2-emissions impacts that continue well beyond 2100.

Estimates of annualized benefits and costs of the proposed standards are shown in Table I.4. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction (for which DOE used a 3-percent discount rate along with the average SCC series that has a value of $40.5/t in 2015),[14] the estimated cost of the standards proposed in today's rule is $12.6 million per year in increased equipment costs, while the estimated benefits are $122.0 million per year in reduced equipment operating costs, $35.9 million per year in CO_2 reductions, and $4.6 million per year in reduced NO_X emissions. In this case, the net benefit amounts to $150 million per year. Using a 3-percent discount rate for all benefits and costs and the average SCC series that has a value of $40.5/t in 2015, the estimated cost of the standards proposed in today's rule is $12.5 million per year in increased equipment costs, while the estimated benefits are $142.7 million per year in reduced operating costs, $35.9 million per year in CO_2 reductions, and $6.0 million per year in reduced NO_X emissions. In this case, the net benefit amounts to $172 million per year.

[12] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2014, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.*, 2020 or 2030), and then discounted the present value from each year to 2014. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates, as shown in Table I.3. DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year, that yields the same present value.

[13] The atmospheric lifetime of CO_2 is estimated of the order of 30–95 years. Mark Z. Jacobson, *Correction to ''Control of fossil-fuel particulate black carbon and organic matter, possibly the most effective method of slowing global warming,''* 110 J. Geophys. Res. D14105 (2005).

[14] DOE used a 3-percent discount rate because the SCC values for the series used in the calculation were derived using a 3-percent discount rate (see section IV.L).

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL DEHUMIDIFIERS

	Discount rate	Million 2013$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Benefits				
Operating Cost Savings	7%	122.0	116.8	126.3
	3%	142.7	136.3	149.2
CO_2 Reduction Monetized Value ($12.0/t case) **	5%	10.9	10.7	11.1
CO_2 Reduction Monetized Value ($40.5/t case)**	3%	35.9	35.3	36.7
CO_2 Reduction Monetized Value ($62.4/t case) **	2.5%	52.2	51.4	53.4
CO_2 Reduction Monetized Value ($119/t case) **	3%	110.9	109.2	113.4
NO_X Reduction Monetized Value †	7%	4.65	4.59	4.73
	3%	5.96	5.86	6.09
Total Benefits ††	7% plus CO_2 range	138 to 238	132 to 231	142 to 244
	7%	163	157	168
	3% plus CO_2 range	160 to 260	153 to 251	166 to 269
	3%	185	177	192
Costs				
Consumer Incremental Product Costs	7%	12.6	12.3	13.7
	3%	12.5	12.0	13.9
Net Benefits				
Total ††	7% plus CO_2 range	125 to 225	120 to 218	128 to 231
	7%	150	144	154
	3% plus CO_2 range	147 to 247	141 to 239	152 to 255
	3%	172	165	178

* This table presents the annualized costs and benefits associated with residential dehumidifiers shipped in 2019–2048. These results include benefits to consumers which accrue after 2048 from the products purchased in 2019–2048. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The Primary, Low Benefits, and High Benefits Estimates utilize projections of energy prices from the *AEO 2015* Reference case, Low Estimate, and High Estimate, respectively. In addition, incremental product costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Benefits Estimate, and a high decline rate in the High Benefits Estimate. The methods used to derive projected price trends are explained in section IV.F.1 of this notice.

** The CO_2 values represent global monetized values of the SCC, in 2013$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series used by DOE incorporate an escalation factor.

† The $/ton values used for NO_X are described in section IV.L.2.

†† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to the average SCC with 3-percent discount rate ($40.5/t in 2015). In the rows labeled ''7% plus CO_2 range'' and ''3% plus CO_2 range,'' the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

D. Conclusion

DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. DOE further notes that products achieving these standard levels are already commercially available for all product 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 consumer benefits, consumer LCC savings, and emission reductions) would outweigh the burdens (loss of INPV for manufacturers and LCC increases for some consumers).

DOE also considered more stringent energy efficiency levels as potential standards, and is still considering them in this rulemaking. However, DOE has tentatively concluded that the potential burdens of the more-stringent energy efficiency levels would outweigh the projected benefits. Based on consideration of the public comments DOE receives in response to this notice and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy efficiency levels presented in this notice that are either higher or lower than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part.

II. Introduction

The following section briefly discusses the statutory authority underlying today's proposal, as well as some of the relevant historical background related to the establishment of standards for residential dehumidifiers.

A. Authority

Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances (collectively referred to as ''covered products''), which includes the types of residential dehumidifiers that are the subject of this rulemaking. (42 U.S.C. 2(a)(6295(cc))) EPCA, as amended, prescribes energy conservation

standards for residential dehumidifiers [15] manufactured on or after October 1, 2007, and more stringent energy conservation standards for residential dehumidifiers manufactured on or after October 1, 2012. (42 U.S.C. 6295(cc)) Under 42 U.S.C. 6295(m), the agency must periodically review established energy conservation standards for a covered product. Under this requirement, such review must be conducted no later than 6 years from the issuance of a final rule establishing or amending a standard for a covered product.

Pursuant to EPCA, DOE's energy conservation program for covered products consists essentially of four parts: (1) Testing; (2) labeling; (3) the establishment of Federal energy conservation standards; and (4) certification and enforcement procedures. The 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(b)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for residential dehumidifiers currently appear at title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendix X.

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products. Any new or 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 residential dehumidifiers, if no test procedure has been established for the product, or (2) if DOE determines by rule that the proposed standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(A)–(B)) In deciding whether a proposed standard is economically justified, and after receiving comments on the proposed standard, 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 by, to the greatest extent practicable, considering 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))

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 procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

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 under this section if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding.'' (42 U.S.C. 6295(o)(4))

Additionally, 42 U.S.C. 6295(q)(1) specifies requirements when promulgating a standard for a covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of covered product that has the same function or intended use, if DOE determines that products within such group: (A) Consume a different kind of energy from that consumed by other covered 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. (42 U.S.C. 6294(q)(1)) 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. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) 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 the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and

[15] Dehumidifiers are defined as self-contained, electrically operated, and mechanically encased assemblies consisting of: (1) A refrigerated surface (evaporator) that condenses moisture from the atmosphere; (2) a refrigerating system, including an electric motor; (3) an air-circulating fan; and (4) a means for collecting or disposing of the condensate. (42 U.S.C. 6291(34))

off mode energy use into a single 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 for residential dehumidifiers address standby mode and off mode energy use. In this rulemaking, DOE intends to adopt a single energy conservation standard that addresses active, off, and standby modes.

B. Background

1. Current Standards

EPCA prescribes energy conservation standards for residential dehumidifiers manufactured on or after October 1, 2012. In a final rule published on March 23, 2009, DOE codified these standards at 10 CFR 430.32(v)(2). 74 FR 12058. The current standards are set forth in Table II.1 below.

TABLE II.1—FEDERAL ENERGY EFFICIENCY STANDARDS FOR RESIDENTIAL DEHUMIDIFIERS *

Product class * (pints/day)	Energy factor (EF) ** (L/kWh)
Up to 35.00	1.35
35.01–45.00	1.50
45.01–54.00	1.60
54.01–75.00	1.70
75.00 or more	2.5

* Capacity in pints/day is measured according to the current DOE test procedure.

** EF is a measure of the water removed from the air per unit of energy consumed by a dehumidifier and is calculated according to the current DOE test procedure.

2. History of Standards Rulemaking for Residential Dehumidifiers

As amended by the Energy Policy Act of 2005 (EPACT 2005), EPCA established the first energy conservation standards for residential dehumidifiers manufactured as of October 1, 2007, based on the EF metric. EISA 2007 subsequently amended EPCA to prescribe new energy conservation standards for dehumidifiers manufactured on or after October 1, 2012. In a final rule published on March 23, 2009, DOE codified the standards at 10 CFR 430.32(v)(2). 74 FR 12058.

DOE initiated today's rulemaking pursuant to 42 U.S.C. 6295(m)(1), which requires DOE, no later than 6 years after issuance of any final rule establishing or amending a standard, to publish either a notice of determination that standards for the product do not need to be amended, or a NOPR that includes new proposed energy conservation standards. As noted above, DOE issued the last final rule for residential dehumidifiers on March 23, 2009.

DOE initiated this rulemaking by issuing an analytical Framework Document, ''Energy Conservation Standards Rulemaking Framework Document for Residential Dehumidifiers.'' 77 FR 49739 (Aug. 17, 2012). The Framework Document explained the issues, analyses, and process that DOE anticipated using to develop energy conservation standards for residential dehumidifiers.

DOE held a public meeting on September 24, 2012, to solicit comments from interested parties regarding the Framework Document and DOE's proposed analytical approach. DOE sought feedback from interested parties on these subjects and provided information regarding the rulemaking process that DOE would follow. Interested parties discussed the following major issues at the public meeting: Rulemaking schedule; test procedure revisions; product classes; technology options; efficiency levels (ELs); and approaches for each of the analyses performed by DOE as part of the rulemaking process.

Comments received following the publication of the framework document helped DOE identify and resolve issues related to the subsequent preliminary analysis. In the preliminary analysis, DOE conducted in-depth technical analyses in the following areas: (1) Engineering; (2) markups to determine product price; (3) energy use; (4) life-cycle cost and payback period; and (5) national impacts. The preliminary technical support document (TSD) that presented the methodology and results of each of these analyses is available at *http://www.regulations.gov/#!documentDetail;D=EERE-2012-BT-STD-0027-0015*.

DOE also conducted, and included in the preliminary TSD, several other analyses that supported the major analyses or were expanded upon for today's NOPR. These analyses included: (1) The market and technology assessment; (2) the screening analysis, which contributes to the engineering analysis; and (3) the shipments analysis,[16] which contributes to the LCC and PBP analysis and national impact analysis (NIA). In addition to these analyses, DOE began preliminary work on the manufacturer impact analysis and identified the methods to be used for the consumer subgroup analysis, the emissions analysis, the employment impact analysis, the regulatory impact analysis, and the utility impact analysis.

DOE published a notice of public meeting and availability of the preliminary TSD on May 22, 2014. 79 FR 29380. DOE subsequently held a public meeting on June 13, 2014, to discuss and receive comments on the preliminary TSD. DOE received comments on topics including: Whole-home dehumidifier coverage and test procedures, product classes, design options, ELs, use of experience curves, shipments projections, social cost of carbon estimates and the associated monetization of carbon dioxide, and small business impacts. After reviewing these comments, DOE gathered additional information, held further discussions with manufacturers, performed product testing, and completed and revised the various analyses described in the preliminary analysis. The results of these analyses are presented in this NOPR.

III. General Discussion

DOE developed this proposed rule after considering verbal and written comments, data, and information from interested parties that represent a variety of interests. The following discussion addresses issues raised by these commenters.

A. Product Classes and Scope of Coverage

When evaluating and establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justify differing standards. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE determines are appropriate. (42 U.S.C. 6295(q))

Existing energy conservation standards divide residential dehumidifiers into five product classes based on the number of pints per day of moisture that the product removes from ambient air at test conditions, as measured by the current DOE test procedure. In this rulemaking, DOE is proposing new product classes that differentiate between portable and whole-home residential dehumidifiers. For portable residential dehumidifiers, DOE is proposing the following three product classes based on the product capacity in number of pints per day of moisture removed from ambient air at

[16] Industry data track shipments from manufacturers into the distribution chain. Data on national unit retail sales are lacking, but are presumed to be close to shipments under normal circumstances.

test conditions [17]: (1) 30.00 pints/day or less; (2) 30.01 to 45.00 pints/day; and (3) 45.01 pints/day or more. For whole-home residential dehumidifiers, DOE is proposing the following two product classes based on product case volume: [18] (1) less than or equal to 8.0 ft^3; and (2) greater than 8.0 ft^3.

The product classes for portable residential dehumidifiers analyzed for today's NOPR are different from those examined in DOE's initial analysis, while the product classes for whole-home residential dehumidifiers are the same. DOE initially analyzed five product classes for portable residential dehumidifiers based on product capacity. Due, in part, to comments received on the preliminary TSD, DOE is proposing only the three product classes discussed above. Comments received relating to the scope of coverage and product classes are discussed in section IV.A of this proposed rule.

B. Test Procedure

EPCA specifies that the dehumidifier test criteria used under the ENERGY STAR [19] program in effect as of January 1, 2001,[20] must serve as the basis for the DOE test procedure for dehumidifiers, unless revised by DOE. (42 U.S.C. 6293(b)(13)) The ENERGY STAR test criteria required that American National Standards Institute (ANSI)/Association of Home Appliance Manufacturers (AHAM) Standard DH–1, ''Dehumidifiers,'' be used to measure capacity while the Canadian Standards Association (CAN/CSA) standard CAN/CSA–C749–1994 (R2005), ''Performance of Dehumidifiers,'' be used to calculate the Energy Factor (EF). The version of AHAM Standard DH–1 in use at the time the ENERGY STAR test criteria were adopted was AHAM Standard DH–1–1992. In 2006, DOE adopted these test criteria, along with related definitions and tolerances, as its test procedure for dehumidifiers at 10 CFR part 430, subpart B, appendix X. 71 FR 71340, 71347, 71366–68 (Dec. 8, 2006).

On October 31, 2012, DOE published a final rule to establish a new test procedure for dehumidifiers that references ANSI/AHAM Standard DH–1–2008, ''Dehumidifiers,'' (ANSI/AHAM DH–1–2008) for both energy use and capacity measurements. 77 FR 65995 (Oct. 31, 2012). The final rule also adopted standby and off mode provisions that satisfy the requirement in EPCA for DOE to include measures of standby mode and off mode energy consumption in its test procedures for residential products, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)) This new DOE test procedure, codified at that time at 10 CFR part 430, subpart B, appendix X1, established a new metric, IEF, which incorporates measures of active, standby, and off mode energy use.

DOE subsequently removed the existing test procedures at appendix X and redesignated the test procedures at appendix X1 as appendix X. 79 FR 7366 (Feb. 7, 2014). Any representations of energy use, including standby mode or off mode energy consumption, or efficiency of portable dehumidifiers must be made in accordance with the results of testing pursuant to the redesignated appendix X.

On May 21, 2014, DOE published a NOPR proposing further amendments to residential dehumidifier test procedures. 79 FR 29272. In addition to making clarifications and corrections, the proposed amendments would create a new appendix, appendix X1, which would: (1) Require certain active mode testing at a lower ambient temperature; (2) add a measure of fan-only mode energy consumption in the IEF metric; and (3) include testing methodology and measures of performance for whole-home dehumidifiers.

On February 4, 2015, DOE published a supplemental notice of proposed rulemaking (SNOPR). 80 FR 5994. In the SNOPR, DOE maintained its proposals from the NOPR, except that DOE proposed: (1) Various adjustments and clarifications to the whole-home dehumidifier test setup and conduct; (2) a method to determine whole-home dehumidifier case volume; (3) a revision to the method for measuring energy use in fan-only operation; (4) a clarification to the relative humidity and capacity equations; and (5) additional technical corrections and clarifications.

In response to the May 2014 Notice, June 2014 public meeting, and February 2015 SNOPR, DOE received comments from interested parties related to the test procedure. DOE addressed these issues in the test procedure final rule to establish appendix X1, and based its analysis in this notice on capacities and efficiencies determined according to the appendix X1 test procedure.

C. Technological Feasibility

1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially available products or in working prototypes to be technologically feasible. (10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i))

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; and (3) adverse impacts on health or safety. (10 CFR part 430, subpart C, appendix A, section 4(a)(4)(ii)–(iv)) Section IV.B of this proposed rule discusses the results of the screening analysis for residential dehumidifiers, particularly the designs DOE considered, those it screened out, and those that are the basis for the standards considered 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

When DOE proposes to adopt an amended standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (max-tech) improvements in energy efficiency for residential dehumidifiers, using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking are described in section IV.C.1.b of this proposed rule and in chapter 5, section 5.3.2 of the NOPR TSD.

[17] Note that the test conditions for the proposed product classes are different from those for the existing product classes.

[18] Product case volume is the rectangular volume that the product case occupies, exclusive of any duct attachment collars or other external components.

[19] For more information on the ENERGY STAR program, please visit *www.energystar.gov*.

[20] ''Energy Star Program Requirements for Dehumidifiers'', Version 1.0, U.S. Environmental Protection Agency (EPA), available online at: *www.energystar.gov/products/specs/system/files/DehumProgReqV1.0.pdf*.

D. Energy Savings

1. Determination of Savings

For each trial standard level (TSL), DOE projected energy savings from application of the TSL to residential dehumidifiers purchased in the 30-year period that begins in the first full year of compliance with the proposed standards (2019–2048).[21] The savings are measured over the entire lifetime of residential dehumidifiers purchased in the 30-year analysis period.[22] 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 that reflects how the market for a product would likely evolve in the absence of amended mandatory efficiency standards.

DOE uses its NIA spreadsheet models to estimate energy savings from potential amended standards. The NIA spreadsheet model (described in section IV.H of this notice) calculates savings in site energy, which is the energy directly consumed by products at the locations where they are used. Based on the site energy, DOE calculates national energy savings (NES) in terms of primary energy savings at the site or at power plants, and also in terms of full-fuel-cycle (FFC) energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy efficiency standards.[23] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.H.1 of this proposed rule.

2. Significance of Savings

To adopt any new or amended standard for a covered product, DOE must determine that such action would result in ''significant'' energy savings. (42 U.S.C. 6295(o)(3)(B)) Although the term ''significant'' is not defined in the Act, the U.S. Court of Appeals for the District of Columbia Circuit, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), opined that Congress intended ''significant'' energy savings in the context of EPCA to be savings that were not ''genuinely trivial.'' The energy savings for all of the TSLs considered in this rulemaking, including the proposed standards, are nontrivial, and, therefore, DOE considers them ''significant'' within the meaning of section 325 of EPCA.

E. Economic Justification

1. Specific Criteria

As noted above, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential amended standard on manufacturers, DOE conducts a manufacturer impact analysis (MIA), as discussed in section IV.J of this proposed rule. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include: (1) Industry net present value (INPV), which values the industry on the basis of expected future cash flows; (2) cash flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and PBP associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national NPV of the economic impacts applicable to a particular rulemaking. DOE also evaluates the LCC impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a national standard.

b. Savings in Operating Costs Compared to Increase in Price

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value. For its analysis, DOE assumes that consumers will purchase the covered products in the first full year of compliance with amended standards.

The LCC savings for the considered ELs are calculated relative to a base case that reflects projected market trends in the absence of amended standards. DOE identifies the percentage of consumers estimated to receive LCC savings or experience an LCC increase, in addition to the average LCC savings associated with a particular standard level. DOE's LCC and PBP analyses are discussed in further detail in section IV.F.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting 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 IV.H.1, DOE

[21] Each TSL is comprised of specific efficiency levels for each product class. The TSLs considered for this NOPR are described in section V.A. DOE also conducted a sensitivity analysis that considers impacts for products shipped in a 9-year period.

[22] In the past DOE presented energy savings results for only the 30-year period that begins in the year of compliance. In the calculation of economic impacts, however, DOE considered operating cost savings measured over the entire lifetime of products purchased in the 30-year period. DOE has chosen to modify its presentation of national energy savings to be consistent with the approach used for its national economic analysis.

[23] The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (Aug. 18, 2011), as amended at 77 FR 49701 (Aug. 17, 2012).

uses the NIA spreadsheet to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing classes of products, and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards proposed in this proposed rule would not reduce the utility or performance of the products under consideration in this rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It also 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 such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) DOE will transmit a copy of this proposed rule to the Attorney General with a request that the Department of Justice (DOJ) provide its determination on this issue. DOE will publish and respond to the Attorney General's determination in the final rule.

f. Need for National Energy Conservation

DOE also considers the need for national energy conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from the proposed standards are likely to provide improvements to the security and reliability of the nation's energy system. Reductions in the demand for electricity 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, as discussed in section IV.M.

The proposed standards also are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production. DOE reports the emissions impacts from the proposed standards, and from each TSL it considered, in section IV.K of this proposed rule. DOE also reports estimates of the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L.

g. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) To the extent interested parties submit any relevant information regarding economic justification that does not fit into the other categories described above, DOE could consider such information under ''other factors.''

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 consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effects that proposed energy conservation standards would have on the PBP for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, 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 IV.F.10 of this proposed rule.

IV. Methodology and Discussion

DOE used three spreadsheet tools to estimate the impact of today's proposed standards. The first spreadsheet calculates LCCs and PBPs of potential standards. The second provides shipments forecasts, and then calculates national energy savings and net present value of total consumer costs and savings expected to result from potential standards. Finally, DOE assessed manufacturer impacts, largely through use of the Government Regulatory Impact Model (GRIM).

Additionally, DOE estimated the impacts on utilities and the environment that would be likely to result from potential amended standards for residential dehumidifiers. DOE used a version of EIA's National Energy Modeling System (NEMS) for the utility and environmental analyses. The NEMS simulates the energy sector of the U.S. economy. EIA uses NEMS to prepare its *AEO,* a widely-known energy forecast for the United States. NEMS offers a sophisticated picture of the effect of standards, because it accounts for the interactions between the various energy supply and demand sectors and the economy as a whole.

A. Market and Technology Assessment

DOE develops information that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. DOE's market and technology analysis activity includes both quantitative and qualitative assessments, based primarily on publicly available information. The subjects addressed in the market and technology assessment for this residential dehumidifier rulemaking include: (1) A determination of the scope of the rulemaking and product classes; (2) manufacturers and industry structure; (3) existing efficiency programs; (4) product shipments; (5) market and industry trends; and (6) technologies that could improve the energy efficiency of residential dehumidifiers. The key findings of DOE's market assessment are summarized below. See chapter 3 of the NOPR TSD for further discussion of the market and technology assessment.

1. Definition and Scope of Coverage

EPCA defines a dehumidifier as product that is self-contained, electrically operated, mechanically encased, and a product that incorporates a refrigerated surface to condense moisture from the atmosphere. It further defines it as a refrigerating system with an electric motor; a fan for air circulation; and a means for collecting or disposing of the condensate. (42 U.S.C. 6291(34)) In the concurrent test procedure rulemaking, DOE is clarifying that this definition of a dehumidifier, codified at 10 CFR 430.2, does not apply to portable air conditioners, room air conditioners, or packaged terminal air conditioners.

Aprilaire Inc. (Aprilaire) commented to suggest that the EPCA definition for

a dehumidifier is too broad, and believes that it would include all products that provide means of dehumidification, including portable, window, and central air conditioners. Aprilaire further suggested that products such as a refrigerator could meet the EPCA definition even though refrigerators are not intended to dehumidify the living space. Therefore, Aprilaire requested that DOE provide a more specific definition for dehumidifiers. (Aprilaire, No. 20 at p. 3) DOE notes that the definition for dehumidifier established in the concurrent test procedure rulemaking specifically excludes portable air conditioners, room air conditioners, and packaged terminal air conditioners because these products also deliver conditioned air to a space such as a room similar to a dehumidifier, in contrast to a refrigerator which provides cooling to a cabinet. DOE has already established energy conservation standards for room air conditioners and refrigerators separately under EPCA (42 U.S.C. 6295(b) and (cc)), and is currently considering new standards for portable air conditioners in a separate rulemaking. The energy conservation standards for these products address energy use in active, standby, and off modes.

In the concurrent test procedure rulemaking, DOE is also adding definitions to 10 CFR 430.2 for portable dehumidifiers and whole-home dehumidifiers. Portable dehumidifiers are designed to operate within the dehumidified space without ducting attached, although ducting may be attached optionally. Whole-home dehumidifiers are designed to be installed with inlet ducting for return process air and outlet ducting that supplies dehumidified process air to one or more locations in the dehumidified space.

Therma-Stor LLC (Therma-Stor) expressed concern that DOE is proposing to subdivide dehumidifiers into ''portable'' and ''whole-home'' dehumidifiers, as defined by their intended application or installation. According to Therma-Stor, this approach may not provide clear differentiation among products, and therefore DOE should revise the proposed definitions of each product type to accurately define specific attributes to avoid confusion in the marketplace. (Therma-Stor, No. 21 at p. 1) Due to the many similarities between certain portable and whole-home dehumidifiers and the inability to determine their intended use through examination of the product, DOE determined that design features associated with installation, namely the attachment of ducts, are the most reliable method for differentiation. The definitions established in the concurrent test procedure rulemaking separate the product types based on this differentiation. For those dehumidifiers that may be optionally configured in either manner, DOE would require that each configuration of these products be certified under corresponding portable and whole-home dehumidifier energy conservation standards.

2. Product Classes

When evaluating and establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justify a different standard. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE determines are appropriate. (42 U.S.C. 6295(q))

Under 42 U.S.C. 6295(cc)(2), residential dehumidifiers, manufactured on or after October 1, 2012, are divided into five product classes based on the capacity of the unit in pints of water extracted per day:

TABLE IV.1—CURRENT DEHUMIDIFIER PRODUCT CLASSES

Capacity (pints/day)
Up to 35.00.
35.01–45.00.
45.01–54.00.
54.01–75.00.
75.00 or more.

a. Preliminary Analysis Proposals

In the preliminary analysis conducted for this rulemaking, DOE considered the following portable dehumidifier product classes that were based on the existing product classes, but with capacities adjusted for the lower ambient temperature proposed in the May 2014 test procedure NOPR:

TABLE IV.2—PRELIMINARY ANALYSIS PORTABLE DEHUMIDIFIER PRODUCT CLASSES

Capacity (pints/day)
20.00 or less.
20.01 to 30.00.
30.01 to 35.00.
35.01 to 45.00.
45.01 or more.

In the preliminary analysis, DOE also considered two product classes for whole-home dehumidifiers, differentiated by product case volume.

TABLE IV.3—PRELIMINARY ANALYSIS WHOLE-HOME DEHUMIDIFIER PRODUCT CLASSES

Product Class (case volume, cubic feet)
less than or equal to 8.0.
greater than 8.0.

b. Comments and Responses

Aprilaire commented that portable and whole-home dehumidifiers are two different classes of product, in their construction as well as their intended application and function. Aprilaire commented that the National Renewable Energy Laboratory (NREL) technical report, NREL/TP–5500–61076, highlights the difference between portables and whole-home dehumidifiers, not only in application, size, and capacity, but also in performance. Aprilaire expressed concern that due to these many differences in the two types of dehumidifier products, the inclusion of both into one rule and test procedure may not be appropriate. Therefore, Aprilaire suggested that DOE not consider whole-home dehumidifiers in the rulemaking and test procedures at this time. (Aprilaire No. 20 at pp. 1–3)

Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas and Electric, and Southern California Edison (California Investor-Owned Utilities (IOUs)) supported extending coverage to whole-home dehumidifiers and regulating them as a separate product class from portable dehumidifiers, as they are designed and installed differently in order to properly take advantage of ducted configurations. According to the California IOUs, whole-home dehumidifiers require more energy than portable units, and the difference in energy use between high and low efficiency products is significant. The California IOUs further stated that whole-home dehumidifiers have a longer lifetime than portable dehumidifiers, and that due to the longer lifetime and large difference in energy use between whole-home dehumidifiers of varying efficiency, it is important to ensure that these products are efficient to realize savings for the duration of the expected lifetime. (California IOUs, No. 24 at pp. 1–2)

DOE notes that although portable and whole-home dehumidifiers have different applications and overall performance, they both: (1) Fall under

the statutory definition of a dehumidifier; (2) provide the same dehumidification function: and (3) can be characterized with the same energy efficiency performance metric. Therefore, DOE believes it is appropriate to address both portable and whole-home dehumidifiers in the same rulemaking. DOE, however, is considering separate proposed efficiency standards levels for each product type. The considered product classes are split between portable and whole-home dehumidifiers, as defined according to the definitions provided in section IV.A.1 of this notice, with further divisions based on product capacity or volume. In addition, DOE established, in a separate test procedure rulemaking, unique testing setups and methodology for the two product types.

The California IOUs commented that there are a group of products in the 65 to 75 pint/day capacity range with significantly higher efficiencies than other dehumidifiers with capacities under 75 pints/day. The California IOUs suggested that DOE analyze these products to understand their technology options and whether or not lower-capacity units can achieve similar efficiencies, or whether a separate product class is necessary to develop more appropriate energy conservation standards for those products. (California IOUs No. 24 at pp. 3–4) DOE investigated the models with higher efficiencies near 75 pints/day rated capacity (as measured according to the current test procedure in 10 CFR part 430, subpart B, appendix X). DOE notes that these products typically have construction similar to whole-home dehumidifiers, but in a portable configuration. They include larger heat exchangers (and for some units, an inlet air-to-air heat exchanger), higher-volumetric flow rate blowers, and higher-capacity compressors. These units are currently rated at capacities between 65 and 75 pints/day, and although these capacities would decrease under the appendix X1 test procedure, DOE expects, based on its investigative testing, that the units would likely be classified in the proposed 45.01 pints/day or more product class. Accordingly, DOE considered higher efficiencies for this product class in this NOPR analysis than for the lower-capacity portable product classes (see section IV.C.1 of this proposed rule).

Appliance Standards Awareness Project (ASAP) asked why DOE proposed multiple product classes for portable dehumidifiers with capacities less than 45 pints/day. (ASAP, Public Meeting Transcript, No. 25 at p. 16) [24] ASAP also asked if there is consumer utility associated with either smaller capacities or smaller chassis. (ASAP, Public Meeting Transcript, No. 25 at p. 18) In a joint comment, ASAP, Alliance to Save Energy, American Council for an Energy-Efficient Economy, Consumers Union, National Consumer Law Center, Natural Resources Defense Council, and Northwest Energy Efficiency Alliance (hereinafter the ''Joint Commenters''), as well as the California IOUs, supported a single product class for all portable dehumidifiers with capacities less than 45 pints/day because they claimed that DOE had not demonstrated that dehumidification capacity is a feature that justifies a lower standard level. They also noted the availability of dehumidifiers over a range of capacities that meet or exceed the current ENERGY STAR specification (EF of 1.85 for all dehumidifiers up to 75 pints/day), which, according to the Joint Commenters, suggests that lower-capacity dehumidifiers may achieve the same efficiencies as higher-capacity models. (California IOUs, No. 24 at p. 2; Joint Commenters, No. 23 at pp. 1–2) The California IOUs noted that many commercially available lower-capacity products are able to meet the ENERGY STAR performance levels, but that non-qualified products are typically clustered right at the Federal standard level, resulting in a significant gap in performance. According to the California IOUs, this large gap is not apparent for higher capacity units, and highlights the increased energy savings potential of requiring lower-capacity units to meet the same energy conservation standards as higher-capacity units. (California IOUs, No. 24 at p. 3)

The Joint Commenters also stated that DOE determined there is no inherent relationship between capacity and efficiency, and that efficiency is instead primarily a function of chassis size. The Joint Commenters further stated that the possibility that some manufacturers' current chassis components may make it difficult for them to meet higher ELs at certain capacities does not justify the use of separate product classes to shield those manufacturers from more stringent standards. The Joint Commenters further stated that, at most, the cost (not the ability) to meet a standard level is different from manufacturer to manufacturer. (Joint Commenters, No 23 at p. 2) The California IOUs commented that by ''right-sizing'' the chassis, manufacturers can produce high-efficiency dehumidifiers of any capacity. Thus, all product classes below 75 pints/day (based on the current test procedure in appendix X) should be consolidated into a single class. (California IOUs, No. 24 at p. 3)

AHAM supported maintaining several product classes for portable dehumidifiers, and agreed that DOE should not collapse portable dehumidifier product classes into two product classes (less than 75 pints/day and greater than 75 pints/day according to the current test conditions). AHAM also agreed that maintaining several product classes would allow DOE to individually consider appropriate ELs in each class that would take into account unique performance factors and costs. (AHAM, No. 22 at pp. 1–2) AHAM commented that it was concerned that the 65 degrees Fahrenheit (°F) ambient temperature test condition in the proposed test procedure for residential dehumidifiers, as opposed to the current 80 °F ambient temperature, would increase test-to-test variation and make it more difficult to establish product classes based on capacity thresholds. Therefore, AHAM stated that it may be necessary to combine two of the lower-capacity product classes, for a total of four portable dehumidifier product classes. (AHAM, No. 22 at p. 2) Therma-Stor commented that the number of product classes may need to be reduced or increased to reflect the (relative) range of ratings. (Therma-Stor, No. 21 at p. 1)

While all current product classes are able to reach similar maximum efficiencies under current test procedures, DOE observed that the two lowest capacity portable product classes considered for the preliminary analysis (20.00 pints/day or less and 20.01 to 30.00 pints/day) could not reach the same maximum IEF as the other product classes when tested under the appendix X1 test procedure. This suggested that there may be an inherent trend between capacity and efficiency at lower ambient test temperatures.

DOE also notes that product sizes and weights vary between products currently available on the market.

[24] A notation in the form ''ASAP, Public Meeting Transcript, No. 25 at p. 16'' identifies an oral comment that DOE received during the June 13, 2014, residential dehumidifier energy conservation standards preliminary analysis public meeting. Oral comments were recorded in the public meeting transcript and are available the residential dehumidifier energy conservation standards rulemaking docket (Docket No. EERE–2012–BT–STD–0027). This particular notation refers to a comment: (1) Made by Appliance Standards Awareness Project during the public meeting; (2) recorded in document number 25, which is the public meeting transcript that is filed in the docket of this energy conservation standards rulemaking; and (3) which appears on page 16 of document number 25.

Lower-capacity units typically use a smaller chassis that limits the sizes of internal components such as heat exchangers. In the sample of units DOE selected for the engineering analysis, DOE observed that portable dehumidifiers with rated capacities below 45 pints/day typically had smaller chassis and had an average weight of 33 pounds. Portable dehumidifiers currently rated with capacities between 45 pints/day and 75 pints/day typically had larger chassis and had an average weight of 45 pounds. DOE believes the 12-pound average increase in product weight in moving to a larger case would reduce portability (*i.e.,* increase difficulty moving the unit within the home), which would negatively impact consumer utility.

DOE also observed that there was no key difference in product characteristics for the two product classes analyzed for the preliminary analysis that DOE proposes to combine into a single product class in this NOPR. The 20.00 pints/day or less and 20.01 to 30.00 pints/day product classes had similar product characteristics and were able to achieve similar ELs under both the current and appendix X1 test procedures. Similarly, the 30.01 to 35.00 pints/day and 35.01 to 45.00 pints/day product classes had similar construction and measured efficiencies. For this NOPR analysis, DOE proposes combing the four lowest-capacity portable product classes analyzed in the preliminary analysis into two: 30.00 pints/day or less and 30.01 to 45.00 pints/day. DOE proposes maintaining the 45.01 pints/day or more product class as considered in the preliminary analysis because the larger chassis size and weight typically associated with these products would allow for consideration of certain design options, such as inlet pre-cooling heat exchangers, that would be infeasible in lower-capacity portable dehumidifiers.

AHAM stated that because dehumidifiers are typically rated at even number capacities, DOE should use odd number boundaries for the product classes, especially as standards become more stringent. AHAM commented that DOE's proposal to define product class boundaries at even numbers may cause findings of noncompliance simply due to test procedure variation. (AHAM, Test Procedure NOPR, No. 7 at p, 6) Based on a review of the products certified in DOE's Compliance Certification Database, DOE observed that approximately 75 percent of certified units are rated at a capacity that is a multiple of 10.[25] However, these capacity ratings are based on the current test procedures, and the certified capacities would change under the appendix X1 test procedures. Therefore, DOE concludes that an *a priori* selection of either an even or odd product class capacity threshold would not be warranted, and instead proposes to define product class boundaries based on the capacities associated with chassis sizes and weights that provide different consumer utility.

Therma-Stor commented that the current product classes, which are based on water removal capacity at 80 °F and 60-percent relative humidity, should be revised to reflect new capacity values if different ambient rating test conditions are chosen. (Therma-Stor, No. 21 at p. 1) As discussed previously, DOE adjusted its portable product classes to account for the updated test conditions at 65 °F ambient temperature.

Aprilaire agreed with using the volume of whole-home dehumidifiers as a product class differentiator, because installed location is one of the restrictions on these units rather than their capacity. However, Aprilaire requested clarification on the selection of 8.0 cubic feet as the threshold between product classes, and whether there was any relationship between this threshold and product capacity. Aprilaire commented that the differentiation of whole-home product classes based on case volume less than or greater than 8.0 cubic feet appears to be arbitrary and only based on products on the market today, and that product sizes exist today due to application and size constraints incurred during or after installation. Aprilaire noted its concern that the market for whole-home dehumidifiers and potential applications were not totally understood, and placing an arbitrary threshold may limit innovation and new product applications. Aprilaire stated that doing so would negatively impact the ability to obtain whole-home energy-efficient humidity control. (Aprilaire, Public Meeting Transcript, No. 25 at pp. 14–15; Aprilaire, No. 20 at p. 3) Therma-Stor also commented that basing whole-home dehumidifier product classes on case volume is arbitrary, and would be confusing in the marketplace. Therma-Stor suggested that whole-home product classes be based upon the same capacity metric as portable dehumidifiers. (Therma-Stor, No. 21 at p.1)

DOE considered whole-home product class differentiation based on those products that are installed in space-constrained locations. Many of the design options associated with improving efficiencies for these products, such as larger heat exchangers or an inlet pre-cooling heat exchanger, require making the unit physically larger. Whole-home units that are not space constrained may incorporate all of these design options and reach higher efficiencies. DOE observed that products available on the market with case volumes greater than 8.0 cubic feet are able to incorporate additional design options and reach higher efficiencies than products with volumes at or less than 8.0 cubic feet. DOE also expects that products with volumes of 8.0 cubic feet or less would be able to meet consumers' needs for space-constrained installations. DOE notes that switching to a capacity-based product class differentiation, as proposed for portable dehumidifier product classes, would not ensure products would maintain the smaller case sizes. Whole-home units at lower capacities could increase case size to incorporate all available design options and maximize heat exchanger sizes to reach high efficiencies, but the increased case size would also limit consumer applications. For these reasons, DOE proposes to maintain the two whole-home dehumidifier product classes based on case volume: Less than or equal to 8.0 cubic feet and greater than 8.0 cubic feet.

c. NOPR Proposals

In summary, DOE proposes classifying portable products into three product classes, by merging two of the current five portable product classes into the other three, and classifying whole-home dehumidifiers in two product classes based on case volume, resulting in the following product classes:

TABLE IV.4—DEHUMIDIFIER PRODUCT CLASSES

Portable (pints/day)
30.00 or less.
30.01 to 45.00.
45.01 or more.
Whole-home (case volume, cubic feet)
less than or equal to 8.0.
greater than 8.0.

In the remaining sections of this NOPR, presented product capacities and efficiencies are consistent with the appendix X1 test procedures.

[25] The Compliance Certification Database is available at: *http://www.regulations.doe.gov/certification-data/*.

3. Technology Options

In the preliminary market analysis and technology assessment, DOE identified 14 technology options that would be expected to improve the efficiency of residential dehumidifiers:

IV.5—TECHNOLOGY OPTIONS FOR DEHUMIDIFIERS

1. Built-in hygrometer/humidistat.
2. Improved compressor efficiency.
3. Improved condenser and evaporator performance.
4. Improved controls.
5. Improved defrost methods.
6. Improved demand-defrost controls.
7. Improved fan and fan-motor efficiency.
8. Improved flow-control devices.
9. Low-standby-loss electronic controls.
10. Washable air filters.
11. Pre-cooling air-to-air heat exchanger.
12. Heat pipes.
13. Improved refrigeration system insulation.
14. Refrigerant-desiccant systems.

In response to the preliminary analysis, two commenters suggested additional technology options that DOE should consider, but the agency has determined that neither option merits further consideration. First, the Joint Commenters and California IOUs stated that DOE should include chassis size as a technology option for improving efficiency in the engineering analysis if it maintains separate portable dehumidifier product classes. (California IOUs, No. 24 at p. 2; Joint Commenters, No. 23 at p. 2) DOE notes that increasing chassis size does not itself increase product efficiency, but it allows the product to house larger heat exchangers, which does improve efficiency. DOE included larger heat exchangers as a design option, and considered any necessary chassis changes associated with the larger components in the engineering analysis.

Second, the California IOUs commented that DOE should consider the potential benefits from networked smart controls, which would allow dehumidifiers to benefit from time-of-use metering and other demand management schemes to maximize the time-value of energy production in participating utilities. They noted that as an added benefit, advanced sensors with more sophisticated reporting capabilities would alert the user when the unit begins to degrade significantly, requiring maintenance or replacement. (California IOUs, No. 24 at p. 5) The current and recently established DOE test procedures for dehumidifiers measure the site energy consumption in typical operation and do not reflect potential overall benefits related to demand management enabled by smart controls. Products incorporating smart controls would have the same (or lower) measured efficiencies according to the DOE test procedure because such controls consume additional energy to provide those features that are not directly related to energy efficiency. Additionally, DOE is not aware of any dehumidifiers currently available on the market or any working prototypes that incorporate a demand response function via smart controls. Accordingly, DOE did not consider smart controls as a design option to reach higher ELs in this analysis. DOE requests comment on any information or data about the availability of dehumidifiers with smart controls, including those currently available on the market or any working prototypes.

After identifying all potential technology options for improving the efficiency of residential dehumidifiers, DOE performed a screening analysis (see section IV.B of this proposed rule and chapter 4 of the NOPR TSD) to determine which technologies merited further consideration.

B. Screening Analysis

DOE uses the following four screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

1. *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

2. *Practicability to manufacture, install, and service.* If it is determined that mass production of a technology in commercial products and reliable installation and servicing of the technology could not be achieved on the scale necessary to serve the relevant market at the time of the effective date of the standard, then that technology will not be considered further.

3. *Impacts on product utility to consumers.* If a technology is determined to have significant adverse impact on the utility of the product to significant subgroups of consumers, or result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the U.S. at the time, it will not be considered further.

4. *Safety of technologies.* If it is determined that a technology will have significant adverse impacts on health or safety, it will not be considered further. (10 CFR part 430, subpart C, appendix A, 5(b))

In sum, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the above four criteria, it will be excluded from further consideration in the engineering analysis. The reasons for eliminating any technology are discussed below.

The subsequent sections include comments from interested parties pertinent to the screening criteria, DOE's evaluation of each technology option against the screening analysis criteria, and whether DOE determined that a technology option should be excluded (''screened out'') based on the screening criteria.

1. Screened-Out Technologies

Pre-Cooling Air-to-Air Heat Exchangers (for Portable Dehumidifiers Up to 45 Pints/Day)

Based on teardowns and research, DOE determined that portable dehumidifiers with capacities up to 45 pints/day have little room to incorporate additional components within the product case (see chapter 4, section 4.2.1 of the NOPR TSD). DOE estimated that the addition of an effective pre-cooling air-to-air heat exchanger would require case sizes to, at a minimum, double. Because of the increased size and weight, DOE determined that incorporating a pre-cooling air-to-air heat exchanger in portable dehumidifiers with capacities up to 45 pints/day would have an adverse impact on product utility to consumers. Because this design option would result in the unavailability of products with the same size and volume as products currently available on the market, DOE screened out pre-cooling air-to-air heat exchangers as a design option for portable dehumidifiers with capacities up to 45 pints/day.

AHAM supported screening out pre-cooling air-to-air heat exchangers for smaller-capacity dehumidifiers. They noted that the pre-cooling heat exchangers would make larger-capacity products even bigger, because the enclosure would need to be bigger, which could impact portability and consumer utility. (AHAM, No. 22 at p. 6) DOE maintains its proposal to eliminate pre-cooling inlet air-to-air heat exchangers from further consideration for portable products with capacity less than 45 pints/day. For portable products with capacities greater than 45 pints/day, DOE notes that certain products available on the market already incorporate this technology option. Thus, DOE has maintained it as a potential design

option for this larger-capacity product class.

Heat Pipes (for Portable Dehumidifiers Up to 45 Pints/Day)

In the preliminary analysis, DOE also identified heat pipes as a potential technology to increase dehumidifier efficiency. Heat pipes perform a similar function as pre-cooling air-to-air heat exchangers, lowering the inlet air temperature to increase the efficiency of the refrigeration system, except that heat pipes use a phase-change fluid to transfer heat between the two air streams. DOE estimated that the additional heat exchangers and fluid tubing for heat pipes would likely require significant increases in case size and overall weight for portable dehumidifiers with capacities of up to 45 pints/day, resulting in an adverse impact on product utility to consumers. Because this design option would result in the unavailability of products with the same weight and volume as products currently available on the market, DOE screened out heat pipes as a design option for portable dehumidifiers with capacities up to 45 pints/day. AHAM agreed that heat pipes should be screened out for smaller-capacity portable dehumidifiers due to their consumer utility impacts. (AHAM, No 22 at p. 6)

However, in the preliminary analysis, DOE retained heat pipes as a design option for whole-home dehumidifiers and portable dehumidifiers with capacities greater than 45 pints/day. DOE noted that many of these products already use larger case sizes to accommodate pre-cooling air-to-air heat exchangers. Products incorporating heat pipes would likely require similar case volumes as the products available on the market that include pre-cooling air-to-air heat exchangers, and would not likely impact consumer utility for whole-home dehumidifiers and portable dehumidifiers with capacities greater than 45 pints/day.

Regarding improved condenser and evaporator performance, AHAM commented that adjusting the cross-sectional area of the heat exchanger to increase heat transfer is feasible, but it will likely involve a change in enclosure size. AHAM suggested that DOE consider screening out this option for smaller capacities. (AHAM, No. 22 at p. 4) DOE agrees that increased heat exchanger areas may require an increase in enclosure size. However, larger coils requiring a larger case and chassis do not necessarily require moving to a product case as large as is needed for higher-capacity portable units (due to smaller heat exchangers as well as compressors, blowers, and condensate buckets). Accordingly, while there may be some increase in product sizes with increased heat exchanger area, DOE did not eliminate this technology option from further consideration because consumer utility could be maintained.

2. Remaining Technologies

After a review of each technology, DOE found that all of the identified technologies, with the restrictions for pre-cooling air-to-air heat exchangers and heat pipes discussed above, met all four screening criteria and are suitable for further examination in DOE's analysis.

TABLE IV.6—REMAINING DESIGN OPTIONS FOR DEHUMIDIFIERS

1. Built-in hygrometer/humidistat.
2. Improved compressor efficiency.
3. Improved condenser and evaporator performance.
4. Improved controls.
5. Improved defrost methods.
6. Improved demand-defrost controls.
7. Improved fan and fan-motor efficiency.
8. Improved flow-control devices.
9. Low-standby-loss electronic controls.
10. Washable air filters.
11. Pre-cooling air-to-air heat exchanger (high-capacity portable and whole-home dehumidifiers).
12. Heat pipes (high-capacity portable and whole-home dehumidifiers).
13. Improved refrigeration system insulation.
14. Refrigerant-desiccant systems.

DOE determined that these technology options are technologically feasible because they are being used or have previously been used in commercially available products or working prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.,* practicable to manufacture, install, and service and do not result in adverse impacts on consumer utility, product availability, health, or safety). For additional details, see chapter 4 of the NOPR TSD.

C. Engineering Analysis

In the engineering analysis DOE establishes the relationship between the manufacturer production cost (MPC) and improved residential dehumidifier efficiency. This relationship serves as the basis for cost-benefit calculations for individual consumers, manufacturers, and the nation. DOE typically structures the engineering analysis using one of three approaches: (1) Design option; (2) efficiency level; or (3) reverse engineering (or cost assessment). The design-option approach involves adding the estimated cost and associated efficiency of various efficiency-improving design changes to the baseline to model different levels of efficiency. The efficiency-level approach uses estimates of costs and efficiencies of products available on the market at distinct efficiency levels to develop the cost-efficiency relationship. The reverse-engineering approach involves testing products for efficiency and determining cost from a detailed bill of materials (BOM) derived from reverse engineering representative products.

In the preliminary engineering analysis, DOE used a hybrid approach combining aspects of all three analytic methods described above. The efficiency-level approach for residential dehumidifiers, combined with the cost-assessment approach, allowed DOE to develop a cost for each product analyzed. DOE estimated that the costs for these products reflected the costs for typical units at their respective efficiency levels. This approach involved physically disassembling commercially available products, consulting with outside experts, reviewing publicly available cost and performance information, and modeling equipment cost. To ensure that DOE's analysis covered the entire range of capacities and efficiencies available on the market, DOE relied on the design-option approach to determine what changes would be needed for a particular unit to meet each incrementally higher EL.

For this NOPR, DOE followed the same general approach as for the preliminary engineering analysis, but modified the analysis based on comments from interested parties and to reflect the most current available information. This section provides more detail on how DOE selected the ELs used for its analysis and developed the MPC at each EL. Chapter 5 of the NOPR TSD contains further description of the engineering analysis.

1. Efficiency Levels

a. Baseline Efficiency Levels

A baseline unit is a product that just meets current Federal energy conservation standards and provides basic consumer utility. DOE uses the baseline unit for comparison in several phases of the NOPR analyses, including the engineering analysis, LCC analysis, PBP analysis, and NIA. To determine energy savings that will result from an amended energy conservation standard, DOE compares energy use at each of the higher energy ELs to the energy consumption of the baseline unit. Similarly, to determine the changes in price to the consumer that will result

from an amended energy conservation standard, DOE compares the price of a unit at each higher EL to the price of a unit at the baseline.

As discussed in section IV.A.2 of this notice, DOE adjusted the existing dehumidifier product classes for the preliminary analysis to reflect capacities measured according to the test procedures proposed in the May 2014 Test Procedure NOPR. Similarly, DOE established baseline ELs in the preliminary engineering analysis by adjusting the existing baseline EFs to IEFs as would be measured under the proposed testing requirements. For the portable product classes, the most significant adjustments accounted for the lower ambient test temperature, and energy consumption in standby mode, off mode, and fan-only mode. DOE also established separate baseline efficiencies for the two proposed whole-home dehumidifier product classes. Table IV.7 and Table IV.8 present the baseline ELs developed for the preliminary analysis. Additional information on the development of these baseline ELs is included in chapter 5, section 5.3.1 of the preliminary TSD.

TABLE IV.7—PRELIMINARY ANALYSIS PORTABLE DEHUMIDIFIER BASELINE EFFICIENCY LEVELS

Capacity (pints/day)	IEF (L/kWh)
20.00 or less	0.77
20.01—30.00	0.80
30.01—35.00	0.94
35.01—45.00	1.00
45.01 or more	2.07

TABLE IV.8—PRELIMINARY ANALYSIS WHOLE-HOME DEHUMIDIFIER BASELINE EFFICIENCY LEVELS

Product class (case volume, cubic feet)	IEF (L/kWh)
less than or equal to 8.0	1.10
greater than 8.0	1.68

In response to the preliminary analysis, AHAM commented that if the test procedure includes a measure of fan-only mode energy use, AHAM would support the proposed baseline IEF based on units with fan-only mode. (AHAM, No. 22 at p. 3) DOE notes that the appendix X1 test procedure incorporates energy consumption in fan-only mode into the calculation of IEF, and DOE considered units with fan-only mode to determine the proposed baseline IEF in this analysis.

Aprilaire commented that it was not aware of any whole-home units that have a fan-only mode. According to Aprilaire, whole-home dehumidifiers use the HVAC air handler instead of the dehumidifier fan to circulate air inside the home. (Aprilaire, Public Meeting Transcript, No. 25 at pp. 23–24) Aprilaire's comment is consistent with what DOE observed during investigative testing. No whole-home units in DOE's test sample operated in fan-only mode. Accordingly, DOE has not adjusted the whole-home dehumidifier baseline levels to account for operation in this mode.

For this NOPR, DOE maintained the baseline efficiencies determined for the preliminary analysis, with updates to reflect the combined product classes as discussed in section IV.A.1 of this notice. DOE set the baseline efficiency level for the combined product classes at the lower of the two baseline IEF levels considered in the preliminary analysis for the two previously separate product classes, because that IEF would be based on the minimum energy conservation standard currently applicable for any product within the combined product classes. Table IV.9 and Table IV.10 present the baseline efficiency levels used in this NOPR analysis.

TABLE IV.9—PORTABLE DEHUMIDIFIER BASELINE EFFICIENCY LEVELS

Capacity (pints/day)	IEF (L/kWh)
30.00 or less	0.77
30.01—45.00	0.94
45.01 or more	2.07

TABLE IV.10—WHOLE-HOME DEHUMIDIFIER BASELINE EFFICIENCY LEVELS

Product Class (case volume, cubic feet)	IEF (L/kWh)
8.0 or less	1.77
more than 8.0	2.41

Additional details on the selection of baseline units may be found in chapter 5, section 5.3.1 of the NOPR TSD.

b. Higher Energy Efficiency Levels

For the preliminary analysis, DOE considered incremental efficiency levels beyond the baseline that were based on existing efficiency levels (*e.g.,* the ENERGY STAR level) available in the market and observed during investigative testing. Similar to the baseline efficiency levels discussed above, DOE adjusted these efficiency levels to reflect values that would be obtained when using the test procedure proposed in the May 2014 Test Procedure NOPR. In addition, DOE proposed that the first incremental efficiency level beyond the baseline for each product class be achieved by the elimination of fan-only mode. Table IV.11 and Table IV.12 present the efficiency levels DOE considered in the preliminary analysis. Additional information on the development of incremental efficiency levels is included in chapter 5, section 5.3.2 of the preliminary TSD.

TABLE IV.11—PRELIMINARY ANALYSIS PORTABLE DEHUMIDIFIER EFFICIENCY LEVELS

Efficiency level	Efficiency level source	Integrated energy factor efficiency levels (L/kWh)				
		20.00 pints/day or less	20.01–30.00 pints/day	30.01–35.00 pints/day	35.01–45.00 pints/day	45.01 pints/day or more
Baseline	Baseline with Fan-only Mode	0.77	0.80	0.94	1.00	2.07
1	Baseline with no Fan-only Mode	1.10	1.10	1.20	1.30	2.40
2	Gap Fill 1	1.20	1.20	*1.40	*1.40	2.80
3	Gap Fill 2/Maximum Available	*1.30	*1.30	1.60	1.60	3.52

TABLE IV.11—PRELIMINARY ANALYSIS PORTABLE DEHUMIDIFIER EFFICIENCY LEVELS—Continued

Efficiency level	Efficiency level source	Integrated energy factor efficiency levels (L/kWh)				
		20.00 pints/day or less	20.01–30.00 pints/day	30.01–35.00 pints/day	35.01–45.00 pints/day	45.01 pints/day or more
4	Maximum Available	1.42	1.52	1.75	1.75	

* These IEF levels represent a translation of the ENERGY STAR efficiency level of 1.85 L/kWh based on the current test conditions to the proposed test condition of 65 °F for the given product class.

TABLE IV.12—PRELIMINARY ANALYSIS WHOLE-HOME DEHUMIDIFIER EFFICIENCY LEVELS

Efficiency level	Efficiency level source	Integrated energy factor efficiency levels (L/kWh)	
		8.0 ft^3 or less (case volume)	8.0 ft^3 or more (case volume)
Baseline	Minimum Available	1.10	1.68
1	Gap Fill 1	1.40	1.90
2	Gap Fill 2/Maximum Available	1.59	2.80
3	Maximum Available		3.41

In response to the preliminary analysis, AHAM commented that its members were conducting testing to compare performance at 80 °F and 65 °F ambient conditions, and if possible, AHAM would provide this aggregated data to DOE. (AHAM, No. 22 at p. 4) DOE has not received additional test data from AHAM at the time of this NOPR, and has therefore relied on its internal test data to establish appropriate IEF values for the incremental efficiency levels beyond the baseline.

Aprilaire noted that there was only about an 11-percent difference between the current DOE energy conservation standards and ENERGY STAR qualification criteria. Aprilaire stated that if the purpose of ENERGY STAR is to promote the best technology at the best value, the current DOE and ENERGY STAR requirements may not provide sufficient consumer choices and differentiation to promote using the latest technology. (Aprilaire, Public Meeting Transcript, No. 25 at pp. 48, 50) Although the U.S. Environmental Protection Agency (EPA), rather than DOE, establishes the ENERGY STAR qualification criteria, DOE selected the current ENERGY STAR level as the basis for an efficiency level in each portable product dehumidifier product class because many products available on the market are rated at that level. While the ENERGY STAR level does not represent a large jump in efficiency from the current DOE standards, on a percentage basis, the range of dehumidifier efficiencies on the market is not large, and the increase in efficiency from baseline to ENERGY STAR represents a significant increase in efficiency over this range. DOE also evaluated higher ELs than the ENERGY STAR level.

Aprilaire asked why there was such a large difference between the highest efficiency levels for the two whole-home product classes. (Aprilaire, Public Meeting Transcript, No. 25 at p. 33) DOE notes that the smaller case volume for the less than 8.0 ft^3 product class limits the available technology options that may be incorporated into these units. For example, the smaller case limits the size of the condenser and evaporator heat exchangers and the ability to incorporate a pre-cooling heat exchanger. Units with larger case volumes are able to more easily incorporate these design options and thus can achieve a higher max-tech efficiency.

For the preliminary analysis, DOE used the maximum available efficiencies as the highest efficiency levels for its analysis, and requested feedback on whether these levels were appropriate. ASAP asked whether the max-tech levels should be higher than the current maximum available efficiency levels. ASAP also asked whether the max-tech level is independent of what level might be appropriate for a standard. (ASAP, Public Meeting Transcript, No. 25 at pp. 34–35) The Joint Commenters stated that DOE should evaluate potential efficiency improvements beyond the maximum available level, and should not use the maximum available level as a proxy for the max-tech levels. They stated that, for example, modest increases in chassis size, permanent-magnet fan motors, and additional heat exchanger improvements may provide further efficiency gains, and that the max-tech levels would likely be higher than the efficiency levels of the most-efficient currently available products. (Joint Commenters, No. 23 at pp. 2–3) The California IOUs commented that the max-tech efficiency level should be based on modeled efficiencies, as opposed to products currently available in the market. They stated that it is important for DOE to either physically test or model a true max-tech level of dehumidifier efficiency, and this level need not be constrained by cost or other factors that are present in normal commercial product development. The California IOUs stated that this max-tech option should incorporate every known measure to maximize efficiency (*e.g.,* inlet air pre-cooling, improved compressor efficiency, and improved condenser and evaporator heat transfer rate). They stated that in addition to capturing the full energy savings potential, existing dehumidifiers could be compared to this benchmark to determine effective timeframes for when the commercial market could meet the max-tech level. (California IOUs, No. 24 at p. 4)

DOE establishes the max-tech level as the maximum efficiency that is technologically feasible for the covered product. In analyzing potential standards, DOE is not constrained to selecting max-tech levels as the proposed standards levels. DOE agrees that dehumidifiers commercially

available at this time may not incorporate all design options that are technologically feasible, and therefore revised the max-tech efficiency levels to incorporate additional design options beyond those observed in its test sample. DOE then modeled the increased efficiency associated with these new max-tech levels.

For the NOPR analysis, another key change to the efficiency levels considered for the preliminary analysis was to combine the previous four lowest capacity portable product classes into two, as discussed in section IV.A.1 of this proposed rule. The two portable product classes from the preliminary analysis with capacities less than 30.00 pints/day each have three identical intermediate efficiency levels. For the combined 30.01 to 45.00 pints/day product class, DOE used an IEF of 1.20 L/kWh for Efficiency Level 1. The previous Efficiency Level 1 for the 35.01 to 45.00 product class in the preliminary analysis was at an IEF of 1.30 L/kWh. DOE chose an IEF of 1.20 L/kWh as the appropriate level for the combined product class because this represents the baseline IEF with no fan-only mode; therefore, DOE concluded it would be appropriate to maintain the lower of the two IEFs at this level for the combined product class.

DOE also updated the efficiency levels for the whole-home dehumidifier classes based on the appendix X1 test procedures, which require a different ambient dry-bulb temperature (73 °F instead of 65 °F) from that proposed in the May 2014 Test Procedure NOPR and a different external static pressure (0.20 inches of water column instead of 0.5 and 0.25 inches of water column) from those proposed in the May 2014 Test Procedure NOPR and the February 2015 Test Procedure SNOPR).

Table IV.13 and Table IV.14 present the revised efficiency levels DOE considered in this NOPR analysis.

TABLE IV.13—NOPR ANALYSIS PORTABLE DEHUMIDIFIER EFFICIENCY LEVELS

Efficiency level	Efficiency level source	Integrated energy factor efficiency levels (L/kWh)		
		30.00 pints/day or less	30.01–45.00 pints/day	45.01 pints/day or more
Baseline	Current Baseline with Fan-only Mode	0.77	0.94	2.07
1	Current Baseline with no Fan-only Mode	1.10	1.20	2.40
2	Gap Fill 1	1.20	1.40	2.80
3	Gap Fill 2/Max Tech	1.30	1.60	3.66
4	Max Tech	1.57	1.80	.....

TABLE IV.14—NOPR ANALYSIS WHOLE-HOME DEHUMIDIFIER EFFICIENCY LEVELS

Efficiency level	Efficiency level source	Integrated energy factor efficiency levels (L/kWh)	
		8.0 ft^3 or less (case volume)	More than 8.0 ft^3 (case volume)
Baseline	Minimum Available	1.77	2.41
1	Gap Fill 1	2.09	2.70
2	Gap Fill 2/Max Tech	2.53	3.52
3	Max Tech	.....	4.50

Additional details on the selection of incremental efficiency levels may be found in chapter 5, section 5.3.2 of the NOPR TSD.

2. Manufacturer Production Cost Estimates

Based on product teardowns and cost modeling conducted in the preliminary analysis, DOE developed overall cost-efficiency relationships for each product class considered in that analysis. DOE selected products covering the range of efficiencies available on the market for the teardown analysis. During the teardown process, DOE created detailed bills of materials (BOMs) that included all components and processes used to manufacture the products. DOE used the BOMs from the teardowns as an input to a cost model, which was used to calculate the MPC for products covering the range of efficiencies available on the market. The MPC accounts for labor, material, overhead, and depreciation costs that a manufacturer would incur in producing a specific dehumidifier. DOE also developed BOMS and MPCs for theoretical units that could implement the current max-tech for dehumidifier components.

For the preliminary analysis, DOE estimated that the costs for these products reflected the costs for typical units at their respective efficiency levels, consistent with the efficiency-level approach. DOE then used the design-option approach to determine what changes would be needed for a particular unit to meet each incrementally higher efficiency level. DOE constructed cost-efficiency curves for multiple manufacturers to reflect the incremental MPC corresponding to each manufacturer's product line and available platforms. DOE combined the individual cost-efficiency curves based on estimates of each manufacturer's market share to develop an overall cost-efficiency curve representative of the entire industry. Table IV. 15 shows the incremental MPCs developed in the preliminary analysis for each product class at each of the analyzed efficiency levels compared to the baseline MPC. The incremental MPCs are presented in 2012 dollars (2012$), which reflects the year in which the preliminary analysis teardowns and modeling were performed.

TABLE IV.15—PRELIMINARY ANALYSIS DEHUMIDIFIER INCREMENTAL MANUFACTURER PRODUCTION COSTS

[2012$]

Efficiency level	Portable product class capacities (pints/day)					Whole-home product class case volume (*cubic feet*)	
	≤20.00	20.01–30.00	30.01–35.00	35.01–45.00	>45.00	≤8.0	>8.0
EL1	$—	$—	$—	$—	$38.40	$15.22	$6.14
EL2	1.56	1.85	2.94	1.98	49.16	76.18	37.05
EL3	4.64	3.78	8.72	7.56	100.13	N/A	112.01
EL4	7.77	10.82	13.40	11.24	N/A	N/A	N/A

Section 5.5 of Chapter 5 of the preliminary TSD contains additional details on the analysis conducted in support of developing these MPC estimates.

DOE received multiple comments from interested parties on the engineering analysis and MPC estimates developed for the preliminary analysis. GE Appliances (GE) commented that it is very low cost to get to Efficiency Level 1 by eliminating fan-only mode because it only requires software changes. (GE, Public Meeting Transcript, No. 25 at p. 43) AHAM and GE commented that removing fan-only mode reduces consumer utility with longer defrost times at lower temperatures, less stability of the humidity in the environment, and stagnation of the air. AHAM also stated that for manufacturers that would not want to make these tradeoffs, Efficiency Level 1 would be nearly impossible to meet by combining other technology options. (AHAM, No. 22 at p. 3; GE, Public Meeting Transcript, No. 25 at p. 43) DOE continues to expect manufacturers would remove fan-only mode in products as a first step to improving efficiency because of the low cost and ease of implementation. Many units available on the market already do not incorporate fan-only mode. In manufacturer interviews, manufacturers typically stated that there would be no impact on consumer utility to remove fan-only mode. DOE also notes that although it asserts that manufacturers would remove fan-only mode to reach Efficiency Level 1, manufacturers may elect to incorporate other design options to improve efficiency to that level.

Aprilaire asked whether DOE considered in its analysis the limited availability of compressor technologies for the larger dehumidifiers. Aprilaire noted that compressors in larger dehumidifiers do not have a lot of new technologies and sizes available to them. Manufacturers would have to increase efficiency by increasing coil sizes or incorporating features such as air-to-air heat exchangers or wrap-around coils, which would be very expensive for the manufacturer. (Aprilaire, Public Meeting Transcript, No. 25 at pp. 23–24) AHAM commented that compressor efficiency has not been increasing significantly. Manufacturers may be seeking to incorporate higher efficiency compressors, but it is possible that compressors are reaching close to max-tech levels such that selecting a higher efficiency compressor may be cost prohibitive. (AHAM, No. 22 at p. 4)

For the preliminary engineering analysis, DOE identified the range of compressor capacities observed in dehumidifiers available on the market. DOE then identified the range of efficiencies for all available compressors within that capacity range. When evaluating higher compressor efficiencies, DOE considered the most efficient rotary R–410A compressor available in the required range of capacities, without requiring a switch to a different compressor technology. Additionally, DOE factored in the compressor efficiencies observed in products in its teardown sample when determining the overall efficiency gains that may be achieved through compressor improvements. If a dehumidifier already incorporated an efficient compressor, DOE relied on other design options such as increasing heat exchanger sizes to improve efficiencies.

In AHAM's comments on the preliminary engineering analysis cost estimates, it asked for more information on how a 3,000 Btu/h compressor would be estimated to cost less than $7. (AHAM, Public Meeting Transcript, No. 25 at p. 38) GE commented that because there are very few room air conditioner compressors rated as low as 5,000 Btu/h, the curve used to determine compressor prices is probably valid only down to 5,000 Btu/h. (GE, Public Meeting Transcript, No. 25 at p. 39) DOE notes that in the preliminary analysis, it relied on the room air conditioner compressor cost curve only over the range of capacities for which it was developed, 5,000 to 24,000 Btu/h. DOE used the $7 cost for a 3,000 Btu/h compressor as an example of an inappropriately low cost from extrapolating the cost curve below its lower limit (5,000 Btu/h). DOE did not use this cost estimate in the preliminary analysis or in this NOPR. In both the preliminary analysis and this NOPR, DOE estimated that compressor costs would continue to decrease for compressor capacities less than 5,000 Btu/h, but estimated a more conservative linear decrease in costs compared to extrapolating the room air conditioner curve. (For additional information, see chapter 5, section 5.5.5 of the preliminary TSD.)

ASAP asked if DOE had evaluated heat exchanger improvements other than increasing the cross-sectional area, and if so, which improvement had the largest impact. (ASAP, Public Meeting Transcript, No. 25 at p. 46) AHAM commented that manufacturers might choose to rely on heat exchanger sizes to improve condenser and evaporator performance, but larger coils mean more static pressure, thus adding more costly motors. (AHAM, No. 22 at pp. 3–4)

As part of the preliminary analysis, DOE considered additional heat exchanger design changes, including increasing the number of tube passes and heat exchanger depth in the direction of the air flow. DOE modeled the efficiency improvements of these changes, as well as an increase in cross-sectional area, and found that increasing the heat exchanger cross-sectional area resulted in the greatest efficiency improvement. As noted in section 5.5.1 and throughout chapter 5 of the preliminary TSD, DOE asserted that manufacturers would rely on this heat exchanger design change to reach higher efficiency levels. Manufacturers confirmed during interviews that they would typically rely on increased cross-sectional area rather than other heat exchanger design changes to reach higher efficiencies. In considering larger cross-sectional areas, DOE also did not assume a corresponding increase in motor power. DOE expects that the

static pressure over the heat exchanger would not increase with larger cross-sectional area because of the lower relative air velocity through the coil.

ASAP asked whether a fixed standby power level is incorporated into each IEF level. ASAP noted that the preliminary analysis does not include reduced standby power as a design option, which is reasonable as long as the standby power levels at each efficiency level are low. ASAP further commented that the energy study that DOE cited in the preliminary TSD found standby power levels for some products to be as high as 12 watts (W), and requested confirmation that high standby power levels are not incorporated in the IEFs. (ASAP, Public Meeting Transcript, No. 25 at pp. 44–45) AHAM agreed with DOE's determination in the preliminary analysis that manufacturers would rely on changes other than low-standby-loss electronic controls to achieve the relatively large increments in efficiency levels. (AHAM, No. 22 at p. 5)

In section 5.5.3.2 of the preliminary TSD, DOE noted that while the average low-power mode power draw for units in its test sample was lower for a switch-mode power supply compared to a linear power supply (0.4 W compared to 1.2 W), these values, incorporated into the same unit, would have a negligible effect on the final rounded IEF. Accordingly, DOE did not consider improving low-power mode energy consumption at any efficiency level. If a unit did indeed have a 12 W low-power mode power draw, DOE expects that the manufacturer would switch to low-standby-power controls to improve IEF. However, DOE notes that the 12 W level was observed in the field, and does not necessarily reflect the control settings and operation of the unit as tested according to the low-power mode testing provisions in the appendix X1 test procedures. DOE did not observe any standby mode or off mode power levels higher than 4.5 W in its testing of a large sample of dehumidifiers from manufacturers representing over 80 percent of the market.

GE and AHAM commented that Underwriters Laboratories (UL) has a new standard, UL 474, which requires Arc Fault Circuit Interrupter (AFCI) protection to be added to all cord-connected dehumidifiers manufactured on or after February 6, 2017. Adding AFCI protection to dehumidifiers will increase standby power. According to GE, the increase in standby power would be about 0.5 W. (AHAM, No. 22 at p. 7; GE, Public Meeting Transcript, No. 25 at pp. 47–48) This estimated increase in low-power mode power draw is similar to the range in low-power mode power consumption that DOE observed among the units in its test sample, and which DOE determined had little or no effect on the final rounded IEF value. Accordingly, DOE determined that the new UL 474 standard would not require adjusting the IEF values considered for each efficiency level.

In chapter 5, section 5.5.3.2 of the preliminary TSD, DOE provided discussion on a number of design options that were not directly considered in the engineering analysis. These design options were described in chapter 3, section 3.14.2 of the preliminary TSD. AHAM agreed that:

1. A built-in hygrometer/humidistat would not result in efficiency gains.

2. Because the test procedure requires continuous unit operation at constant ambient conditions, it would not reflect improved control schemes and thus these should not be further considered in the analysis.

3. If DOE adopts the 65 °F ambient condition, manufacturers would likely adjust their units to avoid defrosts when operating at that condition, and thus improved defrost methods should not be considered further in the analysis.

4. Demand-defrost controls should not be considered because units on the market already feature sensor-based defrost control and because the test procedure would not capture efficiency improvements from it.

5. Any benefit associated with the unit's ability to adjust to varying ambient conditions would not be captured by the test procedure, and thus improved flow-control devices should not be further considered in the analysis.

6. Washable air filters are not a design option because all units DOE analyzed include this feature.

7. Improved refrigeration system insulation should not be considered as a design option because DOE did not observe a relationship between efficiency and insulation. (AHAM, No. 22 at pp. 4–6)

The California IOUs commented that measures that were rejected because their impact would not be directly observable under the current DOE test procedure—variable-speed compressors, permanent-magnet fan motors, improved controls (standby power consumption, relative humidity set-point accuracy, refrigerant flow controls, improved defrost controls), and improved insulation in the refrigeration system—all have the potential for significant energy use reduction and therefore should be considered as design options. The California IOUs stated that a number of areas for improving the accuracy and range of controls could greatly enhance overall dehumidifier efficiency, and although the majority of these measures would not significantly affect the rated active mode efficiency of dehumidifiers under the current test procedure, they should be considered as design options because future updates to the test procedure may properly account for these efficiency gains. (California IOUs, No. 24 at pp. 4 and 5) The California IOUs also commented that DOE should consider requiring dehumidifiers to contain hygrometers, which would reduce overall energy use by automatically controlling active mode operation based on ambient temperature and humidity conditions. They stated that more advanced controls are capable of using data from hygrometers to optimize compressor and fan usage by utilizing a pre-programmed compressor and fan schedule over a range of dry-bulb and wet-bulb temperature combinations. They also stated that because some hygrometers can be inaccurate, which could cause units to run much longer duty cycles than the user intends, DOE should consider requiring a certain hygrometer accuracy and should modify the test procedure to accommodate this measurement. (California IOUs, No. 24 at p. 5)

DOE identified these design options in the market and technology assessment because of their potential to increase dehumidifier efficiencies in real-world applications. However, because the benefits of these design options would likely not be measured under the appendix X1 test procedure, DOE determined that manufacturers would not likely incorporate the design options to existing products to reach higher efficiency levels. The appendix X1 test procedure determines dehumidifier performance under constant ambient conditions, and therefore would not reflect potential energy impacts of design options that improve controls to adjust unit operation to respond to ambient conditions. Accordingly, DOE requests comment on whether to promote installation of any of the design options identified by the California IOUs, even though the resulting efficiency gains would not be measurable with the existing test protocol.

ASAP and the Joint Commenters stated that DOE should include the efficiency improvements associated with permanent-magnet fan motors unless the savings are trivial. (ASAP, Public Meeting Transcript, No. 25 at pp. 45–46; Joint Commenters, No. 23 at pp. 2–3) The Joint Commenters also stated

that while costs to both consumers and manufacturers are important considerations in determining appropriate standard levels, costs can't be considered in establishing the max-tech levels. They also noted that DOE analyzed permanent-magnet fan motors in several recent rulemakings (furnace fans, walk-in coolers and freezers, commercial refrigeration equipment). (Joint Commenters, No. 23 at pp. 2–3) AHAM commented in agreement with DOE's determination in the preliminary analysis that improved fan and fan-motor efficiency should not be considered because DOE found no significant changes to blowers and fan motors at different efficiencies. (AHAM, No. 22 at p. 5)

In improving the max-tech efficiencies beyond the maximum available, as discussed in section IV.C.1.b of this proposed rule, DOE included a change to permanent-magnet fan motors. While manufacturers do not currently incorporate permanent-magnet fan motors in products available on the market, DOE determined that this is a technologically feasible change that would improve product efficiencies. The revised MPCs for the NOPR analysis reflect this design change, as well as others, at the max-tech efficiency level.

For the NOPR analysis, DOE also updated the incremental MPC estimates from the preliminary analysis to combine the four lower capacity portable product classes into two, as discussed in section IV.A.1 of this proposed rule. To combine the cost estimates from the previous separate portable product classes, DOE used the market shares discussed in the preliminary analysis (see chapter 9, section 9.3.3 of the preliminary TSD) to determine a weighted average of the previous cost estimates. Additionally, DOE updated the MPCs to 2013$, the most recent year for which full-year data was available at the time of this analysis. DOE notes that the whole-home test procedure revisions did not impact the MPC cost estimates for those product classes. DOE assumed products would maintain the same construction as considered for the preliminary analysis, with updated IEFs to reflect the proposed, revised test conditions. Table IV.16 presents the updated MPC estimates DOE developed for this NOPR.

TABLE IV.16—NOPR ANALYSIS DEHUMIDIFIER INCREMENTAL MANUFACTURER PRODUCTION COSTS

[2013$]

Efficiency level	Portable product class capacities (pints/day)			Whole-home product class case volume (ft^3)	
	≤30.00	30.01–45.00	>45.00	≤8.0	>8.0
EL1	$—	$—	$42.81	$15.30	$6.20
EL2	1.69	2.39	53.66	129.22	37.20
EL3	4.27	8.07	120.33	N/A	161.39
EL4	19.38	22.42	N/A	N/A	N/A

Additional details on the development of the incremental cost estimates may be found in chapter 5 of the NOPR TSD.

D. Markups Analysis

The markups analysis develops appropriate markups in the distribution chain to convert the MPC estimates derived in the engineering analysis to consumer prices. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin. For residential dehumidifiers, the main parties in the distribution chain are manufacturers and retailers.

The manufacturer markup converts MPC to manufacturer selling price (MSP). DOE developed an average manufacturer markup by examining the annual Securities and Exchange Commission (SEC) 10–K reports filed by publicly traded manufacturers primarily engaged in appliance manufacturing and whose combined product range includes residential dehumidifiers.

For retailers, DOE developed separate markups for baseline products (baseline markups) and for the incremental cost of more efficient products (incremental markups). Incremental markups are coefficients that relate the change in the MSP of higher-efficiency models to the change in the retailer sales price. DOE relied on economic data from the U.S. Census Bureau to estimate average baseline and incremental markups.[26]

Chapter 6 of the NOPR TSD provides details on DOE's development of markups for residential dehumidifiers.

E. Energy Use Analysis

DOE's energy use analysis estimated the range of energy use of residential dehumidifiers in the field, *i.e.,* as they are actually used by consumers. The energy use analysis provided the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended standards.

A dehumidifier uses energy when the compressor is operating to remove moisture from the air. When the compressor is not operating, the dehumidifier may use energy for a fan-only mode that circulates air through the unit to sample the ambient relative humidity and to defrost the condenser coils. When neither the fan nor the compressor is operating, energy is used in standby mode or off mode to supply power for functions such as keeping a user panel lit.

DOE determined the annual energy consumption of residential dehumidifiers by multiplying the capacity (liters per day) by the hours of operation in dehumidification mode, dividing that quantity by the product efficiency, and adding the energy use for the fan mode and the standby and off mode.

The efficiency and capacity values were measured using a temperature of 80 °F and humidity set point of 60 percent, as stipulated in the current test procedure for dehumidifiers.

To estimate hours of operation in each mode, DOE used two recent field studies that measured daily hours of use in each operating mode for both portable and whole-home dehumidifiers.[27] DOE paired these data with estimates of the number of months that dehumidifiers are used in a representative sample of U.S.

[26] U.S. Census, *2007 Annual Retail Trade Survey* (*ARTS*), Electronics and Appliance Stores sectors.

[27] Willem, H., *et al., Using Field-Metered Data to Quantify Annual Energy Use of Residential Portable Unit Dehumidifiers,* Lawrence Berkeley National Laboratory (Nov. 2013); Willem, H., *et al., Field-Monitoring of Whole-Home Dehumidifiers: Initial Results of a Pilot Study,* Lawrence Berkeley National Laboratory (Nov. 2013).

households. DOE used data from the EIA's *2009 Residential Energy Consumption Survey* (RECS 2009), which was the most recent such survey available at the time of DOE's analysis.[28] RECS is a national sample survey of housing units that collects statistical information on the consumption of and expenditures for energy in housing units along with data on energy-related characteristics of the housing units and occupants. RECS 2009 questioned each household on two aspects of dehumidifier use: (1) Ownership and (2) number of months of dehumidifier use. DOE estimated that consumers leave the dehumidifier to cycle on and off for the entire month or months of the dehumidification season.

DOE estimated the energy use for the fan mode and the standby and off mode using the hours of operation described above, along with data on average power in fan and standby modes from the field studies.

Chapter 7 of the NOPR TSD provides details on DOE's energy use analysis for residential dehumidifiers.

F. Life-Cycle Cost and Payback Period Analysis

In determining whether an energy conservation standard is economically justified, DOE considers the economic impact of potential standards on consumers. The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

- LCC (life-cycle cost) is the total consumer cost of an appliance or product, generally over the life of the appliance or product. The LCC calculation includes total installed cost (equipment manufacturer selling price, distribution chain markups, sales tax, and installation costs), operating costs (energy, repair, and maintenance costs), equipment lifetime, and discount rate. Future operating costs are discounted to the time of purchase and summed over the lifetime of the appliance or product.
- PBP (payback period) measures the amount of time it takes consumers to recover the estimated higher purchase price of a more energy-efficient product through reduced operating costs. Inputs to the payback period calculation include the installed cost to the consumer and first-year operating costs.

For any given EL, DOE measures the change in LCC relative to the LCC in the base case, which reflects the market in the absence of new or amended energy conservation standards, and includes baseline products as well as products with higher efficiency. In contrast, the PBP for a given EL is measured relative to the baseline product only.

For each product class efficiency level, DOE calculated the LCC and PBP for a nationally representative set of housing units. As stated previously, DOE developed household samples with RECS 2009 data. For each sample household, DOE determined the energy consumption for the residential dehumidifier and the appropriate electricity price. By developing a representative sample of households, the analysis captured the variability in energy consumption and energy prices associated with the use of residential dehumidifiers.

AHAM continues to oppose DOE's reliance on RECS 2009 for the LCC and PBP analysis. AHAM considers it difficult, if not impossible, to compare the results to the energy use measured in a controlled test procedure situation. (AHAM, No. 22 at p. 6)

The LCC and PBP analyses are designed to support DOE's consideration of the economic impact of potential standards on consumers of the products subject to the standard, as required by EPCA. (42 U.S.C. 6295(o)(2)(B)(i)(I)) The use of RECS 2009 to develop a consumer sample and to provide data for estimation of product energy use allows DOE to characterize the range of conditions in which covered appliances are operated. As a result, DOE is able to estimate how the energy savings would vary among households for each considered EL. Measurement of energy use in a controlled test procedure situation has a different purpose, which is to provide accurate and comparable measures of energy efficiency for particular covered products.

Inputs to the calculation of total installed cost include the cost of the product—which includes MPCs, manufacturer markups, retailer and distributor 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, product lifetimes, and discount rates. DOE created distributions of values for product lifetime, discount rates, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability.

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 residential dehumidifier user samples. The model calculated the LCC and PBP for products at each efficiency level for 10,000 housing units per simulation run.

DOE calculated the LCC and PBP for all customers as if each were to purchase a new product in the expected year of compliance with amended standards. The amended standards would apply to residential dehumidifiers manufactured 3 years after the date on which the amended standards for residential dehumidifiers are published. At this time, DOE estimates publication of a final rule in 2016. Therefore, for purposes of its analysis, DOE used 2019 as the first year of compliance with any amended standards.

Table IV.17 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the NOPR TSD and its appendices.

TABLE IV.17—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Product Cost	Derived by multiplying MPCs by manufacturer and retailer markups and sales tax, as appropriate. Used historical data to derive a price scaling index to forecast product costs.
Installation Costs	Baseline installation cost determined with data from RS Means. Assumed no change with efficiency level.

[28] U.S. Department of Energy: Energy Information Administration, *Residential Energy Consumption Survey: 2009 RECS Survey Data* (2013) (Available at: *http://www.eia.gov/consumption/residential/data/2009/*).

TABLE IV.17—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *—Continued

Inputs	Source/method
Annual Energy Use	The total annual energy use multiplied by the hours per year. Average number of hours based on field data. Variability: Based on the 2009 *RECS.*
Energy Prices	Electricity: Based on EIA's Form 861 data for 2012. Variability: Regional energy prices determined for 27 regions. Variability: By census region.
Energy Price Trends	Energy: Forecasted using *AEO 2015* price forecasts.
Repair and Maintenance Costs	Assumed no change with efficiency level.
Product Lifetime	Portable dehumidifiers: used lifetime from the previous DOE rulemaking for dehumidifiers. Whole-home dehumidifiers: applied the lifetime parameters derived for room air conditioners.
Discount Rates	Approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances, or might be affected indirectly. Primary data source was the Federal Reserve Board's SCF** for 1989, 1992, 1995, 1998, 2001, 2004, 2007, and 2010.
Projected Compliance Date	2019

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the NOPR TSD.
** Survey of Consumer Finances.

1. Product Cost

To calculate consumer product costs, DOE multiplied the MPCs developed in the engineering analysis by the markups described above (along with sales taxes). DOE used different markups for baseline products and higher-efficiency products, because DOE applies an incremental markup to the increase in MSP associated with higher-efficiency products.

In the preliminary analysis, DOE projected future dehumidifier prices using a trend based on the appropriate Producer Price Index (PPI) series. AHAM submitted a comment on the preliminary analysis opposing the use of experience curves to project future product prices. (AHAM, No. 22 at pp. 6–7)

There is extensive literature supporting the use of experience curves (also known as learning curves) for a broad range of products. The approach that DOE has used in some rulemakings to derive an experience rate (defined as the fractional reduction in price expected from each doubling of cumulative production) is consistent with the methods used in numerous studies.[29] However, the historical shipment data for dehumidifiers are too limited to construct a robust cumulative production estimation for these products. Instead, DOE retained the approach using an exponential fit of historic PPI data. PPI data specific to residential dehumidifiers were not available, so DOE used the Small Electric Household Appliances PPI (1983 to 2012) from the Bureau of Labor Statistics for portable dehumidifiers, and the Room Air Conditioners and Dehumidifiers PPI (1990 to 2009) for whole-home dehumidifiers.[30] The average annual rate of price decline, adjusted for inflation, in the default case is 2.02 percent for portable dehumidifiers and 2.23 percent for whole-home dehumidifiers.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the product. DOE used data from the 2013 RSMeans Residential Cost Data book to estimate the baseline installation cost for whole-home dehumidifiers. DOE found no evidence that installation costs would be impacted with increased efficiency levels.

3. Annual Energy Consumption

For each sampled household, DOE determined the energy consumption for a residential dehumidifier at different efficiency levels using the approach described above in section IV.E of this notice.

4. Energy Prices

DOE derived average annual residential electricity prices for 27 geographic regions using data from EIA's Form EIA–861 database.[31] DOE calculated an average annual regional residential price by: (1) Estimating an average residential price for each utility in the region (by dividing the residential revenues by residential sales); and (2) weighting each utility by the number of residential consumers it served in that region. The NOPR analysis used data from 2012.

To estimate energy prices in future years, DOE multiplied the average regional energy prices by the forecast of annual change in national-average residential energy price in the reference case from *AEO 2015,* which has an end year of 2040.[32] To estimate price trends after 2040, DOE used the average annual rate of change in prices from 2020 to 2040.

5. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing product components that have failed in an appliance; maintenance costs are associated with maintaining the operation of the product. Typically, small incremental increases in product efficiency produce no, or only minor, changes in repair and maintenance costs.

During the 2013 preliminary analysis phase of the rulemaking, DOE requested information as to whether maintenance and repair costs are a function of efficiency level and product class. Manufacturers responded that these costs would not increase with efficiency. As a result, DOE assumed that repair and maintenance costs do not scale with the efficiency of residential dehumidifiers.

6. Product Lifetime

For portable dehumidifiers, DOE used lifetime estimates from the previous

[29] Margaret Taylor and K. Sydny Fujita, *Accounting for Technological Change in Regulatory Impact Analyses: The Learning Curve Technique,* Lawrence Berkeley National Laboratory (Apr. 30, 2013); P.B. Kantor and W. I. Zangwill, *Theoretical Foundation for a Learning Rate Budget,* Management Science, Mar. 1, 1991, at 315; L. Argote and D. Epple, *Learning Curves in Manufacturing,* Science, Feb. 1990, at 920; J.M. Dutton and A. Thomas, *Treating Progress Functions as a Managerial Opportunity,* The Academy of Management Review, Apr. 1984, at 235.

[30] PPI Series ID for Small Electric Household Appliance: PCU33521033521014; PPI Series ID for Room Air Conditioner and Dehumidifiers: PCU3334153334156. (Available at: *http://www.bls.gov/ppi/*).

[31] Available at: *www.eia.doe.gov/cneaf/electricity/page/eia861.html.*

[32] DOE–EIA, *Annual Energy Outlook 2013 with Projections to 2040* (Available at: *http://www.eia.gov/forecasts/aeo/*).

DOE rulemaking for dehumidifiers.[33] DOE assumed whole-home dehumidifiers have the same life span as residential room air conditioners and applied the lifetime parameters derived for room air conditioners in the 2011 rulemaking to whole-home dehumidifiers.[34] The analysis yielded an estimate of mean lifetime of approximately 11 years for portable dehumidifiers and approximately 19 years for whole-home dehumidifiers. DOE also used the data to develop a survival function that was incorporated as a probability distribution in the LCC analysis. See chapter 8, section 8.2.2.8 of the NOPR TSD for further details on the method and sources DOE used to develop product lifetimes.

7. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to households to estimate the present value of future operating costs. DOE estimated a distribution of residential discount rates for dehumidifiers based on consumer financing costs and opportunity cost of funds related to appliance energy cost savings and maintenance costs.

To establish residential discount rates for the LCC analysis, DOE identified all relevant household debt or asset classes in order to approximate a consumer's opportunity cost of funds related to appliance energy cost savings and maintenance costs. DOE then estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's Survey of Consumer Finances (SCF) for 1995, 1998, 2001, 2004, 2007, and 2010.[35] Using the SCF and other sources, DOE then developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which amended standards would take effect. DOE assigned each sample household a specific discount rate drawn from one of the distributions. The average rate across all types of household debt and equity and income groups, weighted by the shares of each class, is 5.0 percent. See chapter 8, section 8.2.3 of the NOPR TSD for further details on the development of consumer discount rates.

8. Base-Case Efficiency Distribution

To accurately estimate the share of consumers that would be affected by a standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution of product efficiencies in the base case (*i.e.,* the case without new energy efficiency standards). DOE refers to this distribution of product efficiencies as a base-case efficiency distribution.

To estimate the efficiency distribution of standard residential dehumidifiers for 2014, DOE analyzed its Compliance Certification Database for residential dehumidifiers. To project the efficiency trend between 2014 and 2019, DOE used a 0.25 percent annual increase in shipment-weighted efficiency, as discussed in section IV.H. The estimated shares for the base-case efficiency distribution for residential dehumidifiers are shown in Table IV.18. See chapter 8, section 8.2.5 of the NOPR TSD for further information on the derivation of the base-case efficiency distributions.

TABLE IV.18—RESIDENTIAL DEHUMIDIFIER BASE-CASE EFFICIENCY DISTRIBUTION BY PRODUCT CLASS IN 2019

PC1		PC2		PC3		PC4		PC5	
≤30.00 pints/day		30.01–45.00 pints/day		>45.00 pints/day		≤8.0 ft^3		>8.0 ft^3	
EL	Share (%)	EL	Share (%)	EL	Share (%)	EL	Share (%)	EL	Share (%)
0	11	0	0	0	57	0	75	0	31
1	23	1	0	1	20	1	25	1	46
2	0	2	94	2	23	2	0	2	23
3	66	3	2	3	0			3	0
4	0	4	4						

9. Inputs to Payback Period Analysis

The PBP is the amount of time it takes the consumer to recover the additional installed cost of more efficient products, compared to baseline products, through energy cost savings. PBPs are expressed in years. PBPs that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each EL are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not needed.

10. Rebuttable Presumption Payback Period

As noted above, EPCA, as amended, 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 first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered EL, DOE determined the value of the first year's energy savings by multiplying the energy savings by the average energy price forecast for the year in which compliance with the amended standard would be required. The results of the rebuttable presumption PBP analysis are summarized in section V.B.1.c of this proposed rule.

[33] DOE-Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products, *Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment, Residential Dishwashers, Dehumidifiers, and Cooking Products, and Commercial Clothes Washers* (2009) (Available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2006-STD-0127-0097*).

[34] DOE-Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products, *Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment, Residential Clothes Dryers and Room Air Conditioners* (2011) (Available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2007-BT-STD-0010-0053*).

[35] Two older versions of the SCF are also available, 1989 and 1992, but these surveys are not used in this analysis because they do not provide all of the necessary types of data (*e.g.,* credit card interest rates). DOE concludes that the 15-year span covered by the six surveys included is sufficiently representative of recent debt and equity shares and interest rates.

G. Shipments

DOE uses forecasts of annual product shipments to calculate the national impacts of potential amended energy conservation standards on energy use, NPV, and future manufacturer cash flows.[36] The shipments model takes an accounting approach, tracking market shares of each product class and the vintage of units in the stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age distribution of in-service product stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock.

To determine shipments to the replacement market, DOE estimated a stock of dehumidifiers by vintage by integrating historical shipments starting from 1972. Over time, some units are retired and removed from the stock, triggering the shipment of a replacement unit. Depending on the vintage, a certain percentage of each type of unit will fail and need to be replaced. DOE based the retirement function on a probability distribution for the product lifetime that was developed in the LCC analysis. The shipments model assumes that no units are retired below a minimum product lifetime and that all units are retired before exceeding a maximum product lifetime.

To calibrate the estimated shipments with the historical data, DOE introduced into the model a market segment identified as existing households without dehumidifiers, also referred to as first-time owners. Based on the calibration, DOE estimated that 0.35 percent of existing households without a dehumidifier would annually purchase this product over the analysis period, 2019–2048.

Because the incremental cost of products meeting the considered standard levels is very low relative to the operating cost savings (see section V.B.1.a), DOE assumed that shipments would not be affected by the proposed standards. For details on the shipments analysis, see chapter 9 of the NOPR TSD.

AHAM stated that the historical shipments and the projected shipments do not seem to be logically connected—the historical shipments are jagged, going up and down, sometimes dramatically, while the future shipments show a relatively smooth, upward curve. (AHAM, No. 22 at p. 7) DOE used the average trend of historical shipments to forecast shipments for all dehumidifier product classes. The smoothed-line forecast is a product of this approach.

H. National Impact Analysis

The NIA assesses the NES and the national NPV of total consumer costs and savings that would be expected to result from new or amended standards at specific efficiency levels. DOE calculates the NES and NPV based on projections of annual appliance shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses.[37] For the present analysis, DOE forecasted the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of dehumidifiers sold from 2019 through 2048.

DOE evaluates the impacts of new and amended standards by comparing base-case projections with standards-case projections. The base-case projection characterizes energy use and consumer costs for each product class in the absence of new or amended energy conservation standards. DOE compares these projections with projections characterizing the market for each product class if DOE adopted new or amended standards at specific energy ELs (*i.e.,* the TSLs or standards cases) for that class. For the base-case forecast, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. For the standards cases, DOE also considers how a given standard would likely affect the market shares for products with efficiencies greater than the standard.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each TSL. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs.

Table IV.19 summarizes the inputs and methods DOE used for the NIA analysis for the NOPR. Discussion of these inputs and methods follows the table. See chapter 10 of the NOPR TSD for further details.

TABLE IV.19—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Projected Compliance Date of Standard.	2019
Base-Case Forecasted Efficiencies	Shipment-Weighted Integrated Energy Factor (SWIEF) determined in 2014 for each of the considered products classes. Annual growth rate of 0.25 percent assumed for determining SWIEF between 2014 and 2048.
Standards-Case Forecasted Efficiencies.	Roll-up scenario for 2019; efficiency improvement after 2019 based on 0.25 percent.
Annual Energy Consumption per Unit.	Annual weighted-average values are a function of energy use at each TSL.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each TSL. Incorporates forecast of future product prices based on historical data.
Annual Energy Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit and energy prices.
Repair and Maintenance Cost per Unit.	Annual values do not change with efficiency level.
Energy Prices	*AEO 2015* forecasts (to 2040) and extrapolation through 2048.
Energy site-to-power plant conversion.	A time-series conversion factor derived from *AEO 2014.*
Discount Rate	Three and seven percent real.

[36] DOE uses data on manufacturer shipments as a proxy for national sales, as aggregate data on sales are lacking. In general one would expect a close correspondence between shipments and sales.

[37] For the NIA, DOE adjusts the installed cost data from the LCC analysis to exclude sales tax, which is a transfer.

TABLE IV.19—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS—Continued

Inputs	Method
Present Year	Future costs and savings are discounted to 2014.

1. National Energy Savings

The NES analysis involves a comparison of national energy consumption of the considered products in each potential standards case (TSL) with consumption in the base case with no new or amended energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy consumption (also by vintage). Vintage represents the age of the product. DOE calculated annual NES based on the difference in national energy consumption for the base case (without amended efficiency standards) and for each higher efficiency standard. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy (*i.e.,* the energy consumed by power plants to generate site electricity) using annual conversion factors derived from the *AEO 2015* version of NEMS. Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

In response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards,'' appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and greenhouse gas and other emissions in the NIA and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (Aug. 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in the **Federal Register** in which DOE explained its determination that NEMS is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (Aug. 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector [38] that EIA uses to prepare its *Annual Energy Outlook.* The approach used for deriving FFC measures of energy use and emissions is described in appendix 10C of the NOPR TSD.

a. Forecasted Efficiency in the Base Case and Standards Cases

A key component of the NIA is the trend in energy efficiency forecasted for the base case (without new or amended standards) and each of the standards cases. Section IV.F.8 of this notice describes how DOE developed a base-case energy efficiency distribution (which yields a shipment-weighted average efficiency) for each of the considered product classes for the first year of the forecast period. To project the trend in efficiency for residential dehumidifiers over the entire forecast period, DOE used a 0.25 percent annual increase based on the rate that was used for room air conditioners in DOE's 2011 rule making.[39] This trend is described in chapter 10, section 10.2 of the NOPR TSD.

DOE used a ''roll-up'' scenario to establish the shipment-weighted efficiency for the year that standards are assumed to become effective (2019). In this scenario, product efficiencies in the base case that do not meet the standard under consideration would ''roll up'' to meet the new standard level, and the market share of products above the standard would remain unchanged.

To develop standards-case efficiency trends, DOE used an approach that assumes that the rate of adoption of more efficient products under the standards case occurs at a rate that ensures that the average total installed cost difference between the standards case and base case is constant over the entire forecast period. Because the total installed cost versus efficiency relationship for each product class demonstrates an increasing cost rate for more efficient products, the efficiency growth rate for each standards case is lower than the growth rate for the base case. For more information, see chapter 10, section 10.2 of the NOPR TSD.

2. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are: (1) Total annual installed cost, (2) total annual savings in operating costs, and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the base case and each standards case in total savings in operating costs and total increases in installed costs. DOE calculates operating cost savings over the life of each product shipped during the forecast period.

As discussed in section IV.F.1 of this proposed rule, DOE developed residential dehumidifier price trends based on historical PPI data. Within the portable and whole-house product groups, DOE applied the same trends to forecast prices for each product class at each considered EL. By 2048, which is the end date of the forecast period, the average dehumidifier price is forecasted to drop 37 percent relative to 2013. DOE's projection of product prices for residential dehumidifiers is described in further detail in appendix 10C of the NOPR TSD.

To evaluate the effect of uncertainty regarding the price trend estimates, DOE investigated the impact of different product price forecasts on the consumer NPV for the considered TSLs for residential dehumidifiers. In addition to the default price trend, DOE considered two product price sensitivity cases: (1) A high price decline case based on an exponential fit using PPI data for 1988 to 2013; and (2) a low price decline case based on an experience rate derived using PPI and shipments data for 1991 to 2000. The derivation of these price trends and the results of these sensitivity cases are described in appendix 10C of the NOPR TSD.

The operating cost savings are energy cost savings, which are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE multiplied the average regional energy prices by the forecast of annual national-average residential energy price changes in the reference case from *AEO 2015,* which has an end year of 2040. To estimate price trends after 2040, DOE used the average annual rate of change in prices from 2020 to 2040. As part of the NIA, DOE also analyzed scenarios that used inputs from the *AEO 2015* Low Economic Growth and High

[38] For more information on NEMS, refer to *The National Energy Modeling System: An Overview,* DOE/EIA–0581 (98) (Feb. 1998) (Available at: *http://www.eia.gov/oiaf/aeo/overview/*).

[39] DOE-Energy Efficiency and Renewable Energy, *Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment, Residential Clothes Dryers and Room Air Conditioners* (2011) (Available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2007-BT-STD-0010-0053*).

Economic Growth cases. Those cases have higher and lower energy price trends compared to the Reference case. NIA results based on these cases are presented in appendix 10C of the NOPR TSD.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For today's NOPR, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (OMB) to Federal agencies on the development of regulatory analysis.[40] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.

I. Consumer Subgroup Analysis

In analyzing the potential impact of new or amended standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers that may be disproportionately affected by a national standard. DOE evaluates impacts on particular subgroups of consumers by analyzing the LCC impacts and PBP for those particular consumers from alternative standard levels. For this NOPR, DOE analyzed the impacts of the considered standard levels on low-income households and senior-only households. Chapter 11 in the NOPR TSD describes the consumer subgroup analysis.

J. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the impacts of amended energy conservation standards on manufacturers of residential dehumidifiers. The MIA has both quantitative and qualitative aspects and includes analyses of forecasted industry cash flows, the industry net present value (INPV), investments in research and development (R&D) and manufacturing capital, and domestic manufacturing employment. Additionally, the MIA seeks to determine how amended energy conservation standards might affect manufacturing employment, capacity, and competition, as well as how standards contribute to overall regulatory burden. Finally, the MIA serves to identify any disproportionate impacts on manufacturer subgroups, including small business manufacturers.

The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model (GRIM), an industry cash flow model with inputs specific to this rulemaking. The key GRIM inputs include data on the industry cost structure, unit production costs, product shipments, manufacturer markups, and investments in R&D and manufacturing capital required to produce compliant products. The key GRIM outputs are the INPV and the impact to domestic manufacturing employment. The model estimates the impacts of more stringent energy conservation standards on a given industry by comparing changes in INPV and domestic manufacturing employment between the base case and the various TSLs in the standards case. To capture the uncertainty relating to manufacturer pricing strategy following amended standards, the GRIM estimates a range of possible impacts under different markup scenarios.

The qualitative part of the MIA addresses manufacturer characteristics and market trends. Specifically, the MIA considers such factors as manufacturing capacity, competition within the industry, the cumulative impact of other DOE and non-DOE regulations, and impacts on manufacturer subgroups. The complete MIA is outlined in chapter 12, sections 12.1 and 12.2 of the NOPR TSD.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE prepared a profile of the residential dehumidifier manufacturing industry. This included a top-down analysis of residential dehumidifier manufacturers that DOE used to derive preliminary financial inputs for the GRIM (*e.g.,* revenues; materials, labor, overhead, and depreciation expenses; selling, general, and administrative expenses (SG&A); and R&D expenses). DOE also used public sources of information, including SEC 10–K filings, corporate annual reports, the U.S. Census Bureau's *Economic Census,* and reports from Dunn & Bradstreet, to conduct the analysis.

In Phase 2 of the MIA, DOE prepared a framework industry cash flow analysis to quantify the impacts of new and amended energy conservation standards. The GRIM uses several factors to determine a series of annual cash flows starting with the announcement of the standard and extending over a 30-year period following the effective date of the standard. These factors include annual expected revenues, costs of sales, SG&A and R&D expenses, taxes, and capital expenditures. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) Create a need for increased investment; (2) raise production costs per unit; and (3) alter revenue due to higher per-unit prices and changes in sales volumes.

In addition, during Phase 2, DOE developed interview guides to distribute to manufacturers of residential dehumidifiers in order to develop other key GRIM inputs, including product and capital conversion costs, and to gather additional information on the anticipated effects of energy conservation standards on revenues, direct employment, capital assets, industry competitiveness, and subgroup impacts.

In Phase 3 of the MIA, DOE conducted structured, detailed interviews with representative manufacturers. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to validate assumptions used in the GRIM and to identify key issues or concerns. See section IV.J.4 for a description of the key issues raised by manufacturers during the interviews. As part of Phase 3, DOE also evaluated subgroups of manufacturers that may be disproportionately impacted by amended standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash flow analysis. Such manufacturer subgroups may include small business manufacturers, low-volume manufacturers (LVMs), niche players, or manufacturers exhibiting a cost structure that largely differs from the industry average. DOE identified one dehumidifier manufacturer subgroup (small businesses) for which average cost assumptions may not hold.

Based on the size standards published by the Small Business Administration (SBA),[41] to be categorized as a small business manufacturer of residential dehumidifiers under North American Industry Classification System (NAICS) codes 333415 (''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration

[40] United States Office of Management and Budget, ''Circular A–4: Regulatory Analysis,'' Section E (Sept. 17, 2003) (Available at: *www.whitehouse.gov/omb/memoranda/m03-21.html.http://www.whitehouse.gov/omb/circulars_a004_a-4/*).

[41] 65 FR 30836 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000).

Equipment Manufacturing'') or 335210 (''Small Electrical Appliance Manufacturing''), a dehumidifier manufacturer and its affiliates may not employ more than 750 employees. The 750-employee threshold includes all employees in a business' parent company and any subsidiaries. Using this classification in conjunction with a search of industry databases and the SBA member directory, DOE identified five manufacturers of residential dehumidifiers that qualify as small businesses, the majority of which are manufacturers of whole-home and high-capacity portable dehumidifiers.

The manufacturer subgroup analysis is discussed in greater detail in chapter 12, section 12.6 of the NOPR TSD and in section V.B.2.d of this proposed rule.

2. Government Regulatory Impact Model (GRIM)

DOE uses the GRIM to quantify the changes in industry cash flows resulting from amended energy conservation standards. The GRIM uses manufacturer costs, markups, shipments, and industry financial information to arrive at a series of base-case annual cash flows absent new or amended standards, beginning with the present year, 2014, and continuing through 2048. The GRIM then models changes in costs, investments, shipments, and manufacturer margins that may result from new or amended energy conservation standards and compares these results against those in the base-case forecast of annual cash flows. The primary quantitative output of the GRIM is the INPV, which DOE calculates by summing the stream of annual discounted cash flows over the full analysis period. For manufacturers of residential dehumidifiers, DOE used a real discount rate of 8.43 percent, the weighted-average cost of capital derived from industry financials and modified based on feedback received during confidential interviews with manufacturers.

The GRIM calculates cash flows using standard accounting principles and compares changes in INPV between the base case and the various TSLs. The difference in INPV between the base case and a standards case represents the financial impact of the amended standard on manufacturers at that particular TSL. As discussed previously, DOE collected the necessary information to develop key GRIM inputs from a number of sources, including publicly available data and interviews with manufacturers (described in the next section). The GRIM results are shown in section V.B.2.a of this notice. Additional details about the GRIM can be found in chapter 12, sections 12.4 and 12.5 of the NOPR TSD.

a. Government Regulatory Impact Model Key Inputs

Manufacturer Production Costs

Manufacturing a higher efficiency product is typically more expensive than manufacturing a baseline product due to the use of more complex and typically more costly components. The changes in the MPCs of the analyzed products can affect the revenues, gross margins, and cash flow of the industry, making product cost data key GRIM inputs for DOE's analysis. For each EL for each product class, DOE used the MPCs developed in the engineering analysis, as described in section IV.C.2 of this proposed rule and further detailed in chapter 5 of the NOPR TSD. Additionally, DOE used information from its teardown analysis, described in section IV.C of this proposed rule, to disaggregate the MPCs into material and labor costs. These cost breakdowns and equipment markups were validated with manufacturers during interviews.

Base-Case Shipments Forecast

The GRIM estimates manufacturer revenues based on total unit shipment forecasts and the distribution of shipments by efficiency level. Changes in sales volumes and efficiency mix over time can significantly affect manufacturer finances. For this analysis, the GRIM used the NIA's annual shipment forecasts derived from the shipments analysis from 2015 (the base year) to 2048 (the end of the analysis period). See chapter 9 of the NOPR TSD for additional details on the shipments analysis.

Standards-Case Shipments Forecast

For each standards case, the GRIM assumes a small, constant percentage shift in shipments to higher efficiency levels, reflecting the idea that some efficiency improvements will occur independent of amended standards. The GRIM also assumes all remaining shipments of products below the projected minimum standard levels would roll up (*i.e.,* be added) to the standard efficiency levels in response to an increase in energy conservation standards. The GRIM also assumes that demand for higher-efficiency equipment (that is above the minimally compliant level) is a function of price, and is independent of the standard level.

Product and Capital Conversion Costs

Amended energy conservation standards may cause manufacturers to incur one-time conversion costs to bring their production facilities and product designs into compliance with the new standards. For the purpose of the MIA, DOE classified these one-time conversion costs into two major groups: (1) Product conversion costs and (2) capital conversion costs. Product conversion costs are one-time investments in research, development, testing, and marketing, focused on making product designs comply with the new energy conservation standard. Capital conversion expenditures are one-time investments in property, plant, and equipment to adapt or change existing production facilities so that new product designs can be fabricated and assembled.

Stranded Assets

If new or amended energy conservation standards require investment in new manufacturing capital, there also exists the possibility that they will render existing manufacturing capital obsolete. If the obsolete manufacturing capital is not fully depreciated at the time new or amended standards go into effect, these assets would be stranded and the manufacturer would have to write-down the residual value that had not yet been depreciated.

DOE used multiple sources of data to evaluate the level of product and capital conversion costs and stranded assets manufacturers would likely face to comply with amended energy conservation standards. DOE used manufacturer interviews to gather data on the level of investment anticipated at each proposed efficiency level and validated these assumptions using estimates of capital requirements derived from the product teardown analysis and engineering model described in section IV.C of this proposed rule. These estimates were then aggregated and scaled to derive total industry estimates of product and capital conversion costs and to protect confidential information.

In general, DOE assumes that all conversion-related investments occur between the year the final rule is published and the year by which manufacturers must comply with the new or amended standards. The investment figures used in the GRIM can be found in section V.B.2 of this proposed rule. For additional information on the estimated product conversion and capital conversion costs, see chapter 12, sections 12.4.7 and 12.4.8 of the NOPR TSD.

b. Government Regulatory Impact Model Scenarios

Base-Case Markup

As discussed in section IV.D of this notice, MSPs include direct manufacturing production costs (*i.e.,* labor, material, overhead, and depreciation estimated in DOE's MPCs) and all non-production costs (*i.e.,* SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied manufacturer markups to the MPCs estimated in the engineering analysis. Based on publicly available financial information for manufacturers of residential dehumidifiers and comments from manufacturer interviews, DOE assumed the industry average base-case markup on production costs to be 1.45. This markup takes into account the two-tiered sourcing structure of the small portable dehumidifier segment, detailed below, in addition to the traditional one-tiered structure of the high-capacity portable and whole-home dehumidifier segment. The majority of the market for the lower-capacity portable product classes (product classes 1 and 2) are manufactured under contract by an overseas original equipment manufacturer (OEM). The engineering analysis, as detailed in chapter 5 of the NOPR TSD, estimates the cost of manufacturing at the OEM. This production cost is marked up once by the OEM to the company contracting its manufacturer and again by the contracting company who imports the product and sells it to retailers. For the small portable dehumidifier segment, the industry average baseline markup breaks down as follows:

TABLE IV.20—INDUSTRY-AVERAGE BASELINE MARKUPS

OEM to Contracting Company Markup	1.20
Contracting Company to First Customer Markup	1.21
Overall OEM to First Customer Markup	1.45

Markup Scenarios

Modifying the aforementioned base-case markups in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case markup scenarios to represent the uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards: (1) A preservation of gross margin [42] (percentage) scenario; and (2) a preservation of per-unit operating profits scenario. These scenarios lead to different markups values that, when applied to the MPCs, result in varying revenue and cash flow impacts.

The preservation of gross margin as a percentage of revenues markup scenario assumes that the baseline markup of 1.45 is maintained for all products in the standards case. Typically, this scenario represents the upper bound of industry profitability as manufacturers are able to fully pass through additional costs due to standards to their customers under this scenario.

The preservation of per-unit operating profits markup scenario is similar to the preservation of gross margin as a percentage of revenues markup scenario with the exception that in the standards case, minimally compliant products lose a fraction of the baseline markup. Typically, this scenario represents the lower bound profitability and a more substantial impact on the industry as manufacturers accept a lower margin in an attempt to offer price competitive entry level products while maintaining the same level of absolute operating profits, on a per-unit basis, that they saw prior to amended standards. Under this scenario, gross margin as a percentage decreases in the standards case.

3. Discussion of Comments

During the public comment period following the preliminary analysis public meeting, trade associations and small business manufacturers of residential dehumidifiers provided several comments on the potential impact of amended energy conservation standards on manufacturers.

In response to the May 2014 Notice, AHAM suggested that Canada's Energy Efficiency Regulations mandate standards for dehumidifiers that are harmonized with the existing standards in the United States. For other products, AHAM stated that the Canadian standards currently or soon will lag behind the U.S. standards, even though Canada has expressed its desire for harmonization. AHAM believes that this disharmony will result in added burden for manufacturers and confusion to consumers. AHAM encouraged DOE to work closely with Natural Resources Canada (NRCan) as it promulgates revised dehumidifier standards so that NRCan can publish harmonized Canadian standards with the same projected compliance date as in the United States. AHAM stated that it will work with NRCan and DOE to accomplish this goal. (AHAM, No. 22 at pp. 2–3)

Therma-Stor commented that changes to the testing and rating procedures may lead to confusion in the marketplace as the public has become accustomed to the current dehumidifier rating scheme. Therma-Stor also commented that it will be necessary to educate dealers and consumers about a revised rating scheme which substantially changes the capacity and efficiency ratings of each dehumidifier model. As a small manufacturer, Therma-Stor stated that it has limited engineering design, manufacturing, and marketing resources at its disposal. Therma-Stor typically maintains and manufactures a given dehumidifier model design for several years. According to Therma-Stor, a substantial change in the test procedure may require it to re-engineer its current product designs and revise related literature. Due to their small size and limited resources, this re-engineering may require more time for small manufacturers than larger entities with larger resource pools (Therma-Stor, No. 21 at p. 2) and may place a larger burden on small manufacturers.

Therma-Stor also expressed concern about the divergence of rating test procedures between DOE and EPA ENERGY STAR programs. Therma-Stor believes that DOE and EPA should work together to harmonize the rating test procedures to minimize the cost, time, and complexity of compliance for manufacturers. Therma-Stor further requested that if the rating test procedures are significantly revised, a reasonable ''grace period'' between the publication of the final rule and enforcement of the rule should be provided to allow small manufacturers to make necessary revisions to their products and literature to achieve compliance. *Id.*

DOE acknowledges that the new test procedure will result in a new rating system that will need to be properly conveyed to consumers via updated sizing recommendations in manufacturer product literature and Web sites. DOE notes that all manufacturers will be subject to the same shift in rating system.

While DOE also acknowledges that the presence of multiple standards and test procedures may place a disproportionate burden on small business manufacturers, DOE notes that EPA typically adopts the most recent

[42] ''Gross margin'' is defined as revenues minus cost of goods sold. On a unit basis, gross margin is selling price minus manufacturer production cost. In the GRIMs, markups determine the gross margin because various markups are applied to the manufacturer production costs to reach manufacturer selling price.

DOE test procedure for the ENERGY STAR program. See sections V.B.2.d and VI.B of this proposed rule for a discussion of the impacts on small business manufacturers. Feedback from manufacturers also suggests that a 3-year period for compliance after the final rule is published is reasonable.

Aprilaire noted that energy conservation standards for whole-home dehumidifier products could negatively impact the development of this segment of the dehumidifier industry. Aprilaire explained that, as the whole-home dehumidifier segment is a relatively new industry, innovative products are being developed to help control whole-home latent conditions with minimal energy use. According to Aprilaire, this is achieved through combinations of application, latent removal techniques, and control methods and algorithms. Aprilaire believes that prematurely placing rules and tests that cannot anticipate some of these product designs and applications could limit the number of products on the market and hinder innovation. (Aprilaire, No. 20 at p. 2)

DOE understands that amended conservation standards will require manufacturers to divert at least a portion of R&D and/or capital expenditure resources to standards compliance in the years leading up to the projected compliance date, effectively taking these resources away from other projects. The effect of these investments on manufacturer cash flows is discussed further in section V.B.2.a of this proposed rule.

Aprilaire also commented that it believes DOE is singling out whole-home dehumidifiers for this rule, and ignoring other products which have functions built into them to obtain whole-home dehumidification, such as air conditioners. According to Aprilaire, separating one product from a larger category places an undue and unfair burden on whole-home dehumidifier manufacturers. Aprilaire referenced EPA document 402–F–13053, saying that EPA recognizes that there are multiple methods of controlling humidity, but the proposed standard only restricts the stand-alone whole-home dehumidification method. (Aprilaire, No. 20 at p. 2)

DOE regulations already cover central air conditioners and room air conditioners, and manufacturers of these products must demonstrate compliance with current energy conservation standards codified in 10 CFR 430.32(c) and (b), respectively.

4. Manufacturer Interviews

To inform the MIA, DOE interviewed manufacturers with an estimated combined market share of approximately 70 percent. The information gathered during these interviews enabled DOE to tailor the GRIM to reflect the unique financial characteristics of the residential dehumidifier industry. These confidential interviews provided information that DOE used to evaluate the impacts of amended energy conservation standards on manufacturer cash flows, manufacturing capacities, and employment levels.

During the interviews, DOE asked manufacturers to describe the major issues they anticipate to result from the energy conservation standards proposed in this rulemaking. The following sections describe the most significant issues identified by manufacturers. DOE also includes additional concerns in chapter 12, section 12.3 of the NOPR TSD.

Consumer Confusion

The majority of manufacturers interviewed emphasized concerns over the impact of new test conditions in the DOE dehumidifier test procedure on the rated capacity of their products. One manufacturer noted a 60-percent to 70-percent decrease in capacity and efficiency due to lower ambient temperatures for testing. Some manufacturers fear that a shift in rated capacity resulting from a change in test procedure will lead to confusion in the market, as consumers find it important to have the same apparent capacity in a replacement residential dehumidifier, even if it is simply a larger unit at a lower rating condition. Also, dehumidifiers with smaller capacities cannot reach the same efficiency as higher-capacity units due to limitations of the vapor-compression cycle, because the parasitic losses (*i.e.,* the power draw not associated with running the compressor during dehumidification mode) make it harder to maintain efficiency with smaller compressors. One manufacturer estimated that a multi-million dollar investment would be necessary to redesign products that would maintain customer perception of rated capacities. That manufacturer went on to note that if it is unable to produce comparable products at the same effective capacity, it would consider exiting the market.

Other manufacturers indicated that as product ratings are modified to reflect the test results at the lower ambient temperature, the whole product classification system will need to be revisited, which will require a substantial investment in consumer education.

Consumer Utility

Multiple manufacturers interviewed expressed concerns that an amended energy conservation standard for residential dehumidifiers would have an adverse impact on price, noise level, and size, and would thus compromise consumer utility. Manufacturers are concerned that residential dehumidifiers would need to become physically larger to deliver the same moisture removal capacity to comply with new amended testing and energy conservation standards. For customers with space constraints, finding a product that best fits their needs may be more difficult under an amended standard. For example, some whole-home dehumidifiers must fit into a small attic or crawl space. If amended energy conservation standards for whole-home products cannot be met within the size constraints associated with this type of installation, part of the whole-home market segment may move to portable products, reducing consumer utility by forcing the unit into the living space. Additionally, larger portable dehumidifiers are already cumbersome to move around, making them close to the limit of what is considered portable. As such, consumers may be forced to purchase a lower-capacity dehumidifier or alternative product.

Impacts on Profitability

During interviews, many manufacturers stated that an industry-wide price increase of 25 percent would have major negative impacts on the portable dehumidifier market. Manufacturers went on to note that a price increase of 50 percent or more would cause the market to collapse entirely. A whole-home dehumidifier manufacturer stated that a 10-percent cost increase would have a significant impact on the whole-home market because any increases in manufacturer production costs are magnified due to the two-tiered distribution channel that is characteristic of the whole-home market (*i.e.,* OEM to distributor to dealer). Among manufacturers, it was agreed that consumers find a product's price to be the most important aspect when considering dehumidifier purchases. Relatedly, one manufacturer suggested that as prices increase, consumers may opt to rent units as-needed, instead of buying one. Accordingly, manufacturers expect a negative impact on profitability as revenues decline following any amended energy conservation standard which would raise prices for residential dehumidifiers. Similar impacts on profitability are expected if

manufacturers maintain current prices while absorbing the higher costs associated with the design and manufacture of higher efficiency products.

Impacts on Small Businesses

One small manufacturer noted that it and its competitors in the whole-home segment would be disproportionately impacted by an amended energy conservation standard. Small business manufacturers have fewer human and capital resources than larger, more diversified portable unit manufacturers. Additionally, due to the low-volume nature of the residential whole-home dehumidifier market, small business manufacturers of whole-home products are disadvantaged in achieving the scale needed to exert purchasing power in sourcing components from vendors. One small business manufacturer noted that its lack of influence on suppliers ultimately impacts its ability to compete with larger manufacturers.

K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of CO_2, NO_X, SO_2, and Hg. The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, CH_4 and N_2O, as well as the reductions to emissions of all species due to ''upstream'' activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion. The associated emissions are referred to as upstream emissions.

The analysis of power sector emissions uses marginal emissions factors calculated using a methodology based on results published for the *AEO 2014* reference case and a set of side cases that implement a variety of efficiency-related policies.[43] The methodology is described in chapter 15 of the NOPR TSD.

Combustion emissions of CH_4 and N_2O are estimated using emissions intensity factors published by the EPA, GHG Emissions Factors Hub.[44] The FFC upstream emissions are estimated based on the methodology described in chapter 15. The upstream emissions include both emissions from fuel combustion during extraction, processing and transportation of fuel, and ''fugitive'' emissions (direct leakage to the atmosphere) of CH_4 and CO_2.

The emissions intensity factors are expressed in terms of physical units per MWh or MMBtu of site energy savings. Total emissions reductions are estimated using the energy savings calculated in the national impact analysis.

For CH_4 and N_2O, DOE calculated emissions reduction in tons and also in terms of units of carbon dioxide equivalent (CO_2eq). Gases are converted to CO_2eq by multiplying each ton of gas by the gas' global warming potential (GWP) over a 100 year time horizon. Based on the Fifth Assessment Report of the Intergovernmental Panel on Climate Change,[45] DOE used GWP values of 28 for CH_4 and 265 for N_2O.

The *AEO 2014* projections incorporate the projected impacts of existing air quality regulations on emissions. *AEO 2014* generally represents current legislation and environmental regulations, including recent government actions, for which implementing regulations were available as of October 31, 2013. DOE's estimation of impacts accounts for the presence of the emissions control programs discussed in the following paragraphs.

SO_2 emissions from affected electric generating units (EGUs) are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (DC). (42 U.S.C. 7651 *et seq.*) SO_2 emissions from 28 eastern states and DC were also limited under the Clean Air Interstate Rule (CAIR; 70 FR 25162 (May 12, 2005)), which created an allowance-based trading program that operates along with the Title IV program. CAIR was remanded to the EPA by the U.S. Court of Appeals for the District of Columbia Circuit but it remained in effect.[46] In 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 DC Circuit issued a decision to vacate CSAPR[47] and ordered EPA to continue administering CAIR.[48] On April 29, 2014, the U.S. Supreme Court reversed the judgment of the DC Circuit and remanded the case for further proceedings consistent with the Supreme Court's opinion.[49] On October 23, 2014, the DC Circuit lifted the stay of CSAPR.[50] Pursuant to this action, CSAPR went into effect (and CAIR ceased to be in effect) as of January 1, 2015.

Because *AEO 2014* was prepared prior to the Supreme Court's opinion, it assumed that CAIR remains a binding regulation through 2040. Thus, DOE's analysis used emissions factors that assume that CAIR, not CSAPR, is the regulation in force. However, the difference between CAIR and CSAPR is not relevant for the purpose of DOE's analysis of emissions impacts from energy conservation standards.

The attainment of emissions caps is typically flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. Under existing EPA regulations, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by any regulated EGU. In past rulemakings, DOE recognized that there was uncertainty about the effects of efficiency standards on SO_2 emissions covered by the existing cap-and-trade system, but it concluded that negligible reductions in power sector SO_2 emissions would occur as a result of standards.

Beginning in 2016, however, SO_2 emissions will fall as a result of the Mercury and Air Toxics Standards (MATS) for power plants. 77 FR 9304 (Feb. 16, 2012). In the final MATS rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (HAP), and also established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid

[43] DOE did not use *AEO 2015* for the emissions analysis because it does not provide the side cases that DOE uses to derive marginal emissions factors.

[44] Available at: *http://www.epa.gov/climateleadership/inventory/ghg-emissions.html.*

[45] Intergovernmental Panel on Climate Change (IPCC), 2013: *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Stocker, T.F., D. Qin, G.–K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. Chapter 8.

[46] 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).

[47] See *EME Homer City Generation, LP* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012).2012), *cert. granted,* 81 U.S.L.W. 3567, 81 U.S.L.W. 3696, 81 U.S.L.W. 3702 (U.S. June 24, 2013) (No. 12–1182).

[48] See *EME Homer City Generation, LP* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012).2012), *cert. granted,* 81 U.S.L.W. 3567, 81 U.S.L.W. 3696, 81 U.S.L.W. 3702 (U.S. June 24, 2013) (No. 12–1182).

[49] *See EPA* v. *EME Homer City Generation,* 134 S. Ct. 1584, 1610 (U.S. 2014). The Supreme Court held in part that EPA's methodology for quantifying emissions that must be eliminated in certain States due to their impacts in other downwind States was based on a permissible, workable, and equitable interpretation of the Clean Air Act provision that provides statutory authority for CSAPR.

[50] *See Georgia* v. *EPA,* Order *(D.C. Cir. filed October 23, 2014)* (*No. 11–1302).*

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. *AEO 2014* assumes that, in order to continue operating, coal plants must have either flue gas desulfurization or dry sorbent injection systems installed by 2016. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Under the MATS, emissions will be far below the cap established by CAIR, so it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by any regulated EGU. Therefore, DOE believes that energy efficiency standards will reduce SO_2 emissions in 2016 and beyond.

CAIR established a cap on NO_X emissions in 28 eastern States and the District of Columbia.[51] Energy conservation standards are expected to have little effect on NO_X emissions in those States covered by CAIR because excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions from other facilities. However, standards would be expected to reduce NO_X emissions in the States not affected by the caps, so DOE estimated NO_X emissions reductions from the standards considered in today's NOPR for these States.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's energy conservation standards would likely reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO 2014,* which incorporates the MATS.

L. Monetizing Carbon Dioxide and Other Emissions Impacts

As part of the development of this proposed rule, DOE considered the estimated monetary benefits from the reduced emissions of CO_2 and NO_X that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of equipment shipped in the forecast period for each TSL. This section summarizes the basis for the monetary values used for each of these emissions and presents the values considered in this NOPR.

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) climate-change-related changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. Estimates of the SCC are provided in dollars per metric ton of CO_2. A domestic SCC value is meant to reflect the value of damages in the United States resulting from a unit change in CO_2 emissions, while a global SCC value is meant to reflect the value of damages worldwide.

Under section 1(b)(6) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 5, 1993), agencies must, to the extent permitted by law, ''assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.'' The purpose of the SCC estimates presented here is to allow agencies to incorporate the monetized social benefits of reducing CO_2 emissions into cost-benefit analyses of regulatory actions. The estimates are presented with an acknowledgement of the many uncertainties involved and with a clear understanding that they should be updated over time to reflect increasing knowledge of the science and economics of climate impacts.

As part of the interagency process that developed these SCC estimates, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. The main objective of this process was to develop a range of SCC values using a defensible set of input assumptions grounded in the existing scientific and economic literatures. In this way, key uncertainties and model differences transparently and consistently inform the range of SCC estimates used in the rulemaking process.

a. Monetizing Carbon Dioxide Emissions

When attempting to assess the incremental economic impacts of CO_2 emissions, the analyst faces a number of challenges. A report from the National Research Council [52] points out that any assessment will suffer from uncertainty, speculation, and lack of information about: (1) Future emissions of GHGs; (2) the effects of past and future emissions on the climate system; (3) the impact of changes in climate on the physical and biological environment; and (4) the translation of these environmental impacts into economic damages. As a result, any effort to quantify and monetize the harms associated with climate change will raise questions of science, economics, and ethics and should be viewed as provisional.

Despite the limits of both quantification and monetization, SCC estimates can be useful in estimating the social benefits of reducing CO_2 emissions. The agency can estimate the benefits from reduced (or costs from increased) emissions in any future year by multiplying the change in emissions in that year by the SCC values appropriate for that year. The NPV of the benefits can then be calculated by multiplying each of these future benefits by an appropriate discount factor and summing across all affected years.

It is important to emphasize that the interagency process is committed to updating these estimates as the science and economic understanding of climate 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. Development of Social Cost of Carbon Values

In 2009, an interagency process was initiated to offer a preliminary assessment of how best to quantify the benefits from reducing carbon dioxide emissions. To ensure consistency in how benefits are evaluated across Federal agencies, the Administration sought to develop a transparent and defensible method, specifically designed for the rulemaking process, to quantify avoided climate change damages from reduced CO_2 emissions. The interagency group did not undertake any original analysis. Instead, it combined SCC estimates from the existing literature to use as interim values until a more comprehensive analysis could be conducted. The outcome of the preliminary assessment by the interagency group was a set of five interim values: Global SCC

[51] CSAPR also applies to NO_X and it would supersede the regulation of NO_X under CAIR. As stated previously, the current analysis assumes that CAIR, not CSAPR, is the regulation in force. The difference between CAIR and CSAPR with regard to DOE's analysis of NO_X emissions is slight.

[52] National Research Council, *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use,* National Academies Press (2009).

estimates for 2007 (in 2006$) of $55, $33, $19, $10, and $5 per metric 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. Specially, the group considered public comments and further explored the technical literature in relevant fields. The interagency group relied on three integrated assessment models commonly used to estimate the SCC: The FUND, DICE, and PAGE models. These models are frequently cited in the peer-reviewed literature and were used in the last assessment of the Intergovernmental Panel on Climate Change (IPCC). Each model was given equal weight in the SCC values that were developed.

Each model takes a slightly different approach to model how changes in emissions result in changes in economic damages. A key objective of the interagency process was to enable a consistent exploration of the three models, while respecting the different approaches to quantifying damages taken by the key modelers in the field. An extensive review of the literature was conducted to select three sets of input parameters for these models: Climate sensitivity, socio-economic and emissions trajectories, and discount rates. A probability distribution for climate sensitivity was specified as an input into all three models. In addition, the interagency group used a range of scenarios for the socio-economic parameters and a range of values for the discount rate. All other model features were left unchanged, relying on the model developers' best estimates and judgments.

The interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from the three integrated assessment models, at discount rates of 2.5, 3, and 5 percent. The fourth set, which represents the 95th percentile SCC estimate across all three models at a 3-percent discount rate, was included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. The values grow in real terms over time. Additionally, the interagency group determined that a range of values from 7 percent to 23 percent should be used to adjust the global SCC to calculate domestic effects,[53] although preference is given to consideration of the global benefits of reducing CO_2 emissions. Table IV.21 presents the values in the 2010 interagency group report,[54] which is reproduced in appendix 14A of the NOPR TSD.

TABLE IV.21—ANNUAL SCC VALUES FROM 2010 INTERAGENCY REPORT, 2010–2050

[2007$ per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	4.7	21.4	35.1	64.9
2015	5.7	23.8	38.4	72.8
2020	6.8	26.3	41.7	80.7
2025	8.2	29.6	45.9	90.4
2030	9.7	32.8	50.0	100.0
2035	11.2	36.0	54.2	109.7
2040	12.7	39.2	58.4	119.3
2045	14.2	42.1	61.7	127.8
2050	15.7	44.9	65.0	136.2

The SCC values used for today's notice were generated using the most recent versions of the three integrated assessment models that have been published in the peer-reviewed literature.[55]

Table IV.22 shows the updated sets of SCC estimates in 5-year increments from 2010 to 2050. The full set of annual SCC estimates between 2010 and 2050 is reported in appendix 14B of the NOPR TSD. The central value that emerges is the average SCC across models at the 3-percent discount rate. However, for purposes of capturing the uncertainties involved in regulatory impact analysis, the interagency group emphasizes the importance of including all four sets of SCC values.

[53] It is recognized that this calculation for domestic values is approximate, provisional, and highly speculative. There is no *a priori* reason why domestic benefits should be a constant fraction of net global damages over time.

[54] *Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,* Interagency Working Group on Social Cost of Carbon, United States Government (February 2010) (Available at: *www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf*).

[55] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,* Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised November 2013) (Available at: *http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf*).

TABLE IV.22 ANNUAL SCC VALUES FROM 2013 INTERAGENCY REPORT, 2010–2050

[2007$ per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	11	32	51	89
2015	11	37	57	109
2020	12	43	64	128
2025	14	47	69	143
2030	16	52	75	159
2035	19	56	80	175
2040	21	61	86	191
2045	24	66	92	206
2050	26	71	97	220

It is important to recognize that a number of key uncertainties remain, and that current SCC estimates should be treated as provisional and revisable because they will evolve with improved scientific and economic understanding. The interagency group also recognizes that the existing models are imperfect and incomplete. The National Research Council report mentioned above points out that there is tension between the goal of producing quantified estimates of the economic damages from an incremental ton of carbon and the limits of existing efforts to model these effects. There are a number of analytical challenges that are being addressed by the research community, including research programs housed in many of the Federal agencies participating in the interagency process to estimate the SCC. The interagency group intends to periodically review and reconsider those estimates to reflect increasing knowledge of the science and economics of climate impacts, as well as improvements in modeling.

In summary, in considering the potential global benefits resulting from reduced CO_2 emissions, DOE used the values from the 2013 interagency report adjusted to 2013$ using the implicit price deflator for gross domestic product (GDP) from the Bureau of Economic Analysis. For each of the four sets of SCC values, the values for emissions in 2015 were $12.0, $40.5, $62.4, and $119 per metric ton avoided (values expressed in 2013$). DOE derived values after 2050 using the relevant growth rates for the 2040–2050 period in the interagency update.

DOE multiplied the CO_2 emissions reduction estimated for each year by the SCC value for that year in each of the four cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SCC values in each case.

2. Social Cost of Other Air Pollutants

As noted above, DOE has taken into account how amended energy conservation standards would reduce site NO_X emissions nationwide and decrease power sector NO_X emissions in those 22 States not affected by the CAIR. DOE estimated the monetized value of net NO_X emissions reductions resulting from each of the TSLs considered for today's NOPR based on estimates developed by EPA for 2016, 2020, 2025, and 2030.[56] The values reflect estimated mortality and morbidity per ton of directly emitted NO_X reduced by electricity generating units. EPA developed estimates using a 3-percent and a 7-percent discount rate to discount future emissions-related costs. The values in 2016 are $5,483/ton using a 3-percent discount rate and $4,850/ton using a 7-percent discount rate (2013$). DOE extrapolated values after 2030 using the average annual rate of growth in 2016–2030. DOE multiplied the emissions reduction (tons) in each year by the associated $/ton values, and then discounted each series using discount rates of 3 percent and 7 percent as appropriate.

DOE is evaluating appropriate monetization of avoided SO_2 and Hg emissions in energy conservation standards rulemakings. DOE has not included monetization of those emissions in the current analysis.

AHAM continues to believe that monetization of avoided CO_2 emissions should include a more comprehensive analysis to understand the total environmental impact. It stated that any CO_2 analysis should include CO_2 emissions that are caused indirectly, as well as directly, from a standards change, such as increased carbon emissions required to manufacture a given standard level, the increased transportation and related emissions required for a given standard level, and reduced carbon emissions from peak load reductions. (AHAM, No. 22 at p. 7)

In response, DOE notes that EPCA directs DOE to consider the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard when determining whether a standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(III)) DOE interprets this to include energy used in the generation, transmission, and distribution of fuels used by appliances or equipment. In addition, DOE is using the FFC measure, which includes the energy consumed in extracting, processing, and transporting primary fuels. DOE's current accounting of primary energy savings and the FFC measure are directly linked to the energy used by appliances or equipment. DOE believes that energy used in manufacturing or transporting appliances or equipment falls outside the boundaries of ''directly'' as intended by EPCA. Thus, DOE did not consider such energy use and air emissions in the NIA or in the emissions analysis. DOE's analysis does account for impacts on CO_2 emissions from electricity load reduction.

AHAM stated that DOE should wait for comments on the 2013 interagency report to be resolved before it relies on the 2013 estimates, and, until that time DOE should rely on the 2010 estimates as it has done in rulemakings prior to May 2013. (AHAM, No. 22 at p. 7)

The 2013 report provides an update of the SCC estimates based solely on the latest peer-reviewed version of the models, replacing model versions that were developed up to ten years ago in

[56] *http://www2.epa.gov/benmap/sector-based-pm25-benefit-ton-estimates*

a rapidly evolving field. It does not revisit other assumptions with regard to the discount rate, reference case socioeconomic and emission scenarios, or equilibrium climate sensitivity. Improvements in the way damages are modeled are confined to those that have been incorporated into the latest versions of the models by the developers themselves in the peer-reviewed literature. Given the above, using the 2010 estimates would be inconsistent with DOE's objective of using the best available information in its analyses.

M. Utility Impact Analysis

The utility impact analysis estimates several effects on the power generation industry that would result from the adoption of new or amended energy conservation standards. In the utility impact analysis, DOE analyzes the changes in installed electrical capacity and generation that would result for each TSL. The analysis is based on published output from the NEMS associated with *AEO 2014.* NEMS produce the *AEO* reference case as well as a number of other cases that estimate the economy-wide impacts of changes to energy supply and demand. DOE uses those other cases that incorporate efficiency-related policies to estimate the marginal impacts of reduced energy demand on the utility sector.[57] The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of new or amended energy conservation standards. Chapter 15 of the NOPR TSD describes the utility impact analysis in further detail.

N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a proposed standard. Employment impacts include both direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the products subject to standards, their suppliers, and related service firms. The MIA addresses those impacts. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, caused by: (1) Reduced spending by end users on energy; (2) reduced spending on new energy supply by the utility industry; (3) increased consumer spending on new products to which the new standards apply; and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS).[58] Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[59] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, based on the BLS data alone, DOE believes net national employment may increase due to shifts in economic activity resulting from amended standards for residential dehumidifiers.

For the standard levels considered in today's NOPR, DOE estimated indirect national employment impacts using an input/output model of the U.S. economy called Impact of Sector Energy Technologies, Version 3.1.1 (ImSET).[60] ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (I–O) model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among the 187 sectors most relevant to industrial, commercial, and residential building energy use.

DOE notes that ImSET is not a general equilibrium forecasting model, and understands the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run for this 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 overall economy. For more details on the employment impact analysis, see chapter 16 of the NOPR TSD.

V. Analytical Results

The following section addresses the results from DOE's analyses with respect to potential energy conservation standards for residential dehumidifiers. It addresses the TSLs examined by DOE and the projected impacts of each of these levels if adopted as energy conservation standards for residential dehumidifiers. Additional details regarding DOE's analyses are contained in the NOPR TSD supporting this notice.

A. Trial Standard Levels

DOE analyzed the benefits and burdens of four TSLs for residential dehumidifiers. These TSLs were developed by combining specific ELs for each of the five product classes analyzed by DOE. DOE presents the results for the TSLs in this document, while the results for all ELs that DOE analyzed are in the NOPR TSD. Table V.1 presents the TSLs and the corresponding efficiency levels for residential dehumidifiers. TSL 4 represents the max-tech energy efficiency for all product classes. TSL 3 consists of the ELs below the max-tech level. TSL 2 consists of the gap-fill ELs below TSL 3 and above the baseline and EL 1 for product classes 1 and 2, while product class 3 through product class 5 repeat the same efficiency level as TSL 3. TSL 1 consists of the first EL above the baseline.

[57] DOE did not use *AEO 2015* for the analysis because it does not provide the side cases that DOE uses to derive marginal impact factors.

[58] 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*.

[59] See Bureau of Economic Analysis, *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II),* U.S. Department of Commerce (1992).

[60] J. M. Roop, M. J. Scott, O.V. Livingston, P.J. Balducci, J.M. Roop, and R. W. Schultz, *ImSET 3.1: Impact of Sector Energy Technologies,* Pacific Northwest National Laboratory (2009) (Available at: *www.pnl.gov/main/publications/external/technical_reports/PNNL-18412.pdf*).

TABLE V.1—TRIAL STANDARD LEVELS FOR RESIDENTIAL DEHUMIDIFIERS

TSL	PC1		PC2		PC3		PC4		PC5	
	≤30.00 pints/day		30.01–45.00 pints/day		>45.00 pints/day		≤8.0 ft^3		>8.0 ft^3	
	EL	AEU (kWh/yr)	EL	AEU (kWh/yr)	EL	AEU (kWh/yr)	EL	AEU (kWh/yr)	EL	AEU (kWh/yr)
—	0	720	0	1,030	0	905	0	951	0	1,137
1	1	505	1	808	1	781	1	809	1	1,016
2	2	463	2	693	2	670	1	809	2	784
3	3	428	3	607	2	670	1	809	2	784
4	4	355	4	540	3	513	2	671	3	617

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on residential dehumidifier consumers by looking at the effects potential amended standards would have on the LCC and PBP. DOE also examined the impacts of potential standards on consumer subgroups. These analyses are discussed below.

a. Life-Cycle Cost and Payback Period

In general, higher-efficiency products would affect consumers in two ways: (1) Purchase prices would increase, and (2) annual operating costs would decrease. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* product price plus installation costs), operating costs (*i.e.,* annual energy savings, energy prices, energy price trends, repair costs, and maintenance costs), product lifetime, and discount rates. Chapter 8 of the NOPR TSD provides detailed information on the LCC and PBP analyses.

Table V.2 through Table V.11 show the LCC and PBP results for the ELs considered for each residential dehumidifier product class. In the first of each pair of tables, the simple payback period is measured relative to the baseline product. In the second table, the LCC savings are measured relative to the average LCC in the base case, which represents what consumers would purchase in the absence of amended standards (see section IV.F.8 of this proposed rule). Because some consumers purchase products with higher ELs in the base case, the average savings are less than the difference between the average LCC of EL 0 and the average LCC at each TSL.

TABLE V.2—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR DEHUMIDIFIER PC1

[≤30.00 pints/day]

TSL	EL	Average costs (2013$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
—	0	212	101	952	1,163	.....	11
1	1	212	71	668	879	0.0	11
2	2	214	65	612	826	0.1	11
3	3	218	60	566	784	0.2	11
4	4	241	50	469	710	0.6	11

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline (EL 0) product.

TABLE V.3—AVERAGE LCC SAVINGS RELATIVE TO THE BASE-CASE EFFICIENCY DISTRIBUTION FOR DEHUMIDIFIER PC1

[≤30.00 pints/day]

TSL	EL	Life-cycle cost savings	
		% of Consumers that experience	Average savings *
		Net cost	2013$
1	1	0	31
2	2	0	49
3	3	0	64
4	4	10.3	137

* The calculation includes households with zero LCC savings (no impact).

TABLE V.4—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR DEHUMIDIFIER PC2

[30.01–45.00 pints/day]

TSL	EL	Average costs (2013$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
—	256	145	1,361	1,617	.....	11	.....
1	1	256	114	1,067	1,323	0.0	11
2	2	259	97	915	1,175	0.1	11
3	3	268	85	802	1,069	0.2	11
4	4	290	76	713	1,003	0.5	11

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.5—AVERAGE LCC SAVINGS RELATIVE TO THE BASE-CASE EFFICIENCY DISTRIBUTION FOR DEHUMIDIFIER PC2

[30.01–45.00 pints/day]

TSL	EL	Life-cycle cost savings	
		% of consumers that experience	Average savings *
		Net cost	2013$
1	1	0	0
2	2	0	0
3	3	0.5	99
4	4	5.4	164

* The calculation includes households with zero LCC savings (no impact).

TABLE V.6—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR DEHUMIDIFIER PC3

[>45.00 pints/day]

TSL	EL	Average costs (2013$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
—	0	915	127	1,195	2,110	.....	11
1	1	989	110	1,032	2,021	4.3	11
2, 3	2	1,008	94	885	1,893	2.8	11
4	3	1,124	72	678	1,802	3.8	11

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.7—AVERAGE LCC SAVINGS RELATIVE TO THE BASE-CASE EFFICIENCY DISTRIBUTION FOR DEHUMIDIFIER PC3

[>45.00 pints/day]

TSL	EL	Life-cycle cost savings	
		% of consumers that experience	Average savings *
		Net cost	2013$
1	1	18.9	50
2, 3	2	11.7	147
4	3	31.4	239

* The calculation includes households with zero LCC savings (no impact).

TABLE V.8—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR DEHUMIDIFIER PC4

[≤8.0 ft³]

TSL	EL	Average costs (2013$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
—	0	1,662	139	2,048	3,710	.....	19
1, 2, 3	1	1,689	118	1,740	3,429	1.3	19
4	2	1,890	98	1,444	3,334	5.5	19

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.9—AVERAGE LCC SAVINGS RELATIVE TO THE BASE-CASE EFFICIENCY DISTRIBUTION FOR DEHUMIDIFIER PC4

[≤8.0 ft³]

TSL	EL	Life-cycle cost savings	
		% of consumers that experience	Average savings *
		Net cost	2013$
1, 2, 3	1	8.4	207
4	2	44.4	302

* The calculation includes households with zero LCC savings (no impact).

TABLE V.10—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR DEHUMIDIFIER PC5

[>8.0 ft³]

TSL	EL	Average costs (2013$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
—	0	2,142	166	2,446	4,589	.....	19
1	1	2,154	149	2,188	4,342	0.7	19
2, 3	2	2,212	115	1,687	3,899	1.4	19
4	3	2,445	90	1,328	3,773	4.0	19

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.11—AVERAGE LCC SAVINGS RELATIVE TO THE BASE-CASE EFFICIENCY DISTRIBUTION FOR DEHUMIDIFIER PC5

[>8.0 ft³]

TSL	EL	Life-cycle cost savings	
		% of consumers that experience	Average savings *
		Net cost	2013$
1	1	1.4	75
2, 3	2	10.7	416
4	3	39.9	542

* The calculation includes households with zero LCC savings (no impact).

b. Consumer Subgroup Analysis

As described in section IV.I of this proposed rule, DOE estimated the impact of the considered TSLs on low-income households and senior-only households.[61] Table V.12 through Table V.16 compare the average LCC savings at each efficiency level for the two consumer subgroups, along with the average LCC savings for the entire sample. In most cases, the average LCC savings and PBP for low-income households and senior-only households at the considered ELs are not substantially different from the average for all households. Chapter 11 of the NOPR TSD presents the complete LCC and PBP results for the two subgroups.

[61] DOE did not analyze subgroup impacts for compact dehumidifiers because the saturation of these products is extremely small.

TABLE V.12—DEHUMIDIFIER PC1 (≤30.00 PINTS/DAY): COMPARISON OF AVERAGE LCC SAVINGS FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS

TSL	Average life-cycle cost savings (2013$)			Simple payback period (years)		
	Low-income households	Senior-only households	All households	Low-income households	Senior-only households	All households
1	28	24	31	0.0	0.0	0.0
2	45	39	49	0.1	0.1	0.1
3	58	51	64	0.2	0.2	0.2
4	125	107	137	0.6	0.7	0.6

TABLE V.13—DEHUMIDIFIER PC2 (30.01–45.00 PINTS/DAY): COMPARISON OF AVERAGE LCC SAVINGS FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS

TSL	Average life-cycle cost savings (2013$)			Simple payback period (years)		
	Low-income households	Senior-only households	All households	Low-income households	Senior-only households	All households
1	0	0	0	0.0	0.0	0.0
2	0	0	0	0.1	0.1	0.1
3	92	81	99	0.2	0.2	0.2
4	150	130	164	0.5	0.6	0.5

TABLE V.14—DEHUMIDIFIER PC3 (>45.00 PINTS/DAY): COMPARISON OF AVERAGE LCC SAVINGS FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS

TSL	Average life-cycle cost savings (2013$)			Simple payback period (years)		
	Low-income households	Senior-only households	All households	Low-income households	Senior-only households	All households
1	43	36	50	4.5	5.2	4.3
2, 3	133	114	147	3.0	3.4	2.8
4	209	169	239	4.0	4.6	3.8

TABLE V.15—DEHUMIDIFIER PC4 (✖8.0 FT^3): COMPARISON OF AVERAGE LCC SAVINGS FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS

TSL	Average life-cycle cost savings (2013$)			Simple payback period (years)		
	Low-income households	Senior-only households	All households	Low-income households	Senior-only households	All households
1, 2, 3	113	182	207	1.9	1.4	1.3
4	89	248	302	8.3	6.0	5.5

TABLE V.16—DEHUMIDIFIER PC5 (>8.0 FT^3): COMPARISON OF AVERAGE LCC SAVINGS FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS

TSL	Average life-cycle cost savings (2013$)			Simple payback period (years)		
	Low-income households	Senior-only households	All households	Low-income households	Senior-only households	All households
1	43	67	75	1.0	0.7	0.7
2, 3	224	367	416	2.0	1.5	1.4
4	204	457	542	6.0	4.4	4.0

c. Rebuttable Presumption Payback

As discussed above, EPCA provides a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. In calculating a rebuttable presumption PBP for the considered standard levels, DOE used discrete values and, as required by EPCA, based

the energy use calculation on the current DOE test procedure for residential dehumidifiers. In contrast, the PBPs presented in section V.B.1.a were calculated using distributions for input values, with energy use based on field studies and RECS data.

Table V.17 presents the rebuttable-presumption PBPs for the considered TSLs.[62] While DOE examined the rebuttable-presumption criterion, it further considered whether the standard levels considered for the NOPR are economically justified through a more detailed analysis of the economic impacts of those levels pursuant to 42 U.S.C. 6295(o)(2)(B)(i). The results of that analysis serve as the basis for DOE to evaluate the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification).

TABLE V.17—RESIDENTIAL DEHUMIDIFIERS: REBUTTABLE PAYBACK PERIOD

[Years]

Product class	Trial standard level			
	1	2	3	4
PC1				
(≤30.00 pints/day)	0.0	0.1	0.2	0.8
PC2				
(30.00—45.00 pints/day)	0.0	0.1	0.3	0.7
PC3				
(>45.00 pints/day)	5.6	3.7	3.7	5.0
PC4				
(≤8.0 ft^3)	2.0	2.0	2.0	8.6
PC5				
(>8.0 ft^3)	1.0	2.1	2.1	6.2

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of amended energy conservation standards on manufacturers of residential dehumidifiers. The section below describes the expected impacts on manufacturers at each TSL. Chapter 12 of the NOPR TSD explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

The following tables illustrate the financial impacts (represented by changes in INPV) of amended energy conservation standards on manufacturers of residential dehumidifiers as well as the conversion costs that DOE estimates manufacturers would incur for all product classes at each TSL. To evaluate the range of cash-flow impacts on the residential dehumidifier manufacturing industry, DOE used two different markup scenarios to model the range of anticipated market responses to amended energy conservation standards.

To assess the lower (less severe) end of the range of potential impacts, DOE modeled a preservation of gross margin percentage markup scenario, in which a flat markup of 1.45 (*i.e.,* the baseline manufacturer markup) is applied across all efficiency levels. In this scenario, DOE assumed that a manufacturer's absolute dollar markup would increase as production costs increase in the amended energy conservation standards case. Manufacturers have indicated that it is optimistic to assume that they would be able to maintain the same gross margin markup as their production costs increase in response to a new or amended energy conservation standard, particularly at higher TSLs.

To assess the higher (more severe) end of the range of potential impacts, DOE modeled the preservation of per-unit operating profit markup scenario, which assumes that manufacturers would not be able to preserve the same overall gross margin, but instead would cut their markup for minimally compliant products to maintain a cost competitive product offering while maintaining the same overall level of operating profit in absolute dollars as in the base case. The two tables below show the range of potential INPV impacts for manufacturers of residential dehumidifiers. Table V.18 reflects the lower bound of impacts (higher profitability) and Table V.19 represents the upper bound of impacts (lower profitability).

Each scenario results in a unique set of cash flows and corresponding industry values at each TSL. In the following discussion, the INPV results refer to the sum of discounted cash flows through 2048, the difference in INPV between the base case and each standards case, and the total industry conversion costs required for each standards case.

TABLE V.18—MANUFACTURER IMPACT ANALYSIS UNDER THE PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO FOR ANALYSIS PERIOD

[2015–2048]

	Units	Base case	Trial standard level			
			1	2	3	4
INPV	2013$ Millions	186.5	184.0	183.4	155.2	146.3
Change in INPV	2013$ Millions		(2.5)	(3.1)	(31.3)	(40.2)
	(%)		(1.4%)	(1.6%)	(16.8%)	(21.6%)
Free Cash Flow (2018)	2013$ Millions	15.8	14.1	13.6	(2.5)	(13.7)

[62] The PBPs in Table V.17 differ from those shown in Tables V.2, V.4, V.6, V.8 and V.10 because the rebuttable PBPs are calculated with energy use based on the DOE test procedure, whereas the PBPs in the earlier tables are calculated with energy use based on field studies and RECS data.

TABLE V.18—MANUFACTURER IMPACT ANALYSIS UNDER THE PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO FOR ANALYSIS PERIOD—Continued

[2015–2048]

	Units	Base case	Trial standard level			
			1	2	3	4
Change in Free Cash Flow (2018).	(%)		(11.2%)	(14.4%)	(116.1%)	(186.4%)
Product Conversion Costs	2013$ Millions		3.9	5.1	30.2	48.1
Capital Conversion Costs	2013$ Millions		1.3	1.7	20.5	33.1
Total Conversion Costs.	2013$ Millions		5.2	6.7	50.7	81.3

Parentheses indicate negative (−) values.

TABLE V.19—MANUFACTURER IMPACT ANALYSIS UNDER THE PRESERVATION OF PER-UNIT OPERATING PROFIT MARKUP SCENARIO FOR ANALYSIS PERIOD

[2015—2048]

	Units	Base case	Trial standard level			
			1	2	3	4
INPV	2013$ Millions	186.5	183.5	182.1	151.6	126.8
Change in INPV	2013$ Millions		(3.0)	(4.4)	(34.9)	(59.7)
	(%)		(1.6%)	(2.4%)	(18.7%)	(32.0%)
Free Cash Flow (2018)	2013$ Millions	15.8	14.1	13.6	(2.5)	(13.7)
Decrease in Free Cash Flow (2018).	(%)		(11.2%)	(14.4%)	(116.1%)	(186.4%)
Product Conversion Costs	2013$ Millions		3.9	5.1	30.2	48.1
Capital Conversion Costs	2013$ Millions		1.3	1.7	20.5	33.1
Total Conversion Costs.	2013$ Millions		5.2	6.7	50.7	81.3

Parentheses indicate negative (−) values.

Beyond impacts on INPV, DOE includes a comparison of free cash flow between the base case and the standards case at each TSL in the year before amended standards take effect to provide perspective on the short-run cash flow impacts in the discussion of the results below.

At TSL 1, DOE estimates the impact on INPV for manufacturers of residential dehumidifiers to range from -$2.5 million to -$3.0 million, or a decrease in INPV of 1.4 percent to 1.6 percent under the preservation of gross margin percentage markup scenario and the preservation of per-unit operating profit markup scenario, respectively. At this TSL, industry free cash flow is estimated to decrease by approximately 11.2 percent to $14.1 million, compared to the base-case value of $15.8 million in 2018, the year before the projected compliance date.

At TSL 1, the industry as a whole is expected to incur $3.9 million in product conversion costs attributed to upfront research, development, testing, and certification; as well as $1.3 million in one-time investments in property, plant and equipment (PP&E) necessary to manufacture redesigned platforms. The majority of industry conversion cost burden at TSL 1 would be felt by manufacturers of high-capacity portable and whole-home dehumidifiers, as more of these products are currently at the baseline than is the case for lower-capacity portable products. These baseline products may necessitate complete platform redesigns, which involve moving to a new case size to accommodate larger heat exchangers. These changes require upfront capital investments for new tooling to manufacturing production lines, among other changes. Additionally, it is assumed that manufacturers of high-capacity portable and whole-home dehumidifiers, the majority of which are small business manufacturers, will have to outsource testing of their products to third-party testing facilities, contributing to greater product conversion costs. In contrast, the large manufacturers of small portable dehumidifiers are assumed to have in-house testing capabilities which significantly reduce the cost of testing. DOE confirmed these assumptions regarding testing burdens during manufacturer interviews.

At TSL 2, DOE estimates the impact on INPV for manufacturers of residential dehumidifiers to range from −$3.1 million to −$4.4 million, or a decrease in INPV of 1.6 percent to 2.4 percent under the preservation of gross margin percentage markup scenario and the preservation of per-unit operating profit markup scenario, respectively. At this TSL, industry free cash flow is estimated to decrease by approximately 14.4 percent to $13.6 million, compared to the base-case value of $15.8 million in 2018, the year before the projected compliance date.

At TSL 2, the industry as a whole is expected to incur $5.1 million in product conversion costs associated with the upfront research, development, testing, and certification; as well as $1.7 million in one-time investments in PP&E to manufacturer products requiring platform redesigns. Similar to TSL 1, the majority of industry conversion cost burden at TSL 2 will be felt by manufacturers of high-capacity portable and whole-home dehumidifiers, as more products of these types are at the baseline than is the case for lower-capacity portable products, and will require complete

platform redesigns. Platform redesigns at TSL 2 will require moving to a new case size to accommodate larger heat exchangers, and will necessitate upfront capital investments for new tooling. Similar to TSL 1, because manufacturers of high-capacity portable and whole-home dehumidifiers are largely small businesses, it is assumed that these manufacturers will be required to outsource testing of their products to third-party testing facilities. In contrast, the large manufacturers of small portable dehumidifiers are assumed to have in-house testing capabilities, which significantly reduce the cost of testing. DOE confirmed these assumptions regarding testing burdens during manufacturer interviews.

At TSL 3, DOE estimates the impact on INPV for manufacturers of residential dehumidifiers to range from −$31.3 million to −$34.9 million, or a decrease in INPV of 16.8 percent to 18.7 percent under the preservation of gross margin percentage markup scenario and the preservation of per-unit operating profit markup scenario, respectively. At this TSL, industry free cash flow is estimated to decrease by approximately 116.1 percent to −$2.5 million, compared to the base-case value of $15.8 million in 2018, the year before the projected compliance date.

At TSL 3, the industry as a whole is expected to spend $30.2 million in product conversion costs associated with the research and development and testing and certification, as well as $20.5 million in one-time investments in PP&E to manufacture redesigned platforms. While conversion costs remain relatively constant for manufacturers of high-capacity portable and whole-home dehumidifiers between TSLs 1, 2 and 3, the conversion costs for manufacturers of lower-capacity portable products increase substantially at TSL 3, as a greater portion of these products will require total platform redesigns. As with the high-capacity portable and whole-home dehumidifier market segment, platform redesigns for lower-capacity portable units will consist of moving products to a new case size to accommodate larger heat exchangers, and in turn will require capital investments in new tooling for larger cases. This upfront investment is in addition to higher R&D and testing expenditures. Because lower-capacity portable units represent approximately 97 percent of the market, conversion costs associated with this segment have a significant impact on total industry conversion costs for TSL 3.

At TSL 4, DOE estimates the impact on INPV for manufacturers of residential dehumidifiers to range from −$40.2 million to −$59.7 million, or a decrease in INPV of 21.6 percent to 32.0 percent under the preservation of gross margin percentage markup scenario and the preservation of per-unit operating profit markup scenario, respectively. At this TSL, industry free cash flow is estimated to decrease by approximately 186.4 percent to -$13.7 million, compared to the base-case value of $15.8 million in 2018, the year before the projected compliance date.

At TSL 4, the industry as a whole is expected to spend $48.1 million in product conversion costs associated with the research and development and testing and certification, as well as $33.1 million in one-time investments in PP&E for platform redesigns. Again, conversion costs remain relatively constant for manufacturers of high-capacity portable and whole-home dehumidifiers across TSLs 1, 2, 3, and 4. In contrast, the conversion cost burden for manufacturers of lower-capacity portable products increases substantially at TSL 4, as an increasingly larger portion of smaller portable products will require platform redesigns. Again, since lower-capacity portable units represent approximately 97 percent of the market, conversion costs associated with this segment have a significant impact on total industry conversion costs for TSL 4.

b. Impacts on 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 2015 to 2048. DOE used statistical data from the U.S Census Bureau's 2011 *Annual Survey of Manufactures,* the results of the engineering analysis, and interviews with manufacturers to determine the inputs necessary to calculate industry-wide labor expenditures and domestic employment levels at each TSL. Labor expenditures for the manufacture of a product are a function of the labor intensity of the product, the sales volume, and an assumption that wages in real terms remain constant.

DOE notes that the MIA assessment of impacts on manufacturing employment focuses specifically on the production workers manufacturing the covered products in question, rather than a manufacturer's broader operations. Thus, the estimated number of impacted employees in the MIA is separate and distinct from the total number of employees used to determine whether a manufacturer is a small business for purposes of analysis under the Regulatory Flexibility Act.

The estimates of production workers in this section only cover those up to and including the line-supervisor level that are directly involved in fabricating and assembling a product within the OEM facility. In addition, workers that perform services that are closely associated with production operations are included. Employees above the working-supervisor level are excluded from the count of production workers. Thus, the labor associated with non-production functions (*e.g.,* factory supervision, advertisement, sales) is explicitly not covered.[63] In addition, DOE's estimates only account for production workers that manufacture the specific products covered by this rulemaking. Finally, because DOE does not expect that this standard will impact shipments for any product class, this analysis also does not factor in the dependence by some manufacturers on production volume to make their operations viable. Alternative employment impact scenarios specific to the small business manufacturer subgroup are considered at the end of this section.

In the GRIM, DOE used the labor content of each product and the manufacturing production costs from the engineering analysis to estimate the annual labor expenditures in the residential dehumidifier manufacturing industry. DOE used information gained through interviews with manufacturers to estimate the portion of the total labor expenditures that can be attributed to domestic production labor.

The employment impacts shown in Table V.20 represent the potential production employment that could result following amended energy conservation standards. These are independent of the employment impacts from the broader U.S. economy, which are documented in chapter 16 of the NOPR TSD.

DOE estimates that in the absence of amended energy conservation standards, there would be 214 domestic production workers for all manufacturers involved in manufacturing residential dehumidifiers in 2019. Using the 2011 *Annual Survey*

[63] The U.S. Census Bureau's 2011 Annual Survey of Manufactures provides the following definition: ''The 'production workers' number includes workers (up through the line-supervisor level) engaged in fabricating, processing, assembling, inspecting, receiving, storing, handling, packing, warehousing, shipping (but not delivering), maintenance, repair, janitorial and guard services, product development, auxiliary production for plant's own use (*e.g.,* power plant), recordkeeping, and other services closely associated with these production operations at the establishment covered by the report. Employees above the working-supervisor level are excluded from this item.''

of Manufactures and interviews with manufacturers, DOE estimates that approximately 3 percent of residential dehumidifiers sold in the United States are manufactured domestically. Table V.20 shows the range of the impacts of potential amended energy conservation standards on U.S. production workers in the residential dehumidifier manufacturing industry.

TABLE V.20—CHANGE IN TOTAL NUMBER OF DOMESTIC PRODUCTION EMPLOYEES IN 2019 IN THE RESIDENTIAL DEHUMIDIFIER INDUSTRY

	Base case	TSL 1	TSL 2	TSL 3	TSL 4
Total Number of Domestic Production Workers in 2019	214	219	222	222	261
Change in Total Number of Domestic Production Workers in 2019 (%)	.....	2.3%	3.7%	3.7%	21.9%

Because production employment expenditures are assumed to be a fixed percentage of cost of goods sold and the MPCs typically increase with more efficient products, labor tracks the increased prices in the GRIM. As efficiency of dehumidifiers increases, so does the complexity of the products, generally requiring more labor to produce the product. However, because only 3 percent of residential dehumidifier manufacturing takes place domestically, employment impacts are expected to be minimal. DOE expects that there would be minimal employment impacts among domestic residential dehumidifier manufacturers for TSLs 1, 2, and 3. For TSL 4, the GRIM predicts a 21.9 percent increase in total domestic production employment following amended standards based on the increase in complexity and relative price of the high-capacity portable and whole-home dehumidifier segment.

During manufacturer interviews, some small businesses stated that, contrary to the above findings, domestic production and non-production employment in the industry may decrease as a result of amended standards for residential dehumidifiers, due to reduced shipments volumes and/or reduced margins.

Similarly, the above analysis does not account for the possible relocation of domestic jobs to lower-labor-cost countries because the potential relocation of U.S. jobs is uncertain and highly speculative. As mentioned above, the vast majority of residential dehumidifiers sold in the United States are manufactured abroad. However, almost all of the high-capacity portable and whole-home dehumidifiers are manufactured domestically. Feedback from manufacturers during NOPR interviews reveals that some domestic small businesses in the residential dehumidifier industry may be forced to make employment cuts or to shift production to new locations, including locations outside of the United States, as a result of amended energy conservation standards.

c. Impacts on Manufacturing Capacity

As noted previously, the majority of residential dehumidifiers sold in the United States are not produced domestically. However, feedback from domestic manufacturers of high-capacity portable products and whole-home dehumidifiers suggested that production of these products could shift abroad as a result of amended energy conservation standards. This could lead to a permanently lower production capacity within the residential dehumidifier industry.

d. Impacts on Subgroups of Manufacturers

Using average cost assumptions to develop an industry cash flow estimate is not adequate for assessing differential impacts among subgroups of manufacturers. Small manufacturers, niche players, or manufacturers exhibiting a cost structure that differs significantly from the industry average could be affected differently. DOE used the results of the industry characterization to group manufacturers exhibiting similar characteristics.

As previously mentioned, DOE identified five domestic small business manufacturers that may be disproportionately affected by the proposed energy conservation standards for residential dehumidifiers. These manufacturers are focused on one specific market segment (high-capacity portable and whole-home dehumidifiers) and, in terms of annual revenue, are at least one order of magnitude smaller than their diversified competitors (tens of millions compared to hundreds of millions). Due to this combination of market concentration and size, these small businesses are at risk of high, disproportionate impacts, depending on the TSL chosen.

DOE received feedback from small business manufacturers and OEM contractors through public comments and confidential interviews (see sections IV.J.3 and IV.J.4 of this proposed rule for a discussion of public comments and feedback received from dehumidifier manufacturers during the NOPR phase). These manufacturers expressed a high degree of concern relating to the magnitude of burdens and the disproportionate impacts that they believe will result from amended energy conservation standards for residential dehumidifiers.

Today's standards for residential dehumidifiers could cause small manufacturers to be at a disadvantage relative to large manufacturers. One way in which small manufacturers could be at a disadvantage is that they may be disproportionately affected by product and capital conversion costs. Product redesign, testing, and certification costs tend to be fixed per basic model and do not scale with sales volume. For each model, small businesses must make investments in research and development to redesign their products, but because they have lower sales volumes, they must spread these costs across fewer units. In addition, because small manufacturers have fewer engineers than large manufacturers, they need to allocate a greater portion of their available resources to meet a standard. Because engineers may need to spend more time redesigning and testing existing models as a result of the new standard, they may have less time to develop new products. Similarly, upfront capital investments in new manufacturing capital for platform redesigns, as well as depreciated manufacturing capital, can only be spread across a lower volume of shipments.

Furthermore, smaller manufacturers may lack the purchasing power of larger manufacturers. For example, since fan motor suppliers give discounts to manufacturers based on the number of motors they purchase, larger manufacturers may have a pricing advantage because they have higher volume purchases. This purchasing power differential between small and large manufacturers applies to other residential dehumidifier components as well, including compressors and heat exchangers. Some larger manufacturers of lower-capacity portable dehumidifiers may even manufacture

heat exchangers in-house. Additionally, because small business manufacturers produce larger units, they require larger/custom components (*e.g.* larger compressors) compared to large manufacturers who produce lower-capacity portable products and who account for the majority of the dehumidifier market. Because of the low-volume nature of the high-capacity portable and whole-home dehumidifier market, certain technological improvements to components may only be developed for small portable products, or with significant lag time for large dehumidifier products.

To access the capital required to cover the conversion costs associated with reaching the proposed standards, small business manufacturers would likely be forced to take on additional debt, whereas larger manufacturers of small portable products would be better equipped to fund purchases with existing cash flow from operations.

In terms of impacts to small business manufacturers associated with the specific TSLs outlined in this notice, as discussed in section V.B.2.d, disproportionate impacts will be greatest at TSLs 1 and 2, where relatively more high-capacity portable and home-whole dehumidifiers are at or below the baseline than is the case for the lower-capacity portable products. Additionally, it is assumed that small business manufacturers will be required to outsource the testing of their products to third-party testing facilities. In contrast, the large manufacturers of small portable dehumidifiers are assumed to have in-house testing capabilities, which significantly reduce the cost of testing. While the magnitude of the conversion cost burden increases slightly for small business manufacturers at TSLs 3 and 4, disproportionate impacts decrease substantially, as relatively more lower-capacity portable product platforms will require substantial redesign. Between TSLs 3 and 4, TSL 3 minimizes standards compliance burdens for small business manufacturers relative to the burdens of high-volume portable dehumidifier manufacturers.

Further detail and separate analysis of impacts on small business high-capacity portable and whole-home dehumidifier manufacturers are found in chapter 12, section 12.6 of the NOPR TSD, as well as in sections IV.J.3, IV.J.4, and V.B.2.d of this notice.

e. Cumulative Regulatory Burden

One aspect of assessing manufacturer burden is the cumulative impact of multiple DOE standards and the regulatory actions of other Federal agencies and States that affect the manufacturers of a covered product or equipment. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry.

Companies that produce a wider range of regulated products may be faced with more capital and product development expenditures than their competitors. This can prompt those companies to exit the market or reduce their product offerings, potentially reducing competition. Smaller companies can be especially affected, since they have lower sales volumes over which to amortize the costs of compliance with new regulations.

In addition to DOE's energy conservation regulations for residential dehumidifiers, several other existing and pending regulations apply to these products and other equipment produced by the same manufacturers. The most significant of these additional regulations include several additional Federal energy conservation standards, and third-party certification programs (*e.g.,* UL safety standards certification for dehumidifiers). For more details, see chapter 12, section 12.7.3 of the NOPR TSD.

3. National Impact Analysis

a. Significance of Energy Savings

To estimate the energy savings attributable to potential standards for residential dehumidifiers, DOE compared the energy consumption of those products under the base case to their anticipated energy consumption under each TSL. Table V.21 presents DOE's projections of the national energy savings for each TSL considered for residential dehumidifiers shipped in the 2019–2048 period. The savings were calculated using the approach described in section IV.H.1 of this notice.

TABLE V.21—RESIDENTIAL DEHUMIDIFIERS: CUMULATIVE NATIONAL ENERGY SAVINGS

[Shipments in 2019–2048]

Savings	Trial standard level			
	1	2	3	4
Primary Energy Savings (*quads*)	0.07	0.11	0.31	0.75
FFC Energy Savings (*quads*)	0.07	0.11	0.32	0.79

OMB Circular A–4 [64] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using 9, rather than 30, years of product shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of, and compliance with, such revised standards.[65] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to residential dehumidifiers. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES sensitivity analysis results based on a 9-year analytical period are presented in Table V.22. The impacts are counted over the lifetime of residential dehumidifiers purchased in 2019–2027.

TABLE V.22—RESIDENTIAL DEHUMIDIFIERS: CUMULATIVE NATIONAL ENERGY SAVINGS FOR PRODUCTS SHIPPED IN 2019–2027

Savings	Trial standard level			
	1	2	3	4
Primary Energy Savings (*quads*)	0.03	0.04	0.11	0.23
FFC Energy Savings (*quads*)	0.03	0.04	0.11	0.24

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the standard levels considered for residential dehumidifiers. In accordance with the OMB's guidelines on regulatory

[64] U.S. Office of Management and Budget, ''Circular A–4: Regulatory Analysis'' (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4/*).

[65] Under 42 U.S.C. 6295(m)(1), and no later than 6 years after DOE issues a final rule establishing or amending an energy conservation standard, DOE must publish a notice of determination that standards for the product do not need to be amended or a NOPR that includes new proposed standards. The 9-year analytical period includes this 6-year period and an additional 3 years to issue the final rule and allow time for industry compliance.

analysis,[66] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate.

Table V.23 shows the consumer NPV results for each TSL DOE considered for residential dehumidifiers. The impacts are counted over the lifetime of products purchased in 2019–2048.

TABLE V.23—RESIDENTIAL DEHUMIDIFIERS: CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR PRODUCTS SHIPPED IN 2019–2048

Discount rate	Billion 2013$			
	Trial standard level			
	1	2	3	4
.				
3 percent	0.50	0.78	2.27	4.96
7 percent	0.24	0.37	1.04	2.13

The NPV results based on the aforementioned 9-year analytical period are presented in Table V.24. The impacts are counted over the lifetime of products purchased in 2019–2027. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.24—RESIDENTIAL DEHUMIDIFIERS: CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR PRODUCTS SHIPPED IN 2019–2027

Discount rate	Billion 2013$			
	Trial standard level			
	1	2	3	4
3 percent	0.24	0.36	0.93	1.78
7 percent	0.14	0.22	0.56	1.03

The above results reflect the use of a default trend to estimate the change in price for residential dehumidifiers over the analysis period (see section IV.F.1 of this notice). DOE also conducted a sensitivity analysis that considered one scenario with a lower rate of price decline than the reference case and one scenario with a higher rate of price decline than the reference case. The results of these alternative cases are presented in appendix 10C of the NOPR TSD. In the high price decline case, the NPV of consumer benefits is higher than in the default case. In the low price decline case, the NPV of consumer benefits is lower than in the default case.

c. Impacts on Employment

As discussed above, DOE expects energy conservation standards for residential dehumidifiers to reduce energy bills for consumers of those products, and the resulting net savings to be redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.N of this notice, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered in this rulemaking. DOE understands that there are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframe, where these uncertainties are reduced.

The results suggest that today's standards are likely to have negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the NOPR TSD presents detailed results.

4. Impact on Utility or Performance of Products

Based on testing conducted in support of this proposed rule, discussed in section IV.C.1.b of this notice, DOE has concluded that the TSL proposed in this NOPR would not reduce the utility or performance of the residential dehumidifiers under consideration in this rulemaking. Manufacturers of these products currently offer units that meet or exceed today's standards.

5. Impact of Any Lessening of Competition

As discussed in section III.E.e, the Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination to DOE, together with an analysis of the nature and extent of such impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii))

DOE will transmit a copy of this NOPR and the accompanying NOPR TSD to the Attorney General, requesting that the DOJ provide its determination on this issue. DOE will consider DOJ's comments on the proposed rule in determining whether to proceed with the proposed energy conservation standards. DOE will also publish and respond to DOJ's comments in the **Federal Register** in a separate notice.

6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the nation's energy security, strengthens the economy, and reduces the environmental impacts or costs of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. As a measure of this reduced demand, chapter 15, section 15.3 in the NOPR TSD presents the estimated reduction in generating capacity for the TSLs that DOE considered in this rulemaking.

Energy savings from amended standards for residential dehumidifiers could also produce environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with electricity production. Table V.25 provides DOE's estimate of cumulative emissions reductions to result from the TSLs considered in this rulemaking. DOE reports annual CO_2, NO_X, and Hg emissions reductions for each TSL in chapter 13, section 13.5 of the NOPR TSD.

TABLE V.25—CUMULATIVE EMISSIONS REDUCTION ESTIMATED FOR RESIDENTIAL DEHUMIDIFIER TRIAL STANDARD LEVELS FOR PRODUCTS SHIPPED IN 2019–2048

	Trial standard level			
	1	2	3	4
Power sector emissions				
CO_2 (*million metric tons*)	4.05	6.40	18.29	44.55

[66] U.S. Office of Management and Budget, ''Circular A–4: Regulatory Analysis,'' Section E, (September 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4/*).

TABLE V.25—CUMULATIVE EMISSIONS REDUCTION ESTIMATED FOR RESIDENTIAL DEHUMIDIFIER TRIAL STANDARD LEVELS FOR PRODUCTS SHIPPED IN 2019–2048—Continued

	Trial standard level			
	1	2	3	4
SO_2 (*thousand tons*)	3.52	5.55	15.77	38.16
NO_X (*thousand tons*)	3.18	5.03	14.34	34.83
Hg (*tons*)	0.01	0.02	0.05	0.12
N_2O (*thousand tons*)	0.05	0.09	0.25	0.61
CH_4 (*thousand tons*)	0.38	0.61	1.75	4.28
Upstream emissions				
CO_2 (*million metric tons*)	0.22	0.35	1.01	2.50
SO_2 (*thousand tons*)	0.04	0.06	0.18	0.44
NO_X (*thousand tons*)	3.14	5.00	14.44	35.57
Hg (*tons*)	0.00	0.00	0.00	0.00
N_2O (*thousand tons*)	0.00	0.00	0.01	0.02
CH_4 (*thousand tons*)	18.32	29.15	84.13	207.16
Total FFC emissions				
CO_2 (*million metric tons*)	4.27	6.75	19.31	47.05
SO_2 (*thousand tons*)	3.56	5.61	15.95	38.60
NO_X (*thousand tons*)	6.33	10.03	28.79	70.40
Hg (*tons*)	0.01	0.02	0.05	0.12
N_2O (*thousand tons*)	0.06	0.09	0.26	0.63
N_2O (*thousand tons CO_2eq*) *	15.02	23.84	68.57	168.12
CH_4 (*thousand tons*)	18.70	29.75	85.88	211.44
CH_4 (*thousand tons CO_2eq*) *	523.57	833.12	2,404.57	5,920.22

* CO_2eq is the quantity of CO_2 that would have the same GWP.

As part of the analysis for this proposed rule, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X that DOE estimated for each of the TSLs considered for residential dehumidifiers. As discussed in section IV.L of this notice, for CO_2, DOE used the most recent values for the SCC developed by an interagency process. The four sets of SCC values for CO_2 emissions reductions in 2015 resulting from that process (expressed in 2013$) are represented by $12.0/metric ton (the average value from a distribution that uses a 5-percent discount rate), $40.5/metric ton (the average value from a distribution that uses a 3-percent discount rate), $62.4/metric ton (the average value from a distribution that uses a 2.5-percent discount rate), and $119/metric ton (the 95th-percentile value from a distribution that uses a 3-percent discount rate). The values for later years are higher due to increasing damages (emissions-related costs) as the projected magnitude of climate change increases.

Table V.26 presents the global value of CO_2 emissions reductions at each TSL. For each of the four cases, DOE calculated a present value of the stream of annual values using the same discount rate as was used in the studies upon which the dollar-per-ton values are based. DOE calculated domestic values as a range from 7 percent to 23 percent of the global values, and these results are presented in chapter 14 of the NOPR TSD.

TABLE V.26—ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR RESIDENTIAL DEHUMIDIFIER TRIAL STANDARD LEVELS

TSL	Million 2013$			
	SCC Case *			
	5% Discount rate, average	3% Discount rate, average	2.5% Discount rate, average	3% Discount rate, 95th percentile
Power Sector Emissions				
1	29.5	132.8	210.0	409.9
2	46.2	208.7	330.3	644.4
3	130.3	592.6	938.9	1,831.0
4	310.8	1,426.6	2,264.4	4,411.2
Upstream Emissions				
1	1.6	7.2	11.3	22.1
2	2.5	11.3	18.0	35.0
3	7.1	32.4	51.5	100.4
4	17.0	78.9	125.6	244.4

TABLE V.26—ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR RESIDENTIAL DEHUMIDIFIER TRIAL STANDARD LEVELS—Continued

TSL	Million 2013$			
	SCC Case *			
	5% Discount rate, average	3% Discount rate, average	2.5% Discount rate, average	3% Discount rate, 95th percentile
Total FFC Emissions				
1	31.1	140.0	221.4	432.0
2	48.6	220.1	348.3	679.4
3	137.3	625.0	990.5	1,931.3
4	327.8	1,505.6	2,390.0	4,655.6

* For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.0, $40.5, $62.4, and $119 per metric ton (2013$).

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 used to represent the reduction of CO_2 emissions in this rulemaking is subject to change. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this proposed rule the most recent values and analyses resulting from the interagency process.

DOE also estimated the cumulative monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from amended standards for residential dehumidifiers. The dollar-per-ton values that DOE used are discussed in section IV.L of this notice. Table V.27 presents the cumulative present values for each TSL calculated using 7-percent and 3-percent discount rates.

TABLE V.27—ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION UNDER RESIDENTIAL DEHUMIDIFIERS TRIAL STANDARD LEVELS

TSL	Million 2013$	
	3% Discount rate	7% Discount rate
Power Sector Emissions		
1	11.9	5.4
2	18.6	8.3
3	52.4	22.8
4	125.0	52.9
Upstream Emissions		
1	11.4	4.9
2	18.0	7.6
3	51.4	21.2
4	124.5	49.9
Total FFC Emissions		
1	23.3	10.2
2	36.5	15.9
3	103.7	44.0
4	249.5	102.7

TABLE V.27—ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION UNDER RESIDENTIAL DEHUMIDIFIERS TRIAL STANDARD LEVELS—Continued

7. Summary of National Economic Impacts

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the customer savings calculated for each TSL considered in this rulemaking. Table V.28 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced CO_2 and NO_X emissions in each of four valuation scenarios to the NPV of customer savings calculated for each TSL considered in this rulemaking, at both a 7-percent and 3-percent discount rate. The CO_2 values used in the columns of each table correspond to the four sets of SCC values discussed above.

TABLE V.28—NET PRESENT VALUE OF CUSTOMER SAVINGS COMBINED WITH PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

TSL	Customer NPV at 3% discount rate added with:			
	SCC Case $12.0/metric ton CO_2* and medium value for NO_X	SCC Case $40.5/metric ton CO_2* and medium value for NO_X	SCC Case $62.4/metric ton CO_2* and medium value for NO_X	SCC Case $119/metric ton CO_2* and medium value for NO_X
	Billion 2013$			
1	0.6	0.7	0.7	1.0
2	0.9	1.0	1.2	1.5
3	2.5	3.0	3.4	4.3
4	5.5	6.7	7.6	9.9

TABLE V.28—NET PRESENT VALUE OF CUSTOMER SAVINGS COMBINED WITH PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS—Continued

TSL	Customer NPV at 3% discount rate added with:			
	SCC Case $12.0/metric ton CO_2* and medium value for NO_X	SCC Case $40.5/metric ton CO_2* and medium value for NO_X	SCC Case $62.4/metric ton CO_2* and medium value for NO_X	SCC Case $119/metric ton CO_2* and medium value for NO_X
TSL	Customer NPV at 7% discount rate added with:			
	SCC Case $12.0/metric ton CO_2* and medium value for NO_X	SCC Case $40.5/metric ton CO_2* and medium value for NO_X	SCC Case $62.4/metric ton CO_2* and medium value for NO_X	SCC Case $119/metric ton CO_2* and medium value for NO_X
	Billion 2013$			
1	0.3	0.4	0.5	0.7
2	0.4	0.6	0.7	1.1
3	1.2	1.7	2.1	3.0
4	2.6	3.7	4.6	6.9

* For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.0, $40.5, $62.4, and $119 per metric ton (2013$).

Although adding the value of customer savings to the values of projected emission reductions provides a valuable perspective, two issues should be considered. First, the national operating cost savings are domestic U.S. customer monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and the SCC are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of equipment shipped in 2019 to 2048. 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.

8. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) DOE did not consider any other factors for this NOPR.

C. Conclusion

When considering proposed standards, the new or amended energy conservation standard that DOE adopts for any type (or class) of covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens, considering to the greatest extent practicable the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also ''result in significant conservation of energy.'' (42 U.S.C. 6295(o)(3)(B))

DOE considered the impacts of standards at each TSL, beginning with a maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL, tables present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers, such as low-income households and seniors, who may be disproportionately affected by a national standard (see section V.B.1.b).

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. There is evidence that consumers undervalue future energy savings as a result of (1) a lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient savings to warrant delaying or altering purchases; (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments; (5) computational or other difficulties associated with the evaluation of relevant tradeoffs; and (6) a divergence in incentives (that is, renter versus owner; builder versus purchaser). Other literature indicates that with less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off these types of investments at a higher than expected rate between current consumption and uncertain future energy cost savings. This undervaluation suggests that regulation that promotes energy efficiency can produce significant net private gains (as well as producing social gains by, for example, reducing pollution).

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways. First, if consumers forego a purchase of a product in the standards case, this decreases sales for product manufacturers and the impact on manufacturers attributed to lost revenue is included in the MIA. Second, DOE accounts for energy savings attributable only to products actually used by

consumers in the standards case; if a regulatory option decreases the number of products used by consumers, this decreases the potential energy savings from an energy conservation standard. However, DOE's current analysis does not explicitly control for heterogeneity in consumer preferences, preferences across subcategories of products or specific features, or consumer price sensitivity variation according to household income.[67]

While DOE is not prepared at present to provide a fuller quantifiable framework for estimating the benefits and costs of changes in consumer purchase decisions due to an energy conservation standard, DOE is committed to developing a framework that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards. DOE has posted a paper that discusses the issue of consumer welfare impacts of appliance energy efficiency standards, and potential enhancements to the methodology by which these impacts are defined and estimated in the regulatory process.[68] DOE welcomes comments on how to more fully assess the potential impact of energy conservation standards on consumer choice and how to quantify this impact in its regulatory analysis in future rulemakings.

1. Benefits and Burdens of Trial Standard Levels Considered for Residential Dehumidifiers

Table V.29 and Table V.30 summarize the quantitative impacts estimated for each TSL for residential dehumidifiers. The efficiency levels contained in each TSL are described in section IV.A of this this.

TABLE V.29—RESIDENTIAL DEHUMIDIFIER TRIAL STANDARD LEVELS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4
Cumulative FFC Energy Savings (quads)				
	0.07	0.11	0.32	0.79
NPV of Customer Benefits (2013$ billion)				
3% discount rate	0.50	0.78	2.27	4.96
7% discount rate	0.24	0.37	1.04	2.13
Cumulative FFC Emissions Reduction				
CO_2 (million metric tons)	4.27	6.75	19.31	47.05
NO_X (thousand tons)	6.33	10.03	28.79	70.40
Hg (tons)	0.01	0.02	0.05	0.12
N_2O (thousand tons)	0.06	0.09	0.26	0.63
N_2O (thousand tons CO_2eq)*	15.02	23.84	68.57	168.12
CH_4 (thousand tons)	18.70	29.75	85.88	211.44
CH_4 (thousand tons CO_2eq)*	523.57	833.12	2,404.57	5,920.22
SO_2 (thousand tons)	3.56	5.61	15.95	38.60
Value of Emissions Reduction				
CO_2 (2013$ million)**	31 to 432	49 to 679	137 to 1,931	328 to 4,656
NO_X—3% discount rate (2013$ million)	23.3	36.5	103.7	249.5
NO_X—7% discount rate (2013$ million)	10.2	15.9	44.0	102.7

Parentheses indicate negative (−) values.
* CO_2eq is the quantity of CO_2 that would have the same GWP.
** Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.

TABLE V.30—RESIDENTIAL DEHUMIDIFIER TRIAL STANDARD LEVELS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4
Manufacturer Impacts				
Industry NPV (2013$ millions) (Base Case INPV = 186.5).	184.0 to 183.5	183.4 to 182.1	155.2 to 151.6	146.3 to 126.8
Industry NPV (% change)	(1.4%) to (1.6%)	(1.6%) to (2.4%)	(16.8%) to (18.7%)	(21.6%) to (32.0%)
Consumer Average LCC Savings (2013$)				
PC1 (≤30.00 pints/day)	31	49	64	137
PC2 (30.01–45.00 pints/day)	0	0	99	164
PC3 (>45.00 pints/day)	50	147	147	239
PC4 (≤8.0 ft^3)	207	207	207	302
PC5 (>8.0 ft^3)	75	416	416	542
Consumer Simple PBP (years)				
PC1 (≤30.00 pints/day)	0.0	0.1	0.2	0.6

[67] P.C. Reiss and M.W. White, Household Electricity Demand, Revisited, *Review of Economic Studies* (2005) 72, 853–883.

[68] Alan Sanstad, Notes on the Economics of Household Energy Consumption and Technology Choice, Lawrence Berkeley National Laboratory (2010) (Available at: *https://www1.eere.energy.gov/buildings/appliance_standards/pdfs/consumer_ee_theory.pdf*).

TABLE V.30—RESIDENTIAL DEHUMIDIFIER TRIAL STANDARD LEVELS: MANUFACTURER AND CONSUMER IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4
PC2 (30.01–45.00 pints/day)	0.0	0.1	0.2	0.5
PC3 (>45.00 pints/day)	4.3	2.8	2.8	3.8
PC4 (≤8.0 ft^3)	1.3	1.3	1.3	5.5
PC5 (>8.0 ft^3)	0.7	1.4	1.4	4.0
% of Consumers That Experience Net Cost				
PC1 (≤30.00 pints/day)	0%	0%	0%	10.3%
PC2 (30.01–45.00 pints/day)	0%	0%	0.5%	5.4%
PC3 (>45.00 pints/day)	18.9%	11.7%	11.7%	31.4%
PC4 (≤8.0 ft^3)	8.4%	8.4%	8.4%	44.4%
PC5 (>8.0 ft^3)	1.4%	10.7%	10.7%	39.9%

Parentheses indicate negative (−) values.

DOE first considered TSL 4, which represents the max-tech efficiency levels. TSL 4 would save 0.79 quads of energy, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit would be $2.13 billion using a discount rate of 7 percent, and $4.96 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 47.1 Mt of CO_2, 70.4 thousand tons of NO_X, 38.6 thousand tons of SO_2, 0.12 ton of Hg, 0.6 thousand tons of N_2O, and 211.4 thousand tons of CH_4. The estimated monetary value of the CO_2 emissions reductions at TSL 4 ranges from $328 million to $4,656 million.

At TSL 4, the average LCC impact is a savings of $137 for PC1, $134 for PC2, $239 for PC3, $302 for PC4, and $542 for PC5. The simple PBP is 0.6 years for PC1, 0.5 years for PC2, 3.8 years for PC3, 5.5 years for PC4, and 4.0 years for PC5. The fraction of consumers experiencing a net LCC cost is 10.3 percent for PC1, 5.4 percent for PC2, 31.4 percent for PC3, 44.4 percent for PC4, and 39.9 percent for PC5.

At TSL 4, the projected change in INPV ranges from a decrease of $40.2 million to a decrease of $59.7 million, which correspond to decreases of 21.6 percent and 32.0 percent, respectively. Products that meet the efficiency standards specified by this TSL are forecast to represent less than 2 percent of shipments. As such, manufacturers would have to redesign nearly all products by the expected 2019 projected compliance date to meet demand. Redesigning all units to meet the current max-tech efficiency levels would require considerable capital and product conversion expenditures. At TSL 4, the capital conversion costs total as much as $33.1 million, 3.0 times the industry annual ordinary capital expenditure in 2018 (the year leading up to amended standards). DOE estimates that complete platform redesigns would cost the industry $48.1 million in product conversion costs. These conversion costs largely relate to the extensive research programs required to develop new products that meet the efficiency standards at TSL 4. These costs are equivalent to 8.9 times the industry annual budget for research and development. As such, the conversion costs associated with the changes in products and manufacturing facilities required at TSL 4 would require significant use of manufacturers' financial reserves (manufacturer capital pools), impacting other areas of business that compete for these resources and significantly reducing INPV. In addition, manufacturers could face a substantial impact on profitability at TSL 4. Because manufacturers are more likely to reduce their margins to maintain a price-competitive product at higher TSLs, especially in the lower-capacity portable segment, DOE expects that TSL 4 would yield impacts closer to the high end of the range of INPV impacts. If the high end of the range of impacts is reached, as DOE expects, TSL 4 could result in a net loss to manufacturers of 32.0 percent of INPV.

Beyond the direct financial impact on manufacturers, TSL 4 may also contribute to the potential unavailability of products at certain capacities across the five product classes. The efficiencies at TSL 4 are theoretical levels that DOE determined dehumidifiers could achieve by incorporating the most efficient type of each component. DOE is not aware of any dehumidifiers currently available on the market that achieve the TSL 4 efficiencies. To meet TSL 4, all products would be required to incorporate the highest efficiency compressors; however, manufacturers indicated that few such compressors are available in the range of compressor capacities suitable for residential dehumidifiers, and it is unlikely that substantially more would become available if standards at TSL 4 were adopted. In addition, the specific compressor capacities available at any given time are driven largely by the markets for other products with higher shipments (*e.g.*, room air conditioners), and thus dehumidifier manufacturers may be constrained in their design choices. Because DOE assumed manufacturers would optimize all components at TSL 4, including the use of larger heat exchangers and permanent-magnet blower motors, manufacturers would not have alternative design pathways to achieve the max-tech efficiency level in the absence of high efficiency compressors. Therefore, DOE expects that those dehumidifier platforms for which a suitable high efficiency compressor is not available would be unable to meet the max-tech efficiency level associated with TSL 4. While this would likely not eliminate entire product classes from the market, it has the potential to eliminate dehumidifiers of certain capacities within a given product class. The potential for this impact on manufacturers of high-capacity portable and whole-home dehumidifiers is exacerbated by this segment's low production volumes, which limits manufacturers' ability to influence the availability of higher efficiency components from their vendors.

The Secretary tentatively concludes that at TSL 4 for residential dehumidifiers, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the economic burden on some consumers, the potential impact on product availability, and the impacts on manufacturers, including the conversion costs and profit margin

impacts that could result in a large reduction in INPV. Consequently, the Secretary has tentatively concluded that TSL 4 is not economically justified. However, if this situation were to change in the future, such that components could be made available in sufficient quantities to sustain higher production volumes across the range of product classes, DOE would consider TSL 4.

DOE then considered TSL 3, which would save an estimated 0.32 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefit would be $1.04 billion using a discount rate of 7 percent, and $2.27 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 19.3 Mt of CO_2, 28.8 thousand tons of NO_X, 16.0 thousand tons of SO_2, 0.05 tons of Hg, 0.3 thousand tons of N_2O, and 85.9 thousand tons of CH_4. The estimated monetary value of the CO_2 emissions reductions at TSL 3 ranges from $137 million to $1,931 million.

At TSL 3, the average LCC impact is a savings of $64 for PC1, $99 for PC2, $147 for PC3, $207 for PC4, and $416 for PC5. The simple PBP is 0.2 years for PC1 and PC2, 2.8 years for PC3, 1.3 years for PC4, and 1.4 years for PC5. The fraction of consumers experiencing a net LCC cost is zero percent for PC1, 0.5 percent for PC2, 11.7 percent for PC3, 8.4 percent for PC4, and 10.7 percent for PC5.

At TSL 3, the projected change in INPV ranges from a decrease of $31.3 million to a decrease of $34.9 million, which correspond to decreases of 16.8 percent and 18.7 percent, respectively. Products that meet the efficiency standards specified at this TSL level represent 37 percent of shipments in 2018 (the year leading up to amended standards). As such, manufacturers would have to overhaul a significant fraction of products by the 2019 projected compliance date to meet demand. Redesigning significant component systems or developing entirely new platforms to meet the efficiency levels specified by this TSL would require considerable capital and product conversion expenditures. At TSL 3, the estimated capital conversion costs total as much as $20.5 million, which is 1.8 times the industry annual capital expenditure in 2018 (the year leading up to the amended standards). DOE estimates that the redesigns necessary to meet these standards would cost the industry $30.2 million in product conversion costs. These conversion costs largely relate to the research programs and re-testing required to develop products that meet the efficiency standards set forth by TSL 3, and are 5.6 times the industry annual budget for research and development in 2018, the year leading up to amended standards. As such, the conversion costs associated with the changes in products and manufacturing facilities required at TSL 3 would still require significant use of manufacturers' financial reserves (manufacturer capital pools), impacting other areas of business that compete for these resources and significantly reducing INPV. Because manufacturers are more likely to reduce their margins to maintain a price-competitive product at higher TSLs, DOE expects that TSL 3 would yield impacts closer to the high end of the range of INPV impacts as indicated by the preservation of per-unit operating profit markup scenario. If this is the case, TSL 3 could result in a net loss of 18.7 percent in INPV to manufacturers of residential dehumidifiers.

Although some dehumidifiers may require higher efficiency compressors, the preservation of per-unit operating profit markup scenario efficiency levels specified at TSL 3 offer manufacturers multiple design pathways to meet the standard. This in turn offers manufacturers flexibility in meeting standards at this level and maintaining product offerings at certain capacities should a high efficiency compressor be unavailable at a given compressor capacity. To this end, units are already available that meet the efficiency levels specified at TSL 3.

The Secretary tentatively concludes that at TSL 3 for residential dehumidifiers, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, estimated monetary value of the CO_2 emissions reductions, and positive average LCC savings would outweigh the negative impacts on some consumers and on manufacturers, including the conversion costs that could result in a reduction in INPV for manufacturers.

After considering the analysis and the benefits and burdens of TSL 3, the Secretary tentatively concludes that this TSL will offer the maximum improvement in energy efficiency that is technologically feasible and economically justified, and will result in significant conservation of energy without eliminating or making unavailable any product classes or portions of product classes. Therefore, DOE today proposes to adopt TSL 3 for residential dehumidifiers. The proposed amended energy conservation standards for residential dehumidifiers, which are expressed as a minimum allowable IEF, are shown in Table V.31.

TABLE V.31—PROPOSED AMENDED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL DEHUMIDIFIERS

Portable dehumidifier product capacity (pints/day)	Minimum integrated energy factor (L/kWh)
30.00 or less	1.30
30.01–45.00	1.60
45.01 or more	2.80
Whole-Home Dehumidifier Product Case Volume (cubic feet)	
8.0 or less	2.09
More than 8.0	3.52

DOE requests comments on the proposed standards as well as any information or data that the agency should consider in adopting either a lower or higher TSL.

2. Summary of Benefits and Costs (Annualized) of the Standards

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The annualized net benefit is the sum of: (1) The annualized national economic value of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in product purchase costs, which is another way of representing consumer NPV), and (2) the monetary value of the benefits of CO_2 and NO_X emission reductions.[69]

Table V.32 shows the annualized values for residential dehumidifiers under TSL 3, expressed in 2013$. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reductions, for which DOE used a 3-percent discount rate along with the SCC series corresponding to a value of $40.5/ton in 2015 (in 2013$), the estimated cost of the proposed standards for residential dehumidifiers is $12.6 million per year in increased equipment costs, while the estimated annualized benefits are $122 million per

[69] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2014, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (2020, 2030, *etc.*), and then discounted the present value from each year to 2014. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates, as shown in Table V.22. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year that yields the same present value.

year in reduced equipment operating costs, $35.9 million per year in CO_2 reductions, and $4.6 million per year in reduced NO_X emissions. In this case, the net benefit amounts to $150 million per year.

Using a 3-percent discount rate for all benefits and costs and the SCC series corresponding to a value of $40.5/ton in 2015 (in 2013$), the estimated cost of the proposed standards for residential dehumidifiers in today's rule is $12.5 million per year in increased equipment costs, while the benefits are $142.7 million per year in reduced operating costs, $35.9 million per year in CO_2 reductions, and $6.0 million per year in reduced NO_X emissions. In this case, the net benefit amounts to $172 million per year.

TABLE V.32—ANNUALIZED BENEFITS AND COSTS OF PROPOSED AMENDED STANDARDS (TSL 3) FOR RESIDENTIAL DEHUMIDIFIERS SOLD IN 2019–2048

	Discount rate	Million 2013$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Benefits				
Consumer Operating Cost Savings	7%	122.0	116.8	126.3
	3%	142.7	136.3	149.2
CO_2 Reduction at $12.0/t **	5%	10.9	10.7	11.1
CO_2 Reduction at $40.5/t **	3%	35.9	35.3	36.7
CO_2 Reduction at $62.4/t **	2.5%	52.2	51.4	53.4
CO_2 Reduction at $119/t **	3%	110.9	109.2	113.4
NO_X Reduction †	7%	4.65	4.59	4.73
	3%	5.96	5.86	6.09
Total Benefits ††	7% plus CO_2 range	138 to 238	132 to 231	142 to 244
	7%	163	157	168
	3% plus CO_2 range	160 to 260	153 to 251	166 to 269
	3%	185	177	192
Costs				
Consumer Incremental Product Costs	7%	12.6	12.3	13.7
	3%	12.5	12.0	13.9
Total Net Benefits				
Total ††	7% plus CO_2 range	125 to 225	120 to 218	128 to 231
	7%	150	144	154
	3% plus CO_2 range	147 to 247	141 to 239	152 to 255
	3%	172	165	178

* The results include benefits to consumers which accrue after 2048 from the dehumidifiers purchased from 2019 through 2048. Costs incurred by manufacturers, some of which may be incurred prior to 2019 in preparation for the rule, are not directly included, but are indirectly included as part of incremental equipment costs. The extent of the costs and benefits will depend on the projected price trends of dehumidifiers, as the consumer demand for dehumidifiers is a function of dehumidifier prices. The Primary, Low Benefits, and High Benefits Estimates utilize forecasts of energy prices and housing starts from the *AEO 2015* Reference case, Low Estimate, and High Estimate, respectively. In addition, incremental product costs reflect a medium decline rate for projected product price trends in the Primary Estimate, a low decline rate in the Low Benefits Estimate, and a high decline rate in the High Benefits Estimate. The methods used to derive projected price trends are explained in section IV.F.1 of this notice.

** The CO_2 values represent global values (in 2013$) of the social cost of CO_2 emissions in 2013 under several scenarios. The values of $12.0, $40.5, and $62.4 per ton are the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The value of $119 per ton represents the 95th percentile of the SCC distribution calculated using a 3% discount rate.

† The $/ton values used for NO_X are described in section IV.L.2.

†† Total Benefits for both the 3% and 7% cases are derived using the SCC value calculated at a 3% discount rate, which is $40.5/ton in 2015 (in 2013$). 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.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Section 1(b)(1) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems that this proposed standards address are as follows:

(1) Insufficient information and the high costs of gathering and analyzing relevant information leads some consumers to miss opportunities to make cost-effective investments in energy efficiency.

(2) In some cases the benefits of more efficient equipment are not realized due to misaligned incentives between purchasers and users. An example of such a case is when the equipment purchase decision is made by a building contractor or building owner who does not pay the energy costs.

(3) There are external benefits resulting from improved energy efficiency of residential dehumidifiers that are not captured by the users of such equipment. These benefits include externalities related to public health, environmental protection, and national security that are not reflected in energy prices, such as reduced emissions of air pollutants and greenhouse gases that impact human health and global warming.

In addition, DOE has determined that today's regulatory action is a ''significant regulatory action'' under section (3)(f)(1) of Executive Order 12866. Accordingly, section 6(a)(3) of the Executive Order requires that DOE prepare a regulatory impact analysis (RIA) on this rule and that OIRA in OMB review this rule. DOE presented to OIRA for review the draft rule and other documents prepared for this rulemaking, including the RIA, and has included these documents in the rulemaking record. The assessments prepared pursuant to Executive Order 12866 can be found in the technical support document for this rulemaking.

DOE has also reviewed this regulation pursuant to Executive Order 13563. 76 FR 3281 (Jan. 21, 2011). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, OIRA has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that this NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*). DOE has prepared the following IRFA for the products that are the subject of this rulemaking.

1. Description and Estimated Number of Small Entities Regulated

a. Methodology for Estimating the Number of Small Entities

For the manufacturers of residential dehumidifiers, the SBA has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000) and codified at 13 CFR part 121. The size standards are listed by NAICS code and industry description and are available at: *www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*. Manufacturing of whole-home residential dehumidifiers is classified under NAICS codes 333415: Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing, whereas manufacturing of portable residential dehumidifiers is classified under 335210: Small Electrical Appliance Manufacturing. The SBA sets a threshold of 750 employees or less for an entity to be considered as a small business for either of these categories.

To estimate the number of companies that could be small business manufacturers of products covered by this rulemaking, DOE conducted a market survey using available public information to identify potential small manufacturers. DOE's research included searches of public databases (*e.g.,* DOE's Compliance Certification Database,[70] the SBA Database [71]), individual company Web sites, and market research tools (*e.g.,* Hoovers Web site [72]) to create a list of companies that manufacture or sell products covered by this rulemaking. DOE also asked stakeholders and industry representatives if they were aware of any other small manufacturers during manufacturer interviews and at DOE public meetings. DOE reviewed publicly-available data and contacted select companies on its list, as necessary, to determine whether they met the SBA's definition of a small business manufacturer of covered residential dehumidifiers. DOE screened out companies that do not manufacture products covered by this rulemaking, do not meet the definition of a ''small business,'' or are foreign owned and operated.

DOE initially identified 25 manufacturers of residential dehumidifier products sold in the U.S. DOE then determined that of the 25 companies, 20 were either large manufacturers, exclusively import products manufactured overseas, or are foreign owned and operated. DOE identified the remaining five manufacturers as domestic manufacturers that meet the SBA's definition of a ''small business'' and manufacture products covered by this rulemaking.

b. Manufacturer Participation

Before issuing this Notice, DOE attempted to contact all the small business manufacturers of residential dehumidifiers identified. DOE was only able to establish contact with two small business manufacturers, both of which

[70] See *http://www.regulations.doe.gov/certification-data/*.

[71] See *http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm*.

[72] See *http://www.hoovers.com/*.

consented to being interviewed as part of the manufacturing impact analysis. DOE also obtained information about small business impacts while interviewing large manufacturers.

c. Industry Structure

The five domestic small business manufacturers of residential dehumidifiers identified account for a small fraction of total industry shipments. In 2014, 96.8 percent of residential dehumidifiers sold in the U.S. are small portable units (belonging to product classes 1 and 2) and are made by large, diversified manufacturers. The remaining 3.2 percent of the market consists of high-capacity portable and whole-home dehumidifiers, which are primarily manufactured by small business manufacturers.

d. Comparison of Large and Small Entities

Several factors may contribute to a disproportionate burden on small business manufacturers from amended energy conservation standards for residential dehumidifiers relative to their larger counterparts. One way in which small manufacturers could be at a disadvantage is that they may be disproportionately affected by product and capital conversion costs. Product redesign, testing, and certification costs tend to be fixed per basic model and do not scale with sales volume. Both large and small business manufacturers must make investments in R&D to redesign their products, but small businesses lack the sales volumes to sufficiently recoup these upfront investments without substantially marking up their products. Similarly, upfront capital investments in new manufacturing capital for platform redesigns, as well as depreciated manufacturing capital, can only be spread across a lower volume of shipments for small business manufacturers.

In addition, because small business manufacturers typically have fewer engineers than large manufacturers, they must allocate a greater portion of their available human resources to meet an amended regulatory standard. Because engineers may need to spend more time redesigning and testing existing models as a result of the amended standard, they may have less time to develop new products.

Furthermore, smaller manufacturers may lack the purchasing power of larger manufacturers. For example, because fan motor suppliers give volume discounts to manufacturers based on the number of motors they purchase, larger manufacturers may have a pricing advantage because they make higher volume purchases. This purchasing power difference between high-volume and low-volume orders applies to other residential dehumidifier components as well, including compressors and heat exchangers. DOE expects that certain larger manufacturers of lower-capacity portable dehumidifiers may even manufacture heat exchangers in-house. Additionally, because small business manufacturers produce higher-capacity units, they require larger/custom components (*e.g.,* larger compressors and heat exchangers), than do the lower-capacity portable product manufacturers who account for the majority of the dehumidifier market. Because of the low-volume nature of the high-capacity portable and whole-home dehumidifier market, certain technological improvements to components may only be developed for lower-capacity portable products, or with significant lag time for application in high-capacity portable and whole-home dehumidifier products.

In terms of access to the capital required to cover the conversion costs associated with reaching the proposed standards, small business manufacturers would likely be forced to take on additional debt, whereas larger diversified manufacturers of small portable products would be better equipped to fund purchases with existing cash flow from operations. Additionally, since the recession of 2007 and 2008, small business lending has dropped substantially due to a combination of tightened lending standards, increasing collateral requirements and reduced focus on small business credit markets. Thus, small businesses generally have access to less capital than do larger companies.

2. Description and Estimate of Compliance Requirements

Since the standards in today's proposed rule for residential dehumidifiers could cause small manufacturers to be at a disadvantage relative to large manufacturers, DOE cannot certify that the proposed standards would not have a significant impact on a significant number of small businesses, and consequently, DOE has prepared this IRFA.

DOE estimates that the impacts on small business manufacturers are significantly disproportionate at TSLs 1 and 2, and relatively proportionate at TSLs 3 and 4. At TSL 3, the level proposed in today's notice, DOE estimates capital conversion costs of $1.7 million and product conversion costs of $5.0 million in the years leading up to the standard year for a typical small manufacturer. This is compared to capital conversion costs of $18.8 and product conversion costs of $25.2 million in the years leading up to the standard year for a typical large manufacturer. These costs and their impacts are described in detail below.

To estimate the potential impact on small business manufacturers, DOE used the GRIM results for high-capacity portables and whole-home dehumidifiers (product classes 3–5) to estimate the annual revenue, EBIT, capital expenditure, and R&D expense for a typical small manufacturer. DOE then compared these costs to the required product conversion costs at each TSL for both an average small manufacturer and an average large manufacturer. Table VI.1 and Table VI.2 show the capital and product conversion costs for a typical small manufacturer versus those of a typical large manufacturer. Table VI.3 and Table VI.4 report the total conversion costs as a percentage of annual R&D expense, annual revenue, and EBIT for a typical small and large manufacturer, respectively. In the following tables, TSL 3 represents the proposed standard.

TABLE VI.1—COMPARISON OF TYPICAL SMALL AND LARGE MANUFACTURER'S CAPITAL CONVERSION COSTS

Trial standard level	Capital conversion costs for typical small manufacturer (2013$ millions)	Capital conversion costs for typical large manufacturer (2013$ millions)
TSL 1	$1.3	$—
TSL 2	1.7	.....
TSL 3	1.7	18.8
TSL 4	2.2	30.9

TABLE VI.2—COMPARISON OF TYPICAL SMALL AND LARGE MANUFACTURER'S PRODUCT CONVERSION COSTS

Trial standard level	Product conversion costs for typical small manufacturer (2013$ millions)	Product conversion costs for typical large manufacturer (2013$ millions)
TSL 1	$3.9	$0.04
TSL 2	5.0	0.05
TSL 3	5.0	25.2
TSL 4	6.6	41.5

TABLE VI.3—IMPACTS OF CONVERSION COSTS ON A TYPICAL SMALL MANUFACTURER

Trial standard level	Capital conversion cost as a percentage of annual capital expenditures	Product conversion cost as a percentage of annual R&D expense	Total conversion cost as a percentage of annual revenue	Total conversion cost as a percentage of annual EBIT
TSL 1	130	774	14	235
TSL 2	167	1002	18	304
TSL 3	167	1002	18	304
TSL 4	222	1328	23	403

* Note: Annual Capex, R&D, Revenues, and EBIT figures are for 2014.

TABLE VI.4—IMPACTS OF CONVERSION COSTS ON A TYPICAL LARGE MANUFACTURER

Trial standard level	Capital conversion cost as a percentage of annual capital expenditures	Product conversion cost as a percentage of annual R&D expense	Total conversion cost as a percentage of annual revenue	Total conversion cost as a percentage of annual EBIT
TSL 1	0	1	0	0
TSL 2	0	1	0	0
TSL 3	219	600	14	229
TSL 4	359	988	22	377

* Note: Annual Capex, R&D, Revenues, and EBIT figures are for 2014.

Based on the above results for TSL 3, DOE understands that the potential conversions costs faced by small manufacturers may be greater than those faced by larger manufacturers. However, the disproportionality of these impacts would be much greater at TSLs 1 and 2. Small manufacturers have less engineering staff and lower R&D budgets. They also have lower capital expenditures annually. As a result, the conversion costs incurred by a small manufacturer would likely be a larger percentage of its annual capital expenditures, R&D expenses, revenue, and EBIT, than would be for a large manufacturer.

3. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being proposed today.

4. Significant Alternatives to the Rule

The discussion above analyzes the disproportionality of impacts on small businesses that would result from the other TSLs DOE considered. TSLs lower than the proposed TSL would not be expected to significantly reduce the impacts on small businesses, and would actually result in higher disproportionate impacts on small businesses. As a result, and given that DOE is required by EPCA to establish standards that achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified, DOE rejected the lower TSLs.

In addition to the other TSLs being considered, the NOPR TSD includes a regulatory impact analysis in chapter 17. For residential dehumidifiers, this report discusses the following policy alternatives: (1) No standard, (2) consumer rebates, (3) consumer tax credits, (4) manufacturer tax credits, and (5) early replacement. While these alternatives may mitigate to some varying extent the economic impacts on small entities compared to the standards, DOE determined that the energy savings of these alternatives are significantly smaller than those that would be expected to result from adoption of the proposed standard levels. Accordingly, DOE is declining to adopt any of these alternatives and is proposing the standards set forth in this rulemaking. (See chapter 17 of the NOPR TSD for further detail on the policy alternatives DOE considered.)

Additional compliance flexibilities may be available through other means. For example, individual manufacturers may petition for a waiver of the applicable test procedure. Further, EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8,000,000 may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard. Additionally, Section 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, provides authority for the Secretary to adjust a rule issued under EPCA in order to prevent ''special hardship, inequity, or unfair distribution of burdens'' that may be imposed on that manufacturer as a result of such rule. Manufacturers should refer to 10 CFR part 430, subpart E, and part 1003 for additional details.

C. Review Under the Paperwork Reduction Act

Manufacturers of residential dehumidifiers must certify to DOE that their products comply with any

applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for residential dehumidifiers, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including residential dehumidifiers. 76 FR 12422 (Mar. 7, 2011). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (NEPA) of 1969, 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, App. B, B5.1(b); 1021.410(b) and App. B, B(1)-(5). The proposed rule fits within this category of actions because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this proposed rule. DOE's CX determination for this proposed rule is available at *http://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 Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531) For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

Although today's proposed rule does not contain a Federal intergovernmental mandate, it may require expenditures of $100 million or more by the private sector. Specifically, the proposed rule will likely result in a final rule that could require expenditures of $100 million or more. Such expenditures may include: (1) investment in research and development and in capital expenditures by residential dehumidifiers manufacturers in the years between the final rule and the projected compliance date for the new standards, and (2) incremental additional expenditures by consumers to purchase higher-efficiency residential dehumidifiers, starting at the projected compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of the 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(o), today's proposed rule would establish energy conservation standards for residential dehumidifiers 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

Under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (Mar. 18, 1988), DOE has determined that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's NOPR under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that today's regulatory action, which sets forth energy conservation standards for residential dehumidifiers, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on the proposed rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions. *Id.* at 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report'' dated February 2007 has been disseminated and is available at the following Web site: *http://energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0.*

VII. Public Participation

A. Attendance at the Public Meeting

The time, date, and location of the public meeting are listed in the DATES and **ADDRESSES** sections at the beginning of this notice. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov.*

Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *Regina.Washington@ee.doe.gov*

so that the necessary procedures can be completed.

DOE requires visitors to with laptop computers and other devices, such as tablets, to be checked upon entry into the building. Any person wishing to bring these devices into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the visitor's desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Driver's licenses from the following states or territory will not be accepted for building entry and one of the alternate forms of ID listed below will be required. DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma, and Washington. Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the states of Minnesota, New York or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/55.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make follow-up contact, if needed.

C. Conduct of the Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this 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 *www.regulations.gov.* The *www.regulations.gov* Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through 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 *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov*

provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to *www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible. 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 or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. The proposed product classes for residential dehumidifiers: (1) Portable, less than 30.00 pints/day; (2) portable, 30.01 to 45.00 pints/day; (3) portable, 45.01 or more pints/day; (4) whole-home, case volume less than or equal to 8.0 cubic feet; and (5) whole-home, case volume greater than 8.0 cubic feet (see section IV.A.2 of this notice or chapter 3 of the NOPR TSD).

2. Information or data about the availability of dehumidifiers with smart controls, including those currently available on the market or any working prototypes (see section IV.A.3 of this notice or chapter 3 of the NOPR TSD).

3. The efficiency levels considered for this analysis. DOE specifically seeks information from interested parties on whether the revised max-tech levels, which incorporate savings associated with permanent-magnet fan motors, are technologically feasible, and on whether the updated whole-home dehumidifier efficiency levels, which account for the updated test conditions, are appropriate. DOE also seeks comment on potential utility impacts at any of the analyzed efficiency levels (see section IV.C.1 of this notice or chapter 5 of the NOPR TSD).

4. Whether to promote installation of any of the design options, including variable-speed compressors, improved controls, and hygrometers, even though the resulting efficiency gains would not be measurable with the existing test procedure (see section IV.C.2 of this notice of chapter 5 of the NOPR TSD).

5. The determination that manufacturers would likely rely on improved compressor efficiency and increased heat exchanger sizes to achieve efficiencies below the max-tech level, and may incorporate permanent-magnet motors to further improve efficiency. DOE also requests feedback on the incremental manufacturer production costs DOE estimated at each efficiency level (see section IV.C.2 of this notice or chapter 5 of the NOPR TSD).

6. The inputs to the energy use determination for portable and whole-home dehumidifiers, especially the operating hours by mode for each product type (see section IV.E of this notice or chapter 7 of the NOPR TSD).

7. The base-case efficiency distribution for each product class (see section IV.F.8 of this notice or chapter 8 of the NOPR TSD).

8. Whether the annual efficiency improvement (*i.e.,* 0.25%) that DOE estimated is appropriate for the base-case analysis and if not, a more appropriate approach for DOE to project the base-case and standards-case efficiency distributions for the analysis period (see section IV.F.8 of this notice or chapter 8 of the NOPR TSD).

9. The inputs to the shipments model, particularly historical shipments of whole-home dehumidifiers, and the market share of portable dehumidifiers and whole-home dehumidifiers (see section IV.G of this notice or chapter 9 of the NOPR TSD).

10. Dehumidifier manufacturers that would be considered small businesses and the potential impacts of energy conservation standards on these manufacturers (see sections IV.J and V.B.2.d of this notice or chapter 12 of the NOPR TSD).

11. The proposed standards as well as any information or data that the agency should consider in adopting either a lower or higher TSL.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, and Small businesses.

Issued in Washington, DC, on May 14, 2015.

David T. Danielson,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend part

430 of chapter II, subpart C, of title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. In § 430.32, add paragraph (v)(3) to read as follows:

§ 430.32 Energy and water conservation standards and their effective dates.

* * * * *

(v) * * *

(3) Dehumidifiers manufactured on or after [date 3 years after the publication of the final rule] shall have an integrated energy efficiency ratio that meets or exceeds the following values:

Portable dehumidifier product capacity (pints/day)	Minimum integrated energy efficiency factor (liters/kWh)
30.00 or less	1.30
30.01–45.00	1.60
45.01 or more	2.80
Whole-home dehumidifier product case volume (cubic feet)	
8.0 or less	2.09
More than 8.0	3.52

* * * * *

[FR Doc. 2015–12773 Filed 6–2–15; 8:45 am]

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Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 514 and 558
Veterinary Feed Directive; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 514 and 558

[Docket No. FDA–2010–N–0155]

RIN 0910–AG95

Veterinary Feed Directive

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its animal drug regulations regarding veterinary feed directive (VFD) drugs. FDA's current VFD regulation established requirements relating to the distribution and use of VFD drugs and animal feeds containing such drugs. This amendment is intended to improve the efficiency of FDA's VFD program while protecting human and animal health.

DATES: This rule is effective October 1, 2015.

FOR FURTHER INFORMATION CONTACT: Sharon Benz, Center for Veterinary Medicine (HFV–220), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–5939, email: *Sharon.Benz@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of Final Rule

The purpose of this rulemaking is to revise FDA's VFD regulations to improve the efficiency of the VFD program while continuing to protect public health (human and animal health).

In 1996, Congress enacted the Animal Drug Availability Act (ADAA) (Pub. L. 104–250) to facilitate the approval and marketing of new animal drugs and medicated feeds. In passing the ADAA, Congress created a new regulatory category for certain animal drugs used in or on animal food (animal feed) called veterinary feed directive drugs (or VFD drugs). VFD drugs are new animal drugs intended for use in or on animal feed which are limited to use under the professional supervision of a licensed veterinarian. Any animal feed containing a VFD drug can only be fed to animals based upon an order, called a veterinary feed directive (VFD), issued by a licensed veterinarian in the course of the veterinarian's professional practice. FDA published final regulations implementing the VFD-related provisions of the ADAA in 2000 (see § 558.6 (21 CFR 558.6)) (65 FR 76924, December 8, 2000). In the decade since FDA published its VFD regulations, various stakeholders have informed the Agency that the existing VFD process is overly burdensome. In response to those concerns, FDA published several documents inviting public input on ways to improve the VFD process, including an advance notice of proposed rulemaking (ANPRM) (75 FR 15387, March 29, 2010) (March 2010 ANPRM); draft regulatory text for proposed regulation (77 FR 22247, April 13, 2012) (April 2012 draft proposed regulation); and a notice of proposed rulemaking (NPRM) (78 FR 75515, December 12, 2013) (December 2013 NPRM).

The VFD rule is the third of three core documents that FDA is using to announce and implement its policy framework for the judicious use of medically important antimicrobial drugs in food-producing animals. The first document, Guidance for Industry (GFI) #209, entitled ''The Judicious Use of Medically Important Antimicrobial Drugs in Food-Producing Animals,'' published April 2012, set forth FDA's framework for instituting several key measures for ensuring the appropriate or judicious use of medically important antimicrobial drugs in food-producing animals. These measures include eliminating the feed and water use of medically important antimicrobial drugs for production purposes in food-producing animals and bringing all remaining therapeutic uses under the oversight of licensed veterinarians. The second document, GFI #213, entitled ''New Animal Drugs and New Animal Drug Combination Products Administered in or on Medicated Feed or Drinking Water of Food-Producing Animals: Recommendations for Drug Sponsors for Voluntarily Aligning Product Use Conditions with GFI #209,'' published December 2013, outlined a detailed process and timeline for implementing the measures identified in GFI #209. Once GFI #213 is fully implemented, affected feed-use antimicrobial drugs are expected to transition from over-the-counter (OTC) to VFD marketing status. Given that most of the products affected by this effort are feed-use antimicrobial drugs this VFD regulation plays an important role since it outlines the requirements associated with veterinary authorization, distribution, and use of VFD drugs in animal feed.

The VFD drug process as outlined in this final rule includes important controls regarding the distribution and use of VFD drugs. In addition to providing accountability, this final rule also updates the VFD requirements to improve the efficiency of the process. These regulatory enhancements are important for facilitating the transition of a large number of OTC feed-use antimicrobial drugs to their new VFD status.

FDA intends to use a phased enforcement strategy for implementation of this final rule as OTC drugs become VFD drugs under GFI #213. FDA first intends to provide education and training for stakeholders subject to this final rule such as veterinarians, clients (animal producers), feed mill distributors and other distributors. Such education and training efforts are important for supporting effective implementation and compliance with the final rule. FDA will then engage in risk-based general surveillance, as well as for-cause inspection assignments. FDA intends to use information such as history of VFD use and the volume of VFD feed being produced to focus inspectional resources within the industry based on risk. FDA anticipates that it will utilize various sources for obtaining such information including such sources as FDA food and drug registration information, feed mill licensing information, the VFD distributor notifications FDA receives, and VFD distribution records maintained by drug sponsors and VFD distributors.

The provisions included in this final rule are based on stakeholder input received in response to multiple opportunities for public comment, including the March 2010 ANPRM, April 2012 draft proposed regulation, and the December 2013 NPRM.

Summary of Major Provisions

This final rule makes several important changes from the proposed rule and several major changes to the current VFD regulations in part 558 (21 CFR part 558):

- The definition of ''Category II'' in part 558 is revised to remove the automatic Category II designation for VFD drugs. Instead, the categorization of VFD drugs will be determined on a case-by-case basis based on the likelihood that the particular drug at issue will produce an unsafe residue in edible products derived from treated animals, as is currently the case for non-VFD feed use drugs.
- The definition of veterinary feed directive (VFD) drug is revised to simply refer to the statutory definition to provide further clarity.
- The proposed definition of combination veterinary feed directive (VFD) drug is revised to reflect the

changes to the veterinary feed directive (VFD) drug definition.

- The proposed definition of a ''veterinary feed directive'' is revised to remove language that is duplicated in the responsibilities of a veterinarian issuing a VFD.
- The proposed definition of the term ''distributor'' is revised to use the word ''distributes'' instead of the word ''consigns'' as had been proposed.
- The regulatory text proposed for § 558.6(a)(4) and (b)(8) is revised to clarify that the veterinarian is required to keep the original VFD (in hardcopy or electronically) and the distributor and client must keep a copy of the VFD (in hardcopy or electronically).
- The current requirement that copies of the VFD and records of the receipt and distribution of VFD feed must be kept for a period of 2 years is retained instead of being changed to 1 year as was proposed.
- The final rule provides that the veterinarian must issue the VFD in the context of a valid veterinarian-client-patient relationship (VCPR) as defined by the State requirements applicable to where the veterinarian practices veterinary medicine. In States that lack appropriate VCPR requirements applicable to VFDs, the veterinarian must issue the VFD consistent with the Federally defined VCPR standard, which is set forth in FDA's regulations at § 530.3(i) (21 CFR 530.3(i)).
- The VFD expiration date requirement in the final rule specifies that this is the date that authorization to feed the VFD feed to animals expires. Animals must not be fed the VFD feed after the expiration date of the VFD.
- The VFD requirement for approximate number of animals in the final rule specifies how the approximate number of animals should be determined.
- The final rule clarifies the affirmation of intent statements to be used in VFDs issued by licensed veterinarians to indicate whether a VFD drug may be used in conjunction with another drug in an approved, conditionally approved, or indexed combination VFD feed.
- The final rule clarifies the recordkeeping requirements to differentiate what records are required to be kept for distributors who manufacture VFD feed and those who do not manufacture the VFD feed.

Costs and Benefits

The estimated one-time costs to industry from this final rule are $1,411,000, most of which are simply costs to review the rule and prepare a compliance plan. This equates to annualized costs of about $201,000 at a 7 percent discount rate over 10 years. We estimate that the government costs associated with reviewing the six VFD drug labeling supplements that are expected to be submitted by the three current VFD drug sponsors to be $1,900.

The expected benefit of this final rule is a general improvement in the efficiency of the VFD process. FDA estimates the annualized cost savings associated with the more efficient requirements of the VFD process to be $13,000 over 10 years at a 7 percent discount rate (annualized at $11,000 over 10 years at a 3 percent discount rate). Additionally, the reduction in veterinarian labor costs due to this rule is expected to result in a cost savings of about $7.87 million annually.

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I. Background

A. History

Before 1996, FDA had only two options for regulating the distribution of animal drugs: (1) Over-the-counter (OTC) and (2) by prescription (Rx). Drugs used in animal feeds were generally approved as OTC drugs. Although the Federal Food, Drug, and Cosmetic Act (the FD&C Act) did not prohibit the approval of prescription drugs for use in animal feed, such approvals would be impractical because many States have laws that would require a feed mill to have a pharmacist onsite to dispense prescription drugs. As additional animal drugs were developed, FDA determined the existing regulatory options—OTC and Rx—did not provide the needed safeguards or flexibility for these drugs to be prescribed or administered through medicated feed. FDA believed that these drugs, particularly certain antimicrobial drugs, should be subject to greater control than provided by OTC status. FDA believed this control would be critical to reducing unnecessary use of such drugs in animals and to slowing or preventing the potential for the development of bacterial resistance to antimicrobial drugs administered through medicated feed.

In 1996 Congress enacted the ADAA to facilitate the approval and marketing of new animal drugs and medicated feeds. As part of the ADAA, Congress recognized that certain new animal drugs intended for use in animal feed should only be administered under a veterinarian's order and professional supervision. Therefore, the ADAA created a new category of products called veterinary feed directive drugs (or VFD drugs).

VFD drugs are new animal drugs intended for use in or on animal feed, which are limited by an approved application, conditionally approved application, or index listing to use under the professional supervision of a licensed veterinarian. In order for animal feed containing a VFD drug (VFD feed) to be fed to animals, a licensed veterinarian must first issue an order, called a veterinary feed directive (or VFD), providing for such use. In the **Federal Register** of December 8, 2000 (65 FR 76924), FDA issued a final rule amending the regulations in part 558 (21 CFR part 558) relating to new animal drugs for use in animal feed to implement the VFD-related provisions of the ADAA. In that final rule, FDA stated that because veterinarian oversight is so important for assuring the safe and appropriate use of certain new animal drugs, the Agency should approve such drugs for use in animal feed only if these medicated feeds are administered under a veterinarian's order and professional supervision. In addition, the final rule noted that safety concerns relating to the difficulty of disease diagnosis, drug toxicity, drug residues, antimicrobial resistance, or other reasons may dictate that the use of a medicated feed be limited to use by order and under the supervision of a licensed veterinarian.

It has been over a decade since FDA issued the final rule relating to VFDs. Although currently there are only a few approved VFD drugs, FDA has received comments from stakeholders characterizing the current VFD process as being overly burdensome. In response to these concerns, the Agency began exploring ways to improve the VFD program's efficiency. To that end, FDA initiated the rulemaking process through the publication of the March 2010 ANPRM. The March 2010 ANPRM requested public comment on whether efficiency improvements are needed and, if so, what specific revisions should be made to the VFD regulations. Subsequent to this, FDA published the

April 2012 draft proposed regulation based on the considerable public input it had received in response to the March 2010 ANPRM, and the Agency requested comment on this draft language also.

Recognizing that there would be challenges faced by animal producers and veterinarians as FDA phases in veterinary oversight of the therapeutic use of certain medically important antimicrobials, in the spring of 2013, FDA and the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service jointly sponsored a series of public meetings in various locations throughout the country (2013 public meetings). These meetings provided a forum to discuss potential challenges faced by animal producers in areas that may lack access to adequate veterinary services and to explore possible options for minimizing adverse impacts.

After considering the feedback received during the 2013 public meetings, as well as comments received on our March 2010 ANPRM and April 2012 draft proposed regulation, FDA published the December 2013 NPRM.

B. Judicious Use Policy for Medically Important Antimicrobials

On April 13, 2012, FDA finalized a guidance document entitled ''The Judicious Use of Medically Important Antimicrobial Drugs in Food-Producing Animals'' (GFI #209) (Ref. 1). This guidance document represents the Agency's current thinking regarding antimicrobial drugs that are medically important in human medicine and used in food-producing animals. Specifically, GFI #209 discusses FDA's concerns regarding the development of antimicrobial resistance in human and animal bacterial pathogens when medically important antimicrobial drugs are used in food-producing animals in an injudicious manner. In addition, GFI #209 recommends two principles for assuring the appropriate or judicious use of medically important antimicrobial drugs in food-producing animals in order to help minimize antimicrobial resistance development: (1) Limit medically important antimicrobial drugs to uses in animals that are considered necessary for assuring animal health and (2) limit medically important antimicrobial drugs to uses in animals that include veterinary oversight or consultation.

On December 13, 2013, FDA finalized a second guidance document, GFI #213, entitled ''New Animal Drugs and New Animal Drug Combination Products Administered in or on Medicated Feed or Drinking Water of Food-Producing Animals: Recommendations for Drug Sponsors for Voluntarily Aligning Product Use Conditions with GFI #209'' (Ref. 2). GFI #213 outlined a timeline and provided sponsors with specific recommendations on how they could voluntarily modify the use conditions of their medically important antimicrobial drug products administered in feed or water to align with the two judicious use principles announced in GFI #209. Once the use conditions of the affected products are changed, these products can no longer be legally used for production purposes, and can only be used for therapeutic purposes with the supervision of a licensed veterinarian.

Implementation of the judicious use principles set forth in GFI #209, particularly the second principle recommending that affected products be limited to uses in animals that include veterinarian oversight or consultation, reinforces the need for FDA to reconsider the current VFD program and how best to make the program more efficient and less burdensome for stakeholders while maintaining adequate protection for human and animal health. The majority of the antimicrobial animal drug products that are the focus of GFI #209 and GFI #213 are drugs approved for use in or on animal feed. All but a few of these drugs are currently available OTC without veterinary oversight or consultation and would be affected by the Agency's recommendation in the guidances to switch these products' marketing status from OTC to VFD. Therefore, it is important that the VFD process be as efficient as possible when FDA's judicious use policy is fully implemented to facilitate transition of these products from OTC to VFD marketing status. In addition, an overly burdensome VFD process could disrupt the movement of medicated feeds through commercial feed distribution channels, thereby impacting the availability of medicated feed products needed for addressing animal health issues.

II. Overview of the Final Rule

This final rule amends FDA's regulations found in parts 514 and 558 (21 CFR parts 514 and 558) to change and clarify certain definitions (§ 558.3 (21 CFR 558.3)), clarify the general requirements for VFD drugs (§ 558.6(a) (21 CFR 558.6(a))), clarify the responsibilities of the VFD drug sponsor (§ 514.1(b) (21 CFR 514.1(b)), and clarify specific responsibilities of the veterinarian issuing the VFD (§ 558.6(b) (21 CFR 558.6(b))). Also, in this final rule we clarify the specific responsibilities of any person who distributes an animal feed containing a VFD drug (§ 558.6(c) (21 CFR 558.6(c))).

In this rulemaking, the Agency finalizes many of the provisions in the December 2013 NPRM. In addition, the final rule reflects revisions the Agency made in response to comments on the December 2013 NPRM and certain revisions made by the Agency on its own initiative after considering all of the comments it received. Based on the changes to the final rule from the proposed rule, the Agency has determined that the effective date for the final rule should be 120 days after publication.

III. Comments on the Proposed Rule

This section summarizes comments FDA received in response to the December 2013 NPRM and the Agency's response to those comments. FDA received about 2,000 individual comments submitted to the docket on the December 2013 NPRM. Some of the comments contained signatures by multiple individuals or organizations. Comments were received from veterinary, feed manufacturing, and animal production associations, as well as consumer advocacy groups and individuals. Many of the comments received from veterinarian, feed manufacturing, animal production associations, and individuals generally supported the changes and requested some additional changes or clarification on particular issues. Many of the comments received from consumer advocacy groups and individuals raised concerns over whether the changes would sufficiently protect public health. FDA is making changes in the final rule to address these concerns where the Agency has determined such changes to be appropriate.

The order of the discussion reflects the order in the regulatory text and not the order of significance of a particular issue. To make it easier to identify comments and FDA's responses, the word ''Comment,'' in parentheses, appears before the comment's description, and the word ''Response,'' in parentheses, appears before FDA's response. Each comment is numbered to help distinguish between different comments. The number assigned to each comment is for organizational purposes and does not signify the comment's value or importance.

In addition to the comments specific to this rulemaking that we address in the following paragraphs, we received general comments expressing views about public health, the use of antimicrobials, antimicrobial resistance, antibiotic alternatives, animal husbandry practices, meat consumption,

food labeling, genetically modified organisms, chemicals in food, hormones in food, food (feed) additives, pesticides, fertilizers, trade policy, inspection frequency, violation penalties, and Agency funding. These comments express broad policy views and do not address specific points related to this rulemaking. Therefore, these general comments do not require a response.

A. Definitions Section (§ 558.3)

1. Category II Drug (§ 558.3(b)(1)(ii))

The December 2013 NPRM proposed to remove VFD drugs from the definition of Category II drugs. In this final rule, we are keeping our proposed definition, which means that VFD drugs will no longer be automatically designated as Category II drugs. Category I drugs will remain defined as drugs that do not require a withdrawal period at the lowest use level in each species for which they are approved. Category II drugs will be defined as drugs that require a withdrawal period at the lowest use level for at least one species for which they are approved, or are regulated on a ''no-residue'' basis or with a zero tolerance because of a carcinogenic concern, regardless of whether a withdrawal period is required. As a result of this change, VFD drugs will be designated as either Category I or II based on the definitions in the final rule, including the existing VFD drug products that previously were automatically designated as Category II drugs.

(Comment 1) There were multiple comments supporting FDA's proposed change to the definition of ''Category II'' drugs to discontinue the automatic designation of VFD drugs as Category II drugs. These comments supported Category I and II definitions that use a public health risk-based approach to designate drugs based on the potential for unsafe drug residues in edible tissues as reflected by drug withdrawal periods. At least one comment also recognized that without this change, farm animals may be unable to receive the treatment they need due to supply chain disruptions. This comment noted that limiting the manufacturing of VFD feed from Type A medicated articles to licensed feed mills by automatically designating them as Category II would cause a serious disruption in VFD feed availability and unnecessarily cause harm to animals. The comment further noted that the proposed change to remove the automatic designation should greatly reduce the supply chain consequences.

(Response 1) We agree that this approach provides a consistent scientific rationale for designating VFD drugs as Category I or II and will help prevent potential VFD feed supply chain concerns. Therefore, in this final rule, we are keeping the definition proposed in the December 2013 NPRM.

The definitions proposed in the December 2013 NPRM designate drugs as Category II if a withdrawal period is required at the lowest approved use level for any species, or if the drug is regulated on a ''no-residue'' basis or with a zero tolerance because of a carcinogenic concern regardless of whether a withdrawal period is required. The category in which a new animal drug is placed determines whether the Type A medicated article of that drug can be handled by a licensed or unlicensed mill. Type A medicated articles are the most concentrated form of the new animal drug and are used in the manufacture of another Type A medicated article, or a Type B or C medicated feed. A Type B medicated feed is intended solely for the manufacture of other Type B or Type C medicated feeds and contains a substantial quantity of nutrients with the new animal drug. A Type C medicated feed is intended as the complete feed for the animal or may be added on top of a usual ration, or offered as a supplement with other animal feed. A Type C medicated feed has the lowest concentration of the new animal drug. In order to reduce the potential to create unsafe drug residues, the manufacturing of medicated feeds with Category II Type A medicated articles is restricted to licensed feed mills. Licensed feed mills are generally better suited technically to manufacture feeds containing Category II drugs and are subject to more extensive good manufacturing practice requirements than unlicensed feed mills.

When the VFD regulations were implemented, FDA stated that ''classifying a drug as Category II adds additional regulatory controls because feed manufacturing facilities must possess a medicated feed mill license and be registered with FDA. . . . Registered feed mills are required to be inspected at least every 2 years. Such inspections will help the Agency to ensure that VFD requirements are met'' (65 FR 76924 at 76926). Since the regulations for VFD drugs were implemented over a decade ago, FDA's experience has not shown a continued need to ensure VFD requirements are met by automatically designating all VFD drugs as Category II drugs. Since January 8, 2001, when the initial VFD regulations became effective, FDA has only issued three warning letters for violations related to noncompliance with the VFD regulations (Ref. 3). Furthermore, licensed feed mills are now required to be inspected according to risk instead of at a set frequency. Drug categorization determines whether a facility needs to be licensed to handle the drug in the Type A form and is meant to provide additional regulatory oversight for the manufacturing of the drug to minimize the potential for drug residues to occur. In contrast, VFD designation is intended primarily to provide for veterinary supervision of the use of medicated feeds containing VFD drugs (VFD feeds). For VFD drugs that would otherwise be categorized as Category I drugs (*i.e.,* do not require a withdrawal period at the lowest use level), FDA does not believe it is necessary to limit the manufacture of VFD feeds to licensed feed mills. Whether manufactured at a licensed or unlicensed feed mill, VFD feeds can only be used when authorized by a lawful VFD issued by a veterinarian.

In addition, we agree this change will help prevent the potential supply chain disruptions for VFD feeds that otherwise are likely to occur once the Agency's policy regarding the judicious use of medically important antimicrobial drugs in food-producing animals is fully implemented. The existing definition of Category II drugs includes a provision that says *all* VFD drugs are Category II drugs, regardless of their potential to create unsafe drug residues. Thus, if FDA's policy regarding the judicious use of medically important antimicrobials were implemented with the definitions in the current regulations, drugs currently designated as Category I drugs that transition from OTC to VFD marketing status would automatically move from Category I to Category II. FDA is concerned that this automatic designation would cause supply chain disruptions for VFD feeds because the Type A medicated articles would be restricted to use by licensed feed mills, which number less than 1,000. Currently, since these drugs are OTC Category I drugs, they are able to be used in the Type A form by unlicensed feed mills, which number in the tens of thousands, including farms that manufacture their own medicated feed for their own animals.

For these reasons, FDA is revising the definition of Category II to eliminate the automatic designation of VFD drugs into Category II. Once those medically important antimicrobial drugs that are currently marketed OTC are converted to VFD status as part of the implementation of FDA's judicious use policy, they will be placed in Category

I or II based on whether they have a withdrawal period at the lowest use level for at least 1 species in which they are approved or whether they are regulated on a ''no residue'' basis or with a zero tolerance because of carcinogenic concern, as defined in § 558.3. As a result, five of these medically important antimicrobial new animal drugs are expected to remain in Category I; approximately three drugs are expected to move from Category I into Category II. Each of these drugs account for multiple drug product approvals, conditional approvals, or index listings. Type A medicated articles for the drugs that remain in Category I will continue to be available for use by the unlicensed feed mills currently using these drugs as OTC drugs in medicated feeds, thus reducing the potential for supply chain disruption.

(Comment 2) FDA also received multiple comments opposing the proposed change to the definition of a ''Category II'' drug. Most of these comments stated a concern about unlicensed feed mills handling Type A medicated articles for drugs that are VFDs or antimicrobials. The shared concern was that there would not be sufficient controls in place, or oversight over unlicensed feed mills, to ensure that these drugs are handled according to the requirements of the VFD regulation. One comment was concerned that without requiring VFD drugs to first go through a licensed feed mill, coupled with the proposed removal of the explicit Federal VCPR requirement and the proposed change to the definition of distributor, FDA would have no way to monitor the majority of VFD drug use.

(Response 2) At the time VFD regulations were initially issued in December 2000, FDA was concerned that adherence to VFD regulations would require additional regulatory oversight for the proper use of VFD drugs in VFD feed. After over a decade of experience, FDA has only issued three warning letters for compliance issues in the handling of VFD drugs as Type A medicated articles by licensed feed mills, or as Type B or C VFD feed by unlicensed feed mills (Ref. 3). Furthermore, unlicensed feed mills routinely handle Category I Type A medicated articles and are also required to adhere to current good manufacturing practices (CGMPs). Although FDA may not inspect unlicensed feed mills at the same frequency as licensed feed mills, they are inspected for cause when surveillance tools, such as tissue residue or feed sampling, determine that a problem has occurred (Ref. 4). State regulatory Agencies also inspect licensed and unlicensed feed mills (Ref. 5). Therefore, FDA does not believe VFD drugs require continued automatic designation as Category II drugs.

FDA recognizes that feed mill licensing is one method for FDA to maintain an inventory of feed mills that handle and use Type A VFD medicated articles; however, feed mill licensing is not the only way for FDA to be aware of VFD drug use. Furthermore, with respect to the concern raised in one of the comments that the change in the Category II definition, taken together with other proposed changes would diminish FDA's ability to monitor VFD use, the Agency is taking measures to address that concern. First, FDA has reintroduced an explicit VCPR requirement into the provisions for veterinarian supervision and oversight in the regulatory text. Second, FDA has also chosen not to proceed with the proposed changes to the definition of distributor outlined in the December 2013 NPRM and has clarified elsewhere in this document particular actions of on-farm processors that make them distributors.

FDA intends to use a phased enforcement strategy for implementation of this final rule as OTC drugs become VFD drugs under GFI #213. FDA first intends to provide education and training for stakeholders subject to this final rule, such as veterinarians, clients (animal producers), feed mill distributors and other distributors. These education and training efforts are important for supporting effective implementation and compliance with the final rule. As products change to VFD status under the process outlined in GFI #213, FDA will engage in general surveillance, as well as for-cause inspection assignments. These assignments will be risk-based and in response to adverse observations. In order to engage in a risk-based work planning approach, FDA intends to gather information, such as VFD use and the volume of VFD feed being produced within the industry. This information would be gathered through multiple sources, such as FDA food and drug registration information, feed mill licensing information, the VFD distributor notifications FDA receives, and VFD distribution records maintained by drug sponsors and VFD distributors. This information will allow FDA to focus inspectional resources within the industry based on risk.

Therefore, FDA is removing VFD drugs from the definition of Category II drugs. Instead of automatic Category II designation, VFD drugs will now be categorized according to the risk of drug residues based on whether they have a withdrawal period at the lowest level use in any species for which they are approved, or whether they are regulated on a ''no residue'' basis or with a zero tolerance because of carcinogenic concern. This includes the existing approved VFD drug products, each of which will either remain in Category II or be redesignated as Category I drugs based on whether they meet the definition of Category I or the revised definition of Category II.

2. Veterinary Feed Directive Drug (§ 558.3(b)(6))

In the December 2013 NPRM, we proposed changes to better align the definition of ''veterinary feed directive (VFD) drug'' in FDA's regulations with the statutory definition in section 504 of the FD&C Act (21 U.S.C. 354) and to provide additional clarity. We did not receive comments specifically related to our proposed change in definition. However, upon further review we are providing more clarity to the VFD drug definition in this final rule by using the statutory definition in the FD&C Act. That definition of a ''veterinary feed directive (VFD) drug'' states that it is ''[a] drug intended for use in or on animal feed which is limited by an approved application filed pursuant to section 512(b), a conditionally-approved application filed pursuant to section 571, or an index listing pursuant to section 572 to use under the professional supervision of a licensed veterinarian. . . .'' This change in § 558.3(b)(6) provides consistency between the statute and the regulation and helps to reduce the potential for confusion.

3. Veterinary Feed Directive (§ 558.3(b)(7))

FDA did not receive specific comments regarding the addition of language in the proposed VFD definition in § 558.3(b)(7) stating that a VFD may be issued in hardcopy or through electronic means. However, upon further review, we are removing this duplicative language because similar language appears in § 558.6(b) concerning the responsibilities of the veterinarian issuing the VFD. Section 558.6(b) provides more clarity by specifying that a fax also can be used. This change avoids duplication in the regulatory text and helps to reduce potential reader confusion about whether transmitting a VFD by fax is allowed.

Also to help reduce the potential for confusion, FDA is removing the duplicative language concerning the oversight and supervision requirements

for issuing a VFD from the definition of a veterinary feed directive (§ 558.3(b)(7)) and from the general requirements related to veterinary feed directive drugs (§ 558.6(a)(1)), because the same requirements are also in the provision (§ 558.6(b)) that discusses the responsibilities of the veterinarian issuing the VFD. FDA received many comments concerning the oversight and supervision requirements for veterinarians issuing a VFD, which are addressed in the discussion of the responsibilities of the veterinarian issuing the VFD (558.6(b)). This change eliminates duplication in the regulatory text and clarifies that the requirement for oversight and supervision is the responsibility of the veterinarian.

4. Distributor (§ 558.3(b)(9))

In the December 2013 NPRM, we proposed to change the definition of ''distributor.'' In particular, we proposed to change the phrase ''any person who distributes a medicated feed containing a VFD drug to another person'' to ''any person who consigns a medicated feed containing a VFD drug to another person.'' Many of the comments we received expressed concern that this definitional change was meant to narrow the scope of who is defined as a distributor.

(Comment 3) Some comments requested that we maintain the current definition that a distributor is any person who distributes a medicated feed containing a VFD drug to another distributor or to the client-recipient of the VFD. These comments were concerned that use of the term ''consigns'' instead of ''distributes'' in the proposed definition would exempt operations that were previously considered to be distributors. Some of these comments thought that the proposed changes would narrow the scope of the definition such that it would exclude from the distributor notification requirements the majority of facilities where medicated feeds are mixed. One comment supported the definition of distributor proposed in the December 2013 NPRM.

(Response 3) We used the term ''consigns'' in place of the term ''distributes'' with the intent to provide additional clarity; however, the comments we received indicated this proposed terminology was more confusing. In addition, many comments perceived this change as an attempt to narrow the definition of distributor. As stated in the December 2013 NPRM, our intent was to improve the clarity of this definition, not to narrow the scope. As a result of the comments received and the discussions that occurred at public meetings about this proposed change, we are retaining the existing term ''distributes'' as part of the definition of distributor.

In the December 2013 NPRM, we noted that ''on-farm mixers that only manufacture medicated feeds for use in their own animals are not distributors.'' Based on the comments, we would like to provide additional clarity. Some comments perceived this statement to exempt all on-farm mixers from requirements that apply to distributors. However, this statement was intended to describe a limited and specific situation in which FDA does not intend to consider on-farm mixers to be distributors. By on-farm mixers, we were specifically referring to any person who is mixing VFD feed on a ''farm'' as that term is defined in 21 CFR 1.227, who is only feeding that VFD feed to their own animals on that farm. In addition, the on-farm mixer must only be manufacturing VFD feed for their use in their own animals on their own farm (*e.g.,* animal production facility), meaning that the ownership of the feed mill, the animals, and the animal production facility must be the same and the on-farm mixer must be the person using the VFD feed. In contrast, for example, when Person A mixes VFD feed on their farm for their own animals, but also mixes feed and distributes it to Person B's farm, Person A is acting as a ''distributor'' as that term is defined in § 558.3 and, therefore, will be required to comply with the distributor requirements. Another example is when Person C operates a feed mill and owns animals, but distributes the feed to Person D who raises Person C's animals on Person D's farm (*e.g.,* a contract grower), that person (Person C) who operates the feed mill would also be a distributor under the definition.

(Comment 4) Some comments requested that all facilities that dispense feed to an animal production facility be required to submit a notification to FDA. One comment suggested we define a distributor as ''any person who consigns a medicated feed containing a VFD drug to another distributor or to an animal production facility.''

(Response 4) FDA does not believe it is necessary to require that all persons who dispense VFD feed to an animal production facility submit a notification to FDA. For example, if a person purchases a Type B VFD feed and then mixes it on their farm into a Type C VFD feed and feeds it to their own animals on their farm in accordance with a lawful VFD, they are dispensing VFD feed to an animal production facility because the mixing operations are not part of the animal production facility. However, they are not acting as a ''distributor'' as that term is defined in § 558.3 because they are not distributing to another person. When a person who dispenses VFD feed to an animal production facility obtains the VFD feed from a distributor, they are required to submit a VFD or acknowledgment letter to the distributor from whom they obtained the VFD feed. This documentation allows FDA to identify users of VFD feed from the distributor's records for purposes of surveillance, inspection, or investigation. In addition, should a person who dispenses VFD feed to an animal production facility obtain a VFD Type A medicated article for manufacture of the VFD feed, the sponsor of the VFD Type A medicated article is required to maintain a record of distribution.

(Comment 5) One comment was concerned that the required one-time notification to FDA that someone is a distributor of VFD feeds could discourage distribution and sale of floor stock.

(Response 5) The requirement for a person distributing VFD feed to notify FDA when they first engage in such distribution is a statutory requirement. (See section 504(a)(3)(C) of the FD&C Act.) We understand that some businesses may choose not to engage in the sale of floor stock. However, in order to adequately protect public and animal health, FDA must be able to track the distribution of VFD feed, and one-time notification to FDA upon first engaging in the distribution of a VFD feed provides the minimum information needed for this tracking. We do not agree that the minimal burden of a one-time notification to FDA would be a significant factor in discouraging the distribution of floor stock. Furthermore, FDA believes there is no compelling reason to treat distributors who only sell floor stock differently from distributors who distribute VFD feed through other sales models.

(Comment 6) One comment requested clarification on whether a manufacturer of a Type B VFD feed who distributes the Type B VFD feed to an animal producer who then makes a Type C VFD feed needs to get an acknowledgement letter from the animal producer as opposed to a VFD.

(Response 6) When a manufacturer of a Type B VFD feed distributes the Type B VFD feed to an animal producer, the animal producer may manufacture a Type C VFD feed to either feed the VFD feed to his or her own animals and/or further distribute the Type C VFD feed to another distributor or client-recipient. If the Type B VFD feed is being shipped to an animal producer who is not a

distributor, the animal producer must provide a VFD for the receipt of the Type B VFD feed from the distributor. If the Type B VFD feed is being shipped to an animal producer who is a distributor that has sent a one-time notification to FDA, the animal producer must supply either an acknowledgment letter or a VFD for the receipt of the Type B VFD feed from the distributor. (**Note:** In order for the animal producer to receive a Type B or Type C VFD feed without a VFD in hand, he or she must have previously notified FDA that he or she is a distributor.) If the animal producer provides an acknowledgment letter to the distributor from whom the animal producer receives the VFD feed, the animal producer must either receive an acknowledgment letter or a VFD prior to further distributing the VFD feed to another person, or have a VFD on hand prior to feeding the Type C VFD feed to his or her own animals. We have revised the definition of acknowledgment letter in (§ 558.3(b)(11)) to clarify that when an animal producer is acting as a distributor as defined in (§ 558.3(b)(9)), they may provide an acknowledgment letter even if they are the ultimate user of some of the VFD feed.

5. Animal Production Facility (§ 558.3(b)(10))

The December 2013 NPRM did not propose a change to the definition of animal production facility. However, we received comment on the definition.

(Comment 7) A few comments requested that FDA define ''animal production facility'' more broadly to include the location where the medicated feed is made. These comments cited a concern that movement of VFD feed would be limited by this definition because shipment of VFD feed to an animal production facility must frequently go beyond the gate to a facility or feed mill where the animals are not housed.

(Response 7) The term animal production facility is defined as ''a location where animals are raised for any purpose, but does not include the specific location where medicated feed is made.'' (§ 558.3(b)(10)). The definition of animal production facility does not hinder the movement of feed between a feed mill and an animal production facility. VFD feed may be shipped from a distributor directly to an animal production facility, or may first be delivered to a facility or feed mill that is located where the animals are not housed. Provided the recipient of such feed has a lawful VFD and is the owner of both the facility or feed mill to which the feed was delivered and the animal production facility, further movement of that VFD feed to the actual animal production facility would not be limited and we would not consider such further movement to be the activity of a ''distributor.''

6. Combination VFD Drug (§ 558.3(b)(12))

In the December 2013 NPRM, we added a definition for the term ''combination veterinary feed directive (VFD) drug.'' In the final rule, we have further clarified that definition to align the language with the statutory definition of a veterinary feed directive drug.

B. Veterinary Feed Directive Drugs (§ 558.6)

1. General Requirements Related to VFD Drugs (§ 558.6(a))

a. VFD Retention and Transmission Requirements (§ 558.6(a)(4))

In the December 2013 NPRM, we proposed that VFDs would no longer be specifically required to be produced in triplicate; however, all three involved parties (veterinarian, distributor, and client) still would be required to receive and keep a copy of the VFD, either electronically or in hardcopy. If the VFD is transmitted electronically, the veterinarian would no longer be required to send the original in hardcopy to the distributor.

(Comment 8) Many comments supported these changes. Some comments indicated that there was some confusion about whether an electronic copy of the VFD would satisfy the recordkeeping requirement.

(Response 8) To improve the clarity of this section, we have revised the regulatory text to more precisely indicate the recordkeeping requirements. An electronic copy of the VFD is sufficient for recordkeeping purposes. The original no longer needs to be sent to the distributor. As we stated in the December 2013 NPRM, this hardcopy requirement has become outdated by modern electronic communication and presents an unnecessary burden on the industry.

This revision further reduces the number of paper copies requiring physical recordkeeping space. The December NPRM, however, did not specify who should maintain the original. Because of the confusion indicated in the comments, we are revising the rule to specify that the original should be maintained by the veterinarian who issued the VFD and should be maintained in the manner it was generated, either electronic or hardcopy. The client and distributor should each also have a copy of the VFD, and that copy may be electronic or hardcopy.

(Comment 9) A few comments addressed the regulatory requirements for electronically generated documents. One comment asked what requirements would apply to records with an electronic signature. Another comment urged FDA to not require compliance with 21 CFR part 11 (part 11) for VFDs transmitted and stored electronically.

(Response 9) The regulations in part 11 (Electronic Records; Electronic Signatures) describe FDA's standards for assessing whether electronic records and electronic signatures are trustworthy and reliable and generally equivalent to paper records with handwritten signatures. Electronic records, such as an electronic VFD that meets the requirements of part 11, may be used in lieu of a paper VFD (*i.e.,* VFDs that are generated and signed on paper). As we have previously stated in GFI #120: Veterinary Feed Directive Regulation Questions and Answers, published on March 26, 2009, part 11 applies to records in electronic form that are created, modified, maintained, archived, retrieved, or transmitted, under any FDA records requirements. Therefore, electronic VFDs issued by veterinarians must be compliant with part 11, and VFDs received and electronically stored by distributors and clients must be compliant with part 11. Part 11 does not apply to paper records that are, or have been, transmitted by electronic means (such as facsimile, email attachments, etc.). Part 11 requires a one-time certification that the electronic signatures in their system, used after August 20, 1997, are intended to be the legally binding equivalent of the signer's handwritten signature (Ref. 6). Additional information about part 11 compliance, including information on how FDA intends to exercise enforcement discretion with regard to certain part 11 requirements during the reexamination of part 11, can be found in GFI Part 11, Electronic Records; Electronic Signatures—Scope and Application (Ref. 7).

(Comment 10) One comment suggested that a paper VFD process would be unwieldy, costly, and burdensome.

(Response 10) There are relative advantages and disadvantages to generating and keeping records in either electronic or paper form. We believe that businesses should be able to decide what format (electronic or hard copy) they would like to use to fulfill the recordkeeping requirements. For that reason, we proposed regulations that removed the explicit requirement that

VFDs be issued in triplicate and that the original VFD be transferred from the veterinarian (either directly or through the client) to the distributor. The final regulatory text allows businesses to decide, based on their unique business structure and operation, which recordkeeping format (electronic or paper) to use to fulfill the VFD recordkeeping requirements.

b. Caution Statement on Labeling (§ 558.6(a)(6))

(Comment 11) One comment requested clarification about the caution statement required on labeling and advertising for VFD drugs and feeds containing VFD drugs. The comment recognized that for products in paper bags this would be appropriate, but wondered what would be required for feed that is delivered in bulk where there is no container.

(Response 11) As reflected in the regulatory text, all labeling and advertising for VFD drugs, combination VFD drugs, and feeds containing VFD drugs or combination VFD drugs must prominently and conspicuously display the cautionary statement. In section 201(m) of the FD&C Act (21 U.S.C. 321(m)), ''labeling'' is defined as ''all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.'' Packaged food typically has a label affixed to the package or container; however, any labeling or advertising would also need to contain the statement. Bulk food typically does not have a label affixed to the container, but is accompanied by labeling to meet other requirements of the FD&C Act, such as displaying the common or usual name of the animal food, as well as any other information already required by existing regulations. FDA would expect that the caution statement be on this labeling, as well as any other labeling or advertising for the bulk food.

c. Length of Time VFD and Records Must Be Kept (§ 558.6)

In the December 2013 NPRM, we proposed to reduce the length of time a VFD and records related to a VFD must be kept from the currently required 2 years to 1 year. We received many comments related to this requirement. After further considering this issue, we are retaining the existing 2-year recordkeeping requirement.

(Comment 12) We received many comments requesting FDA to maintain the current 2-year recordkeeping requirement. We also received several comments supporting the proposed 1-year recordkeeping period. Some of these comments supported the 1-year requirement because many VFD records are also required to be kept under the CGMP recordkeeping requirements for medicated feeds found in part 225 (21 CFR part 225), and those requirements specify a 1-year retention period. A few comments requested a requirement that records related to VFDs be kept for a period shorter than 1 year, or longer than 2 years.

(Response 12) In response to comments and after further consideration of the issue, we are requiring that VFDs and all required records related to VFDs for veterinarians, clients, and distributors be kept for a period of 2 years. This record retention period is the same as the current record retention requirement. Our purpose in proposing the 1-year recordkeeping requirement in the December 2013 NPRM was to better align the VFD recordkeeping requirements with those in the CGMP regulations in part 225 for medicated feed. All records required under part 558 of this chapter must be kept for 2 years. In addition, as discussed elsewhere in this document, we believe it is important that all parties be required to maintain VFD receipt and distribution records for 2 years, irrespective of whether the party is required to maintain receipt and distribution records under part 225 of this chapter. We believe that there are several benefits to a 2-year VFD record retention period.

The first benefit is that a 2-year VFD recordkeeping requirement aligns with the recently published Current Good Manufacturing Practice and Hazard Analysis and Risk-Based Preventive Controls for Food for Animals proposed rule (78 FR 64736; October 29, 2013). This proposed rule includes new CGMP requirements for operations that manufacture, process, pack, and hold animal food, including animal feed, and proposes a 2-year records retention period. Some of those recordkeeping requirements would also fulfill the VFD recordkeeping requirements. We believe that, because many operators manufacturing or distributing animal feed bearing or containing VFD drugs may be required to comply with these proposed CGMP requirements, they would benefit from such a recordkeeping requirement alignment.

In addition, while we still believe that a longer retention period ordinarily will not be critical in order to investigate violative drug residues in edible animal tissues, the longer record retention period would provide a more complete history of records, which is useful in identifying patterns of noncompliance with the VFD regulations during regular inspections.

As discussed elsewhere in this document, this final rule adds clarifying language that distributors who manufacture animal feed bearing or containing VFD drugs must keep VFD feed manufacturing records for 1 year in accordance with part 225. These manufacturing records are not required to be kept for 2 years unless they are also required to be kept under part 558 of this chapter (*e.g.,* the VFD and distribution records).

2. Responsibilities of the Veterinarian Issuing the VFD (§ 558.6(b))

a. Veterinarian Oversight, Supervision and the Veterinarian Client-Patient Relationship (VCPR) (§ 558.6)(b)(1)).

FDA is requiring that any veterinarian issuing a VFD be licensed to practice veterinary medicine and operate in compliance with appropriate State defined veterinarian-client-patient relationship (VCPR) requirements or Federally defined VCPR requirements where no applicable and appropriate State VCPR requirements exist. Some States' licensing and practice requirements specify that a VCPR as defined by that State's law must exist before a VFD can be issued. In those States with VCPR requirements that include the key elements of a VCPR as described in the Federal definition (§ 530.3(i)), FDA intends to defer to the State VCPR requirement. This has the advantage of being able to leverage the accountability that comes with State licensing board oversight to ensure compliance with the VCPR requirement, while providing States the flexibility to adapt their VCPR requirements appropriately to local conditions. Although elements of a VCPR are discussed in the paragraphs that follow, FDA believes that in order for the State defined VCPR requirements to sufficiently ''include the key elements of a VCPR as defined in § 530.3(i),'' the State defined VCPR must at least address the concepts that the veterinarian: (1) Engage with the client to assume responsibility for making clinical judgments about patient health, (2) have sufficient knowledge of the patient by virtue of patient examination and/or visits to the facility where patient is managed, and (3) provide for any necessary followup evaluation or care. In States where the practice requirements do not require that a VFD be issued within the context of a State defined VCPR, FDA is requiring that the VFD be issued within the context of a Federally defined valid VCPR.

(Comment 13) The majority of comments supported maintaining a veterinarian-client-patient relationship (VCPR) as a requirement for issuing a VFD. A large number of those comments asked FDA to maintain the Federal definition of a VCPR because some States either do not define VCPR in their State licensing and practice requirements, or they include a VCPR requirement for dispensing prescription drugs or controlled substances, but not for issuing a VFD. Many comments raised the specific concern that the veterinarian who issues a VFD should be required to have recently seen the animals specified in the VFD or visited the farm on which the animals were kept.

(Response 13) FDA agrees that a veterinarian-client-patient relationship is an important element of veterinary supervision and oversight of the VFD process. As stated in the December 2013 NPRM, our intent in revising the VCPR provisions was to ''appropriately defer to existing regulatory oversight standards for veterinary professional conduct,'' which are overseen by the State organizations responsible for the licensing of veterinarians. We did not intend to eliminate requiring a VCPR for the issuance of a lawful VFD. Instead, we intended to broaden the concept of supervision and oversight to include a VCPR and other practice requirements as defined by the State to allow for practice variations and the need for flexibility among State requirements.

After reviewing the comments, it is clear that some people have interpreted our proposed changes as a relaxation of the existing VCPR requirement. We acknowledge that not all States currently require that a VCPR must exist before a VFD can be issued and that there is some uncertainty as to when or if such States will choose to establish such a requirement subsequent to finalization of this rule. To address potential gaps in those States that currently lack VCPR requirements applicable to VFDs, we are changing the regulatory text to specify that in those States that require a VCPR that includes the key elements of the Federally defined VCPR in order for a veterinarian to issue a VFD, the veterinarian issuing the VFD must be operating within the context of a VCPR as that term is defined by the State. In all other cases, the veterinarian must be operating within the context of a valid VCPR as defined by FDA in § 530.3(i).

A review of the States that have VCPR requirements in place that are applicable to the issuance of VFDs reveals that those VCPR requirements typically provide that the animals or premises must recently have been seen by the veterinarian, or that the veterinarian otherwise have on-farm knowledge of the animals sufficient to make a diagnosis. Some States go further, requiring that the animals must have been seen by the veterinarian within a certain timeframe, or that the veterinarian has performed an actual examination of the animals. FDA, therefore, believes that recognizing State professional standards for issuing a VFD in accordance with VCPR requirements as prescribed by State law or, where no applicable State VCPR requirements exist, requiring the VFD to be issued in compliance with Federally defined VCPR requirements, addresses the concern raised by these comments that some States currently lack VCPR requirements applicable to VFDs, as well as the concern that the veterinarian should be required to have recently seen the animals specified in the VFD or visited the farm on which the animals are kept.

(Comment 14) A large number of comments did not specifically mention a VCPR requirement, but more broadly supported veterinary supervision and oversight of the VFD process.

(Response 14) We agree that veterinary supervision and oversight is important in the issuance of a VFD. We believe that the requirements we have included in the regulatory text will help ensure adequate veterinarian oversight and supervision over the use of VFD drugs in animal feed and are responsive to the comments received.

(Comment 15) A number of comments supported the proposed intent of the December 2013 NPRM to defer to State standards for the practice of veterinary medicine. These comments supported allowing flexibility for States to set practice standards that address the particular needs and concerns of the State, including the issue of veterinary shortages. Several comments also supported the intention to recognize professional expertise and oversight by State licensing boards to enforce professional conduct and practice requirements.

(Response 15) We agree that the practice of veterinary medicine has traditionally been regulated at the State level and that the States generally are in a better position to establish and enforce the requirements of the practice of veterinary medicine. However, not all States have appropriate VCPR requirements specifically applicable to the issuance of a VFD. As a result, we believe that the approach we proposed in the December 2013 NPRM to defer to State practice standards needs to be supplemented with Federally defined VCPR requirements that apply to States without such requirements, so that all VFDs will continue to be issued under veterinary supervision and oversight within the context of a defined and appropriate VCPR. This approach addresses both our original intent, as well as the concerns raised in the comments.

(Comment 16) A number of comments raised the concern that there is a shortage of veterinarians, or veterinarians with specialized expertise, in certain geographical areas. One comment said that the regulation did not fully address the veterinary shortage issue. A few comments requested that the rule should include an exemption for farms that have limited access to veterinarians, or FDA should make funds available to ensure the farms have access to veterinarians for treatment of sick animals. One comment requested that FDA work with USDA on an assistance program for small farmers to enable access to veterinary care and support the study of large animal medicine so more veterinarians will enter the field. At least one comment cited studies from the American Veterinary Medical Association (AVMA) and the Cornucopia Institute documenting the lack of access to affordable and competent veterinarians in rural areas. This comment also stated that, according to the American College of Poultry Veterinarians, there are only 235 veterinarians available to the poultry industry in the United States. One comment suggested that an exemption be made for farmers who cannot access a veterinarian and for species where the drug administration route of best efficacy is feed or water.

(Response 16) We recognize and share the concerns raised in the comments regarding the challenges that animal producers may face in accessing qualified veterinary care. In light of these concerns, FDA also carefully considered the feedback received on this issue from the April 2012 draft proposed regulation and the 2013 public meetings with stakeholders in rural areas to identify regulatory changes that might help to mitigate this concern. For example, FDA's intent in proposing in the December 2013 NPRM to remove the ''one-size-fits-all'' Federally defined VCPR standard was to allow the veterinary profession and States the flexibility needed ''to adjust the specific criteria for a VCPR to appropriately align with current veterinary practice standards, technological and medical advances, and other regional considerations'' (78 FR 75515 at 75518). In the NPRM, we stated that this greater flexibility ''could allow veterinarians to

more effectively provide services to food animal producers in remote geographical areas where veterinary professional resources are limited and distances are great'' (78 FR 75515 at 75518). We believe this proposed change provides the flexibility needed for States with a VCPR requirement for VFDs to address the concern regarding access to qualified veterinary care. As stated in ''Response 13,'' of this section, for States that do not have an appropriate VCPR requirement as part of their VFD regulations, we are adding a requirement to this final rule that when issuing VFDs, veterinarians must operate within the context of a valid VCPR as defined by FDA in § 530.3(i). We believe that this approach strikes the appropriate balance, allowing adequate flexibility for States to account for limited veterinary resources while still providing a Federal assurance of appropriate oversight.

As veterinary oversight of the therapeutic use of certain medically important antimicrobials is phased in, FDA will continue to seek opportunities to work with our Federal, State, and other stakeholder partners to help address the practical issues associated with limited access to veterinary services in certain parts of the country.

(Comment 17) A few comments raised the concern that requiring veterinarian supervision and oversight would impose an unreasonable financial burden on small farmers. As a solution, these comments stated that a VCPR should be required only for confinement agricultural feeding operations and farms with more than $300,000 turnover, and small producers should be exempt from VCPR requirements. One comment suggested an exemption for species where the feed or water route of administration is the only practical means of effectively administering antimicrobial therapy.

(Response 17) We disagree that the requirements for veterinarian supervision and oversight should not apply to the VFDs issued to small farmers or for certain species. Section 504 of the FD&C Act (21 U.S.C. 354) requires that VFD drugs be used under a veterinarian's supervision. As a result, veterinary supervision for the use of VFD drugs is required, whether or not certain animal producers or operations would be exempt from State or Federally defined VCPR requirements. Therefore, exempting small animal producers or certain species from VCPR requirements would not likely result in any cost savings for their use of VFD drugs because the statute requires the veterinarian to be involved in the issuance of a VFD. In addition, it would be difficult and confusing for veterinarians to determine whether such an exemption would apply. For these reasons, FDA does not believe that this proposal is a viable solution.

Furthermore, FDA does not believe that continuing to require a VCPR, whether State or Federally defined, to issue a VFD results in an unreasonable financial burden on animal producers. FDA continues to believe that veterinary oversight of the use of medically important antimicrobial drugs in feed is a critical measure for ensuring judicious use of these drugs in support of efforts to minimize antimicrobial resistance. Maintaining a requirement for an appropriate VCPR is a fundamental element of providing for meaningful veterinary oversight. FDA will continue to seek opportunities to work with our Federal, State, and other stakeholder partners to help address the practical issues that arise as veterinary oversight of the therapeutic use of certain medically important antimicrobials is phased in.

(Comment 18) A few comments stated that the requirement for supervision and oversight was not clear, or advocated for specific requirements to be included as part of supervision and oversight. These comments requested more specific guidelines describing the amount of time the veterinarian must spend on the farm or ranch, how recently the veterinarian must have seen the animals or farm, whether the veterinarian needs to see the animals or visit the farm in person, and what it means for a veterinarian to be familiar with the client's operation. The comments also expressed concern that veterinarians be licensed in each State where there is a facility under the operation, and that the facility should be recently visited so that the veterinarian is familiar with the local conditions in which the animals are raised.

(Response 18) We have addressed these concerns by including more specific language about the requirements for veterinary supervision and oversight, including compliance with State licensing and practice requirements and the continued role of a VCPR in § 558.6(b)(1). The State and Federal definitions of VCPR set out the requirements for the veterinarian to establish an appropriate relationship with the client and the animal(s) for which services are being provided.

The first element of the Federal VCPR is that ''A veterinarian has assumed the responsibility for making medical judgments regarding the health of (an) animal(s) and the need for medical treatment, and the client (the owner of the animal or animals or other caretaker) has agreed to follow the instructions of the veterinarian'' (§ 530.3(i)(1)). For the States that define a VCPR, all but one State includes in their definition a statement about the responsibility the veterinarian assumes in making medical judgments about the animal's health. Many of the States go further and specify the owner or animal producer's responsibility to follow the veterinarian's instructions.

The second element of the Federal definition of VCPR states that ''There is sufficient knowledge of the animal(s) by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal(s) . . .'' (§ 530.3(i)(2)). In addition, the definition states that ''[s]uch a relationship can exist only when the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s) by virtue of examination of the animal(s), and/or by medically appropriate and timely visits to the premises where the animal(s) are kept'' (§ 530.3(i)(3)). Typically, a veterinarian has an ongoing relationship with the client and the client's animals being treated such that the veterinarian is familiar with the animal production operation and has made previous visits to their facility(s). This relationship also allows the veterinarian to provide education to the client about appropriate use of medication, including storage, use, and withdrawal times. FDA expects that a veterinarian will only authorize use of a VFD feed in animals for which he or she has such knowledge and familiarity. For the States that define a VCPR, all but one State includes in their definition a statement about the veterinarian's knowledge of or acquaintance with the animal or operations. Most of the States that incorporate this knowledge or acquaintance criterion in their VCPR definition provide similar detail to the Federal definition about what constitutes sufficient knowledge, such as requirements that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s) by an examination or medically appropriate and timely visits. Some States are even more specific and specify the time period in which the animal must have been seen by the veterinarian. A few States do not have a knowledge or acquaintance criterion, but instead require that the veterinarian has actually examined the animal or a representative segment of the consignment or herd. Thus, in most States, these requirements regarding responsibility are the same or similar to the current Federal definition.

The third element of the Federal VCPR is that ''The practicing veterinarian is readily available for followup in case of adverse reactions or failure of the regimen of therapy'' (§ 530.3(i)(3)). The State VCPR definitions vary the most among each other and from the Federal definition in what they require regarding followup care. Seven States that define VCPR do not specify in their VCPR a requirement for followup veterinary availability. The primary role of the veterinarian in issuing a VFD is the supervision and oversight needed for the issuance of the VFD and feeding of the VFD feed. Even though some States do not have specific requirements about how readily available the veterinarian must be for followup, these States all have a requirement that the veterinarian is knowledgeable of, or acquainted with the animals, or farm, and/or the veterinarian has assumed the responsibility for making medical judgments regarding the health of the animal and its need for medical treatment.

Most of the States that have a VCPR requirement that applies to the issuance of VFDs define a VCPR in a manner consistent with the Federal VCPR. Like the Federally defined VCPR, the key elements of a VCPR for many of these States includes the requirements that the veterinarian issuing a VFD assume responsibility for the medical care of the animal and have sufficient knowledge of the animal or herd based on having recently seen and being personally acquainted with the keeping and care of the animals and/or perform an actual examination of the animal or herd or make timely visits to the operation. For that reason, we believe that deferring to the State VCPR standard for those States that define an appropriate VCPR applicable to VFDs will allow States the needed flexibility to factor regional considerations into their VCPR requirements while, at the same time, continuing to provide sufficient protection for human and animal health. In those States that do not define a VCPR that includes the key elements in the Federally defined VCPR, or in the States that define a VCPR but do not require it for the issuance of a VFD, the veterinarian is required to issue the VFD within the context of a valid VCPR as that term is defined by FDA at § 530.1(i). FDA will work with States to finalize its list of the States that have an appropriate VCPR that applies to VFDs. Once that task is complete, FDA will communicate that information to the public as part of the implementation of this final rule. FDA will also continue to work with the States and veterinary associations to foster the adoption of VCPR definitions that are sufficiently rigorous to ensure meaningful veterinary supervision and oversight.

With respect to the comment suggesting that a veterinarian who writes VFDs for a particular animal production operation needs to be licensed in each State where that operation has a facility, we disagree that such a requirement is necessary unless such licensing is required by the States where those facilities are situated. In other words, the veterinarian needs to be in compliance with the licensing requirements in the State(s) in which he or she is practicing veterinary medicine. The State laws and rules for licensing and practice determine for what activities a license is necessary and whether reciprocity or other programs that recognize licensure in another State may apply. It is the responsibility of the veterinarian to be familiar with the licensing and practice requirements for his or her activities in each State in which he or she practices veterinary medicine. A client who operates in multiple States may engage with one veterinarian who is in compliance with all of those States' licensing requirements, or may choose to engage more than one veterinarian to ensure that a veterinarian is available who complies with each of those States' licensing and practice requirements.

(Comment 19) Some comments raised concerns with FDA's proposed language and the potential impacts on public health if the Federal VCPR standard is eliminated. Comments also expressed concern with the lack of a description or explanation in the NPRM of how the Federal standard is overly burdensome, how State regulations and voluntary ethical principles will adequately substitute for a VCPR, and why a Federally defined VCPR is unnecessary to ensure appropriate use of VFD drugs when it is appropriate to guide drug use in other contexts.

(Response 19) As discussed elsewhere in this document, our intention was not to eliminate a VCPR standard, but instead to provide the flexibility of relying on States' standards for veterinary professional conduct, which are based on current veterinary practice standards, technological and medical advances, and other regional considerations. As discussed elsewhere in this document, based on the State defined VCPR standards that exist currently, we believe that an appropriate State defined VCPR standard affords a level of veterinarian supervision and oversight similar to the Federal VCPR standard, and helps ensure animals are being provided VFD drugs judiciously and for approved indications. Therefore, we do not think that this change will affect public health.

We stated in the December 2013 NPRM that our intent was to provide greater flexibility for veterinarians by deferring to the individual States for the specific criteria for acceptable veterinary professional conduct. In the final rule, the Agency has affirmed its decision to defer to State practice standards for acceptable veterinary professional conduct when those standards require a VCPR for the issuance of a VFD that includes the key elements of the Federally defined VCPR standard. In response to comments that some State practice standards do not require a VCPR for the issuance of a VFD, and because a VCPR is an important part of veterinarian supervision and oversight in the VFD process, we will require adherence to the Federally defined VCPR if an applicable and appropriate State VCPR standard is not in place.

As we have stated previously, many States have defined VCPR, and require a VCPR to exist in order for a veterinarian to issue a VFD. Many States also explicitly adopt the AVMA Principles of Veterinary Medicinal Ethics as part of their practice requirements, which includes a VCPR definition (Ref. 8). For States with a VCPR definition that does not include key elements of the Federally defined VCPR, or who do not require a VCPR for issuing a VFD, language in the regulatory text requires veterinarians to issue VFDs in compliance with the Federally defined valid VCPR. For the reasons stated previously, FDA believes a hybrid State and Federal VCPR approach is appropriate to help ensure sufficient veterinary oversight and supervision for the use of VFD drugs in or on animal feed.

(Comment 20) Several comments were concerned that the elimination of the Federally defined VCPR as proposed in the NPRM would result in FDA no longer being able to take enforcement action against veterinarians who issue a VFD for animals outside the context of a VCPR. Several comments supported FDA engaging in outreach and education to feed mills and veterinarians on the subject of veterinarian supervision and oversight as it pertains to VFDs as part of this Agency's compliance and enforcement processes.

(Response 20) We agree that it is important for regulations to be enforceable. The approach in the regulatory text allows either the States

or FDA to take enforcement action, depending upon the VCPR requirements at issue. If a veterinarian issues a VFD without complying with applicable State licensing and practice requirements, including VCPR, the State may take enforcement action and FDA may determine the resulting animal food to be adulterated or misbranded. If the Federally defined valid VCPR standard is applicable and the veterinarian fails to comply, FDA may act to enforce compliance. In addition, if the veterinarian is not complying with State licensing or practice requirements, or is not issuing a VFD within the context of the applicable State or Federally defined VCPR, the VFD issued will not be lawful. A VFD drug is limited by the terms of its approval, conditional approval, or index listing to use in or on animal feed only under a lawful VFD. If animal feed containing a VFD drug is fed to animals without a lawful VFD, then the VFD drug would be considered unsafe under section 512(a)(1) of the FD&C Act (21 U.S.C. 360b(a)(1)) and adulterated under section 501(a)(5) (21 U.S.C. 351(a)(5)) of the FD&C Act. In addition, the animal feed bearing or containing the VFD drug will be considered adulterated under section 501(a)(6) of the FD&C Act. A VFD drug and animal feed containing such a drug also will be considered misbranded under section 502(f) of the FD&C Act (21 U.S.C. 352(f)) unless the drug and feed are labeled, distributed, held, and used in compliance with the applicable VFD requirements.

FDA is committed to working with the State entities that license veterinarians in order to ensure that appropriate action is taken if the veterinarian does not issue VFDs in the context of an appropriate VCPR, or does not follow State licensing or practice requirements.

(Comment 21) A few comments requested clarification about the use of the terms ''veterinary supervision'' and ''veterinary oversight'' as used in the VFD regulation. The comments asked whether ''oversight'' means something different than the term ''supervision'' which is used in section 504, or whether the two terms are meant to be synonymous. The comments were concerned that oversight could be performed in place of supervision and that it was a less-stringent standard. One comment requested that FDA define ''supervision or oversight'' to mean that the veterinarian has visited the premises at least once per year or documented why an alternative visitation schedule is more appropriate.

(Response 21) For purposes of this regulation, the term ''oversight'' is meant to be a synonym of ''supervision.'' The phrase ''supervision or oversight'' was introduced in order to tie the oversight language FDA has used in other documents to the concept of veterinary ''supervision,'' which is the term used in section 504 of the FD&C Act. As discussed previously, the VCPR which is required for issuing a VFD controls how recently a veterinarian needs to have examined the animals or operation. As a result, FDA does not find it necessary to define the phrase ''supervision or oversight'' to mean that the veterinarian has visited the premises within a specific timeframe.

(Comment 22) A few comments were concerned about a potential conflict of interest between the veterinarian and the client. One comment said that the veterinarian should not have a fiduciary tie to production. One comment said that an oversight committee should be established to independently approve antibiotic use.

(Response 22) We understand the concern raised by these comments. However, most State practice requirements have a standard of ethics that addresses what constitutes a conflict of interest and the ethical standards veterinarians must observe in such circumstances. The requirement for the veterinarian issuing the VFD to comply with all State practice requirements includes compliance with standards of ethical conduct.

We disagree that an oversight committee should be established to independently approve antibiotic use. Currently, there are several points of oversight in the use of antibiotics. The drug is first reviewed for safety and effectiveness as part of the approval or indexing process. During this process, parameters are set that limit the drug's use to certain conditions and for certain approved uses, as reflected on the drug's approved labeling (Refs. 9, 10, and 11). In addition, VFD drugs are required to be used under a veterinarian's supervision. The veterinarian's role is to make a medically-based decision as to whether a particular VFD drug or combination VFD drug is appropriate for the treatment, control, or prevention of a specific disease. Should the veterinarian determine that a VFD drug should be used, he or she can only use the drug as stated on the approved labeling of that drug. Extralabel use (ELU) of medicated feed, including VFD feed, is prohibited by statute.

Furthermore, as part of the effort to implement the objectives of the National Strategy for Combating Antibiotic Resistance published in September 2014, FDA will be working with veterinary organizations, animal producer organizations, and other partners to identify and implement measures to foster stewardship of antibiotics in animals. These measures include educational outreach to veterinarians and animal producers to advance antibiotic stewardship and judicious use of antibiotics in agricultural settings (Ref. 12).

(Comment 23) Several comments supported ELU being allowed by veterinarians for VFD drugs.

(Response 23) ELU of a new animal drug in or on animal feed is illegal and results in the drug and feed being deemed unsafe under section 512(a) of the FD&C Act and adulterated under sections 501(a)(5) and (6) of the FD&C Act.

b. Veterinarian Licensing Information

In the December 2013 NPRM, we proposed to remove the requirement that veterinarians include their license number and the name of the issuing State on the VFD. We received several comments on this issue and, after consideration of these comments, we are finalizing our proposal to not require veterinary licensing information on the VFD.

(Comment 24) One comment requested that we require the veterinarian to list their license number and State of licensure on the VFD for traceability and accountability. This comment indicated that these requirements were not a burden on the veterinarian because veterinarians use preprinted forms, and adding this information to their electronic signature is a one-time effort that takes only minutes to complete. A few comments supported the proposed change because they thought the required name and address of the veterinarian on the VFD would be sufficient if follow up with the veterinarian ever became necessary.

(Response 24) We disagree that including the veterinarian's license number and State of issuance on the VFD is necessary for traceability or accountability. The issuing veterinarian's name and address is sufficient for FDA to work with the State veterinary licensing boards to determine licensure status, in the event that there is a concern that a VFD has been illegally issued. Also, many State licensing boards maintain an online database that allows the public to search for a veterinarian's licensing status by their name.

We disagree that the low burden is outweighed by the benefit of requiring this information, because we do not believe that this information provides any additional benefit to determining the licensure status of veterinarians.

Even if this information were to be required on the VFD, we would still need to perform an investigation into the licensing status of the issuing veterinarian in the event that there was a concern and the veterinarian's name and address is sufficient information to perform that investigation. In addition, some veterinarians may choose not to use preprinted forms or electronic signatures. For veterinarians who do not use preprinted forms or electronic signatures, the recordkeeping burden would be substantially greater than the comment suggests. Because this information would create a time burden for the veterinarian and does not provide information that aids our ability to investigate a veterinarian's licensure status, we are not including this requirement in the final regulatory text.

c. Name of Animal Drug (§ 558.6(b)(3)(vi))

(Comment 25) One comment requested clarification on whether it is allowable to use an approved generic VFD drug as a substitute for an approved pioneer VFD drug in cases where the pioneer VFD drug is identified on a VFD.

(Response 25) The veterinarian is required to write the name of the VFD drug on the VFD. The veterinarian may choose to write the name of the pioneer or a generic (if available) VFD drug to complete this requirement. The veterinarian may choose to specify that a substitution by the feed manufacturer of either the pioneer or generic VFD drug identified on the form is not allowed. If the veterinarian does not specify that a substitution is not allowed, the feed manufacturer may use either the approved pioneer or an approved generic VFD drug to manufacture the VFD feed. However, the feed manufacturer may not substitute a generic VFD drug for a pioneer VFD drug in a combination VFD feed if the generic VFD drug is not part of an approved combination VFD drug.

d. Client Name and Address (§ 558.6(b)(3)(ii))

(Comment 26) A few comments requested clarification about whether the feedlot manager's information is the correct information for the client name and address.

(Response 26) The client name and address should reflect the client in the veterinarian-client-patient relationship, which is typically the person responsible for feeding the animals the VFD feed. In many cases, a feedlot manager may be the appropriate individual.

e. Premises at Which the Animals Specified in the VFD Are Located (§ 558.6(b)(3)(iii))

The December 2013 NPRM proposed to retain the existing requirement that the location of the animals be specified on the VFD. In the proposed language, this requirement was listed separately from the required information about the number and species of animals. The NPRM also proposed to allow the issuing veterinarian, at his or her discretion, to provide more detailed information about the location of the animals to be fed the VFD feed. The regulatory text in this final rule reflects the approach proposed in the NPRM.

(Comment 27) A few comments suggested that the site or location at which the animals are located be determined broadly (*i.e.,* the location of the premises where animals are located, but not the specific pen or confinement unit). A few comments were concerned that animals move throughout their life cycle and it may be difficult to identify one location.

(Response 27) We expect that, in response to the requirement to enter information describing the premises where the animals are located, the veterinarian would enter information about the location of the animals that would allow someone to locate the animals. Typically, the address would be an appropriate way to identify the location; however, other generally recognized geographical indicators such a global positioning system (GPS) coordinate may be appropriate if a street address does not exist.

We recognize that an address for a facility may not provide enough information to identify the location of animals in a case where the VFD is meant to authorize that a very specific group of animals receive the animal feed bearing or containing the VFD drug. As a result, the veterinarian may use his or her discretion to enter additional information on the VFD that more specifically describes the location of the animals such as the site, pen, barn, stall, tank, or other descriptor. The veterinarian should consult with the client to determine whether the animals will remain at this more specific location until the expiration date of the VFD.

We understand that some groups of animals that are of similar age, weight range, etc., are managed in a similar manner, but may be housed in different physical locations. For example, a group of weaned pigs may be moved out of a nursery facility and transferred to multiple grow-out facilities for finishing. If a VFD is intended to authorize the use of a VFD feed in an identified group (approximate number) of animals that are located at more than one physical location, it is acceptable for a veterinarian to include multiple specified locations for that group of animals on the VFD. The veterinarian may write a VFD that covers animals in multiple locations (animal production facilities) to be fed the VFD feed by the expiration date on the VFD, provided he or she can do so in compliance with professional licensing and practice standards and provided the VFD feed is supplied to such multiple locations by a single feed manufacturer (distributor).

f. Expiration Date (§ 558.6(b)(3)(v))

The December 2013 NPRM proposed to add new language to the requirement that the veterinarian enter the expiration date of the VFD on the form. The new language limits the veterinarian to using the expiration date that is specified in the approval, conditional approval, or index listing. Where such date is not specified, the veterinarian can write a VFD with an expiration date that does not exceed 6 months after the date of issuance of the VFD. The regulatory text in this final rule reflects this approach, with clarified language.

(Comment 28) Many comments supported the 6-month expiration period. Some comments also requested that the VFD expire when an animal is deceased, at 6 months, or based on the expiration date specified in the approved labeling, whichever is shorter.

(Response 28) We agree that a maximum 6-month expiration date in the absence of an expiration date specified in the approval, conditional approval, or index listing is appropriate. The date of expiration should be calculated by the calendar date, not the number of days. This will allow for easy calculation by veterinarians in the field. For example, using a 6-month expiration date for a VFD, if the VFD is written on July 10, then the expiration date would be January 10 of the following year. Using the same 6-month expiration date example, but having the VFD written on the last day of the month, the VFD expiration date would be the last day of the sixth month even if that month has fewer days. Thus, in this example, if the VFD is written on August 31, the expiration date would be the following February 28 during a regular calendar year, or February 29 during a leap year.

With respect to the comments requesting to have the VFD expire when an animal is deceased, at 6 months, or based the expiration date specified in the approved labeling, whichever is shorter, we do not agree with these

comments. Having the VFD expire when an animal is deceased is not practical because one death in a herd or flock of animals would result in an unlawful VFD. However, if there is no expiration date specified in the approval, conditional approval, or index listing, the veterinarian may write an expiration date shorter than 6 months based on their medical judgment and taking into account factors such as the life cycle of the animals being treated. If there is an expiration date specified in the approval, conditional approval, or index listing, then the veterinarian has to use that date and may not write a shorter or longer expiration date for the VFD. Deviating from the expiration date specified by the approval, conditional approval, or index listing would constitute ELU, which is prohibited by section 512(a) of the FD&C Act.

(Comment 29) Many comments requested the expiration period be shorter than 6 months. One comment requested that the VFD expire at the end of treatment. Some comments recommended expiration periods of 21 and 30 days. One comment recommended that the maximum expiration period be shortened to 90 days if VFD drugs are used for unapproved uses or for longer than 6 months, with the possibility of extension upon reassessment.

(Response 29) We disagree that a shorter expiration period is necessary for VFD drugs that do not specify an expiration date in their approval, conditional approval, or index listing. Even though a VFD can be written for a 6-month period does not mean the veterinarian will write all VFDs with a 6-month expiration date. The veterinarian will use his or her medical judgment to determine what expiration date is appropriate for the VFD, based on many factors including, but not limited to, the type of animal production facility and operation, the VFD drug or combination VFD drug at issue, the intended use of the VFD drug, and the health status, treatment history, and life cycle of the animals.

Also, a maximum expiration period of 6 months does not necessarily mean that the animals will consume the feed containing the VFD drug for 6 months. Rather, an expiration period of 6 months means that the authorization to feed the specified VFD product is lawful for 6 months. The veterinarian is also required to include on the VFD the duration of use, which limits the amount of time the animal feed bearing or containing the VFD drug can be fed. The duration of use must follow the duration that is specified in the approval, conditional approval, or index listing even if it is a shorter timeframe than the expiration date. If the veterinarian issues a new VFD after the expiration date of the first VFD, they can use their medical judgment, taking into account factors such as the life cycle and treatment history of the animal, to consider what expiration date would be appropriate for the new VFD, up to the 6-month maximum for VFD drugs that do not specify an expiration date in the approval, conditional approval, or index listing.

We disagree that a shorter VFD expiration period should be in place for VFD drugs used for unapproved uses, or those used longer than 6 months. Medicated feeds, including those bearing or containing a VFD drug, cannot legally be used in an extralabel (unapproved) manner; such use is prohibited by statute. As explained previously, the expiration date of the VFD does not control how long the VFD drug is to be used, but rather defines when it must be used by (*i.e.,* the period of time for which the authorization is lawful).

(Comment 30) Some comments requested that the maximum expiration date of a VFD be longer than 6 months. Most of these comments requested that the VFD expiration date be a maximum of 1 year.

(Response 30) We disagree that a maximum expiration date for a VFD should be longer than 6 months for VFD drugs that do not have an expiration date specified in their approval, conditional approval, or index listing. We think that a 6-month maximum VFD expiration date permits veterinarians, based on their medical judgment and knowledge of the animal production operation, to determine on a case-by case basis whether the maximum 6-month period is an appropriate expiration date for the VFD or whether a more limited period is warranted. When deemed appropriate, we expect that flexibility in applying the VFD expiration date can substantially reduce the administrative burden associated with issuing VFDs for a given animal production operation. Limiting the expiration to a maximum of 6 months ensures that the veterinarian is required, at least every 6 months, to review whether factors such as the type of animal production operation, animal health, or the need to use a VFD drug have changed when considering whether to issue another VFD.

(Comment 31) Several comments requested clarification about how the VFD expiration date relates to refills and reorders, the duration of use and the concept of standing orders. Several comments supported VFD drugs having clear limits on the duration of use. These comments did not specifically recommend an expiration date, but offered support for the risk criteria in GFI #152, ''Evaluating the Safety of Antimicrobial New Animal Drugs with Regard to Their Microbiological Effects on Bacteria of Human Health Concerns.'' Several comments were concerned that a VFD drug could be continuously used. Some of these comments requested that FDA not permit the continuous use of a VFD drug.

(Response 31) As previously discussed, the VFD expiration date defines the period of time for which the authorization to feed an animal feed containing a VFD drug is lawful. This period of time may be specified in the approved labeling of a given VFD drug (*e.g.,* 45 days for tilmicosin) or, if not specified in the labeling, the veterinarian must specify an expiration date that does not exceed 6 months. The duration of use is a separate concept than the expiration date and determines the length of time as established as part of the approval, conditional approval or index listing process that the animal feed containing the VFD drug is allowed to be fed to the animals. This period of time is specified in the labeling of the VFD drug (*e.g.,* 21 days for tilmicosin). For example, the currently approved VFD drug tilmicosin has an expiration date of 45 days, which means the client has 45 days to obtain the VFD feed and complete the 21 day course of therapy (§ 558.618). Animals cannot legally be fed the VFD feed after the VFD expiration date.

We acknowledge the comments seeking limits on the duration of use of VFD drugs. However, the duration of use of VFD drugs (*i.e.,* how long the drug is to be given to the animals) is not determined by the VFD regulation, but rather is established as part of the approval, conditional approval, or index listing process and is based on the scientific information submitted about the VFD drug. A VFD issued by a licensed veterinarian authorizes a client to feed the VFD feed to the client's animals. The expiration date of a VFD is the length of time that such authorization is lawful. In contrast, the duration of use limits the length of time that the animals can be fed the animal feed containing the VFD drug. Thus, in the example of tilmicosin, the approval allows a VFD expiration date of 45 days, but the duration of use (*i.e.,* how long the drug is to be given to the animals) is limited to 21 days.

Similar to the concept of refilling a prescription for 30 tablets with another 30 tablets, a refill or reorder in the VFD

context is meant to apply when the feed authorized under the VFD has been exhausted. The refill or reorder would provide authorization to obtain and feed additional VFD feed in the same total quantity and under the same conditions of the existing VFD by the expiration date of that VFD. A veterinarian can only authorize refills or reorders if the labeling of the product in question explicitly permits them. Currently, there are no approved VFD drugs that allow refills or reorders as a condition of their approval, conditional approval, or index listing.

FDA anticipates that the appropriate use of refills or reorders could vary considerably depending on the VFD drug and its use. Since we cannot predict what disease conditions, and what types of VFD drugs for the treatment, control, or prevention of those diseases, may exist in the future, appropriate limitations regarding refills and reorders and how they relate to the expiration date of the VFD must be considered on a case-by-case basis as part of the new animal drug approval process. In the context of antimicrobial VFD drugs, FDA envisions that the refill/reorder concept will have limited applicability.

The term ''standing order'' is not used in the regulatory text included in this final rule, but has been used in public meetings and by industry to refer to the situation in which a veterinarian issues a VFD for a VFD drug that does not have a label-defined VFD expiration date; therefore, the veterinarian is required to apply a VFD expiration date that does not exceed 6 months from the time the VFD is issued. In such a case, the veterinarian, in the context of a VCPR, would use his or her medical judgment and knowledge of the animal production facility and operation to determine the therapeutic needs for the VFD drug by the expiration date established by the veterinarian. As a result, the client would have the VFD authorization in place and could more quickly get the animal feed containing the VFD drug manufactured if and when the animals needed treatment. In addition, this practice would allow for clients with limited access to veterinarians to be able to receive a VFD within the confines of a VCPR and use it at a later date, but within the expiration date of the VFD, when the need for use of the animal feed containing the VFD drug occurs.

g. Approximate Number of Animals To Be Fed the VFD Feed by the Expiration Date on the VFD (§ 558.6(b)(3))

In the December 2013 NPRM, FDA proposed removing the requirement for a veterinarian to identify the amount of feed to be manufactured under the VFD, and modified the requirement to identify the number of animals to instead require the veterinarian to identify the approximate number of animals to be treated under the VFD.

(Comment 32) Multiple comments supported changing the requirement to identify the amount of feed manufactured to instead identify the approximate number of animals on the VFD. These comments recognized the current problems with calculating the amount of feed, including the need to write additional VFDs when feed volume is underestimated and recordkeeping for delivery of feed that only partially fulfills the amount of feed on the VFD. One comment also stated that this change will allow the amount of feed required to be determined by the feed manufacturer, which is how other feed orders are filled.

(Response 32) FDA agrees that the requirement to state the approximate number of animals instead of the amount of feed resolves the problems noted in the comments. FDA agrees that the feed manufacturer, in consultation with the client, has the experience necessary to determine the amount of feed that should be manufactured in order to treat the approximate number of animals identified by the veterinarian on the VFD.

(Comment 33) Several comments were concerned that the approximate number of animals was not clearly defined and were unsure how FDA intended to use the information in enforcing the VFD regulations. These comments were unsure of the scientific basis for specifying the number of animals. The comments were also concerned that the number of animals can change between the time the VFD is issued and the time it expires, and the requirement would add to increased time and costs. The comments requested clarification on the responsibility of the feed mill to address discrepancies between the number of animals and amount of feed.

(Response 33) FDA agrees that further clarity is needed for stakeholders to correctly calculate the approximate number of animals. Therefore, FDA is including additional language in the regulatory text at § 558.6(b)(3)(viii) to clarify how the approximate number of animals should be calculated. The approximate number of animals is the potential number of animals of the species and production class identified on the VFD that will be fed the VFD feed or combination VFD feed manufactured according to the VFD at the specified premises by the expiration date of the VFD. Because the VFD authorization targets the animals that need to be fed the VFD feed, FDA believes the approximate number of animals is an appropriate mechanism to limit the scope of use authorized by the VFD.

FDA recognizes that the number of animals to be covered under the VFD can change by the expiration date; animals may leave or enter the group being fed the VFD feed manufactured under the VFD for a variety of reasons. This is why FDA chose to include the term ''approximate'' in the requirement. FDA believes that veterinarians typically have enough information about the animal production operation to determine the approximate number of animals that will be entering or leaving the operation over a specific period of time.

FDA does not agree that determining the approximate number of animals will increase time or costs. Calculating the approximate number of animals should take less time than complying with the previous requirement to calculate the amount of feed because the calculation will include fewer factors to take into consideration. Furthermore, using the approximate number of animals may decrease costs because clients will have the flexibility to work directly with their feed supplier to ensure that the appropriate amount of feed is provided for the approximate number of animals authorized by the VFD. This reduces the burden of seeking an additional VFD in those cases where, if the previous requirement to specify the amount of feed on the VFD were still in effect, the veterinarian may have underestimated the amount of VFD feed the animals would consume.

FDA expects the feed mill to share expertise and work with the client and veterinarian to determine the appropriate amount of feed to be manufactured for the approximate number of animals authorized by the VFD and to retain the necessary records to document the amount of feed that was manufactured under the VFD. FDA expects that feed mills will only distribute VFD feeds in quantities that are commensurate with the approximate number of animals as specified by the veterinarian in the VFD. FDA anticipates that, as part of its inspectional activities, it will consider such factors as whether the amount of feed manufactured is reasonable relative to the approximate number of animals specified in the VFD.

(Comment 34) One comment was concerned that using the approximate number of animals would lead to overuse or stockpiling of medicated feeds, and would potentially remove veterinarian oversight from the process.

(Response 34) FDA disagrees with this comment. The veterinarian, with input from the client, will be responsible for identifying the approximate number of animals on the VFD. This level of veterinarian involvement is similar to the veterinarian's current role in identifying the amount of feed. FDA expects that feed mills will only distribute VFD feeds in quantities that are commensurate with the approximate number of animals specified in the VFD. In addition, the client has the responsibility to use the VFD feed within the constraints of the VFD as written by the veterinarian.

Furthermore, FDA does not believe that this change will lead to over-purchasing, stockpiling or unregulated use of VFD drugs or the VFD feeds manufactured with them. Medicated feeds can be susceptible to decomposition if they are stored for lengthy periods of time, making it unlikely that clients would stockpile economically valuable medicated feeds. In addition, other requirements on the VFD limit use of the VFD feed to a specified group of animals for a specified time period, which will help to regulate use and prevent stockpiling. FDA believes that feed mills will be able to more accurately determine the amount of feed to manufacture because they can work with the client as batches of feed are shipped under the VFD to adjust the amount of feed as feed consumption rates change among the animals. The Agency believes this will help to prevent overuse.

Therefore, FDA is revising the current requirement for the number of animals to be treated in § 558.6(b)(3)(viii) to mean an approximate number of animals to be fed the VFD feed by the expiration date on the VFD, due to the difficulty in determining the exact number of animals to be treated during the duration of the VFD. In addition, FDA is removing the existing requirement in § 558.6(a)(4)(vi) for veterinarians to specify the amount of feed to be fed to the animals listed on the VFD, as discussed elsewhere in this document. Veterinarians will instead be required in § 558.6(b)(3)(x) to include the duration of VFD drug use on the VFD in addition to the level of VFD drug in the feed, as is currently required.

h. Refills or Reorders Authorized on the VFD (§ 558.6(b)(3)(xii))

In the December 2013 NPRM, FDA added to the language that requires the number of refills or reorders to be entered on the VFD to account for refills or reorders allowed as part of a conditional approval, or index listing in addition to an approval. FDA has updated the proposed language to clarify that when an approval, conditional approval, or index listing is silent on refills or reorders, they are not allowed.

(Comment 35) Some comments supported refills or reorders to continue to be entered on the VFD if refills or reorders are permitted by the approval, conditional approval, or index listing. A subset of these comments requested clarification about how refills or reorders relate to the other provisions of the VFD regulation and what the phrase ''permitted by the approval, conditional approval, or index listing'' means. One comment suggested that the need for refills or reorders be determined based on the duration of the disease period. One comment asked FDA to remove this requirement because it is likely to cause confusion among animal producers, veterinarians, and feed mills, as many existing OTC products that are changed to VFD status under the GFI #213 process do not have a refill listed on their label.

(Response 35) We agree that if a refill or reorder is permitted as part of the VFD drug approval, conditional approval, or index listing, the veterinarian is required to indicate on the VFD whether he or she is authorizing a refill or reorder and if so, the number of refills or reorders authorized within the limitations permitted by the approval, conditional approval, or index listing. In order for a refill or reorder to be permitted, it must be explicitly allowed in the VFD drug approval, conditional approval, or index listing. Clarifying language has been added to the regulatory text specifying that when the labeling for an approval, conditional approval, or index listing is silent in regards to refills or reorder, a refill or reorder is not permitted.

A refill or reorder is meant to apply to when the feed authorized under the VFD has been exhausted. The refill or reorder would provide authorization to obtain and feed additional VFD feed in the same total quantity and under the same conditions of the existing VFD by the expiration date of the VFD. Currently, there are no approved VFD drugs that allow refills or reorders as a condition of their approval, conditional approval, or index listing. A veterinarian can only authorize refills or reorders if the labeling of the product in question explicitly permits them. Therefore, refills or reorders are not permitted for an approval, conditional approval, or index listing of a VFD drug if the label of such product is silent on the labeling about refills or reorders.

Although there are no refills or reorders permitted for any current VFD drug approvals, there may be future VFD drugs that may be appropriately refilled or reordered as authorized by the veterinarian on the VFD according to their professional judgment up to the maximum number permitted by the VFD drug approval, conditional approval, or index listing. FDA anticipates that the appropriate use of refills or reorders could vary considerably depending on the VFD drug and its use. Since we cannot predict what disease conditions, and what types of VFD drugs for the treatment, control, or prevention of those diseases, may exist in the future, appropriate limitations regarding refills and reorders and how they relate to the expiration date of the VFD must be considered on a case-by-case basis as part of the new animal drug approval process. In the context of antimicrobial VFD drugs, FDA envisions that the refill/reorder concept will have limited applicability.

If a veterinarian writes a VFD that authorizes a refill or reorder for a VFD drug that does not permit a refill or reorder, or if the authorization exceeds the number of refills or reorders permitted, FDA would consider that to be ELU of the VFD drug. ELU of a drug on or in animal feed is prohibited by statute.

(Comment 36) Some comments supported limiting the number of refills or reorders. Several comments were concerned that without a limit to refills or reorders, the non-specific use of antibiotics for long periods of time would be allowed, or that veterinarians could write unlimited refills. A few comments requested that the requirement to list the number of refills or reorders on the VFD should be removed because it is difficult for the feed manufacturer to track.

(Response 36) FDA agrees that limiting refills or reorders is appropriate. However, those limitations should be based on the safety and effectiveness data, and intended use as evaluated and determined at the time of the VFD drug approval, conditional approval, or index listing. The approvals and index listings for the current VFD drugs do not permit refills or reorders.

FDA disagrees that the requirement to list the number of the refills or reorders on the VFD should be removed. Should a veterinarian authorize refills or reorders for a VFD drug as permitted by its approval, conditional approval, or index listing, this is necessary information for the feed mill to appropriately manufacture and for the

client to appropriately feed the VFD feed.

i. Combination Drugs (§ 558.6(b)(6)(xiv))

In the December 2013 NPRM, FDA proposed a new provision that would require the issuing veterinarian to include one of three ''affirmation of intent'' statements on the VFD regarding the use of a VFD drug in an approved, conditionally approved, or indexed combination in medicated feed. These ''affirmation of intent'' statements would either: (1) Allow the VFD drug to be used in any approved, conditionally approved, or indexed combination in VFD feed; (2) allow the VFD drug to be used only in specific approved, conditionally approved, or indexed combinations in VFD feed; or (3) not allow the VFD drug to be used in any approved, conditionally approved, or indexed combination in VFD feed. We received several comments on this new provision and have revised the language in the regulatory text to provide additional clarity in response to the comments received.

(Comment 37) A few comments expressed concern that the veterinarian would not have sufficient knowledge of approved combination VFD drugs. They were concerned that the veterinarian would write a VFD allowing a combination VFD drug that was not approved, conditionally approved, or indexed, or that he/she would not authorize a VFD for a combination VFD drug that was approved, conditionally approved, or indexed.

(Response 37) We understand this concern and have clarified the language in the regulatory text to more explicitly state the three ''affirmation of intent'' statements the veterinarian may make. These ''affirmation statements'' facilitate the process by which a veterinarian indicates his or her intent for authorizing the use of a VFD drug with other drugs (*i.e.,* approved, conditionally approved, or indexed combination VFD drugs) to make combination VFD feeds. If such statements were prepopulated on the VFD provided by the sponsor, we anticipate that the veterinarian would only have to circle, provide a check mark, or use another method to clearly indicate whether the VFD drug: (1) May be used in any approved, conditionally approved, or indexed combination in VFD feed; (2) may be used in only specific approved, conditionally approved, or indexed combinations in VFD feeds; or (3) may not be used in any approved, conditionally approved, or indexed combination in VFD feed. If the VFD drug is approved, conditionally approved, or indexed for use in multiple combination VFD feeds, and the veterinarian does not want the VFD drug to be used in all approved, conditionally approved, or indexed combinations in medicated feeds, then the veterinarian would need to specify the combination VFD feed(s) in which the veterinarian is authorizing the VFD drug to be used.

This process of affirming intent will reduce the opportunity for a veterinarian to mistakenly authorize an illegal combination of drugs when he or she chooses to only authorize the VFD drug to be used in certain combination VFD feeds. In addition, veterinarians that create their own VFD can rely on the drug labeling to determine whether the drug is approved, conditionally approved, or indexed to be used in combination with another drug or drugs. In the situation where a VFD is authorizing the use of two or more VFD drugs in an approved, conditionally approved, or indexed combination in VFD feed, the VFD must contain information for all of the individual VFD drugs in the combination. A VFD that authorizes an unapproved combination is not a lawful VFD because ELU of medicated feeds, including feeds containing VFD drugs, is prohibited. We think that this approach balances reducing the risk of an illegal combination being mistakenly included on a VFD with the need for a veterinarian to be able use his or her medical judgment to limit the use of a VFD drug in combination with other drugs.

(Comment 38) One comment requested that additional information be provided in the preamble to the final rule explaining how currently approved, conditionally approved, or indexed combinations of drugs would be used when drugs included in such combinations are changed from OTC drugs to VFD drugs.

(Response 38) We agree that it would be helpful to further clarify the use of approved, conditionally approved, or indexed combination new animal drugs containing a VFD drug and one or more OTC or VFD drugs after such drugs in currently used combinations are changed from OTC to VFD. If any component drug in an approved, conditionally approved, or indexed combination drug is a VFD drug, the combination drug is a combination VFD drug and its use must comply with the VFD requirements. This is because combination drug products must meet the requirements of the drug in the combination that is most strictly regulated. In addition, section 504 of the FD&C Act requires a VFD in order to feed an animal feed bearing or containing a VFD drug to an animal. This is the case whether the VFD drug is being used in or on the feed by itself, or in combination with other OTC or VFD drugs.

An analogous situation is when an approved, conditionally approved, or indexed combination drug contains both Category I and Category II drugs. If the animal feed bearing or containing the combination drug is manufactured from a Category II Type A medicated article, the mill must be licensed and follow the requirements for a licensed medicated feed mill (which are stricter requirements).

j. Veterinarian Must Issue a Written VFD (§ 558.6(b)(7))

(Comment 39) One comment requested that FDA modify the requirement that a veterinarian may not transmit a VFD by phone to state that the veterinarian must not verbally transmit a VFD because technology may allow for a written VFD to be transmitted by a phone.

(Response 39) FDA proposed in the December 2013 NPRM to change this provision for the reasons stated in the comment. FDA finalizes this change in the regulatory text.

k. Contents of the VFD

(Comment 40) One comment requested that mixing directions not be allowed on a VFD because they are on the label directions.

(Response 40) We understand that non-required information that is placed on the VFD can create confusion and make it more difficult to locate required information on the form. FDA recommends the amount of information on the VFD be limited to the required and discretionary information listed in § 558.6(b)(3) and (4). FDA also recommends that non-required information the veterinarian chooses to include on a VFD in addition to the mandatory and discretionary information listed in § 558.6(b)(3) and (4) be in a place and manner that does not interfere with the information listed in § 558.6(b).

(Comment 41) A few comments requested that a uniform VFD format be required.

(Response 41) FDA understands that a uniform VFD format would help clients, veterinarians, and distributors (including feed mills) quickly identify relevant information on the VFD. However, FDA believes that requiring a specified format for the VFD would be too prescriptive. In this final rule, FDA is updating the regulatory text in § 514.1(b)(9) to clarify that as part of the application process, the sponsor must

submit a form that accounts for the information in § 558.6(b)(3) that the veterinarian must ensure is on the VFD and the optional information in § 558.6(b)(4) that the veterinarian may include at his or her discretion. This change will help reduce confusion as to whether a specific format is required. It will also ensure that when a company distributes a VFD form tailored to that company's products, the veterinarian will have an opportunity to complete all of the required and optional information specified in the regulation. We believe that having the VFD form that is provided by the VFD drug manufacturer include the required and discretionary information elements in § 558.6(b) is the best approach. Although many companies distribute for use by veterinarians a VFD form that is specific to their own products, a veterinarian may also create or use a different VFD as long as it contains all of the required information.

3. Responsibilities of Any Person Who Distributes an Animal Feed Containing a VFD Drug or a Combination VFD Drug (§ 558.6(c))

In the December 2013 NPRM, we proposed to remove the requirement for distributors to keep records of receipt and distribution from § 558.6(e). We proposed this change because we were changing the retention period for records under the VFD rule from 2 years to 1 year and these records were already required to be kept by manufacturers to comply with the CGMP requirements set forth in part 225. However, as we considered this final rule, it became apparent that a distinction should be made between distributors who manufacture VFD feed and those who do not manufacture VFD feed, but only distribute VFD feed. The final rule provides that all distributors, regardless of whether they manufacture animal feeds bearing or containing VFD drugs or not, must keep records of receipt and distribution for 2 years from the date of issuance in accordance with § 558.6(c)(3). Although this requirement is duplicative for distributors that manufacture animal feeds bearing or containing VFD drugs and must comply with part 225, it is not duplicative for distributors who do not manufacture animal feeds bearing or containing VFD drugs and do not have to comply with part 225. In addition, we believe it is important that all distributors be required to maintain receipt and distribution records because these records are an important tool to trace the animal feed in the event of a recall or investigation of a potentially misbranded or adulterated product. Furthermore, by explicitly stating all VFD recordkeeping requirements in part 558, distributors are not required to refer to another part of the regulation to determine their specific VFD recordkeeping requirements.

Also, we have added clarifying language that distributors who manufacture animal feed bearing or containing VFD drugs must keep VFD feed manufacturing records for 1 year in accordance with part 225 of this chapter. These manufacturing records are not required to be kept for 2 years unless they are also required to be kept under part 558 (*e.g.,* the distributor's copy of the VFDs and receipt and distribution records).

4. Other Comments

(Comment 42) Multiple comments supported the proposed rule's intent to provide additional efficiency and flexibility in issuing VFDs. Several comments mentioned that providing drugs through animal feed is an important drug delivery tool. Several comments stated that the rule was a step in the right direction, but wanted more done to reduce antimicrobial use. Some comments supported the revisions to clarify that conditionally approved and indexed VFD drugs are included.

(Response 42) FDA believes that the rule achieves its intent to provide additional efficiency and flexibility in issuing VFDs. FDA recognizes the importance of animal feed as a drug delivery tool. FDA recognizes that certain revisions to this rule will facilitate a broader effort to assure the judicious use of antimicrobials in food-producing animals. FDA agrees that this rule provides additional clarity that VFD drugs that are conditionally approved or indexed drugs are also subject to the requirements in this final rule.

(Comment 43) Many comments indicated that FDA's approach should be mandatory, not voluntary. Some comments were concerned that the voluntary approach had no mechanism for enforcement or metric for success. Other comments were concerned that there were loopholes in the rule. One comment thought the rule was not strong enough to stop antibiotic use and antimicrobial resistance.

(Response 43) Many of these comments were unclear as to whether they were referring to the implementation of this rule or FDA's efforts to promote the judicious use of antibiotics in food-producing animals as outlined in the Agency's guidance documents GFIs #209 and #213. To the extent that these comments were applicable to the enforceability of this rule, FDA disagrees that this approach is voluntary. The requirements in the regulatory text are mandatory. As stated in the December 2013 NPRM, the Agency is amending the VFD regulations to make the VFD program as efficient as possible for stakeholders while maintaining adequate protection for human and animal health as FDA implements the judicious use principles for medically important antimicrobial new animal drugs approved for use in food-producing animals.

While not directly relevant to this rulemaking, FDA disagrees with the comments that say a voluntary approach to judicious use of antimicrobials cannot be effective. As of June 30, 2014, all sponsors of medically important antimicrobial new animal drug products covered by GFI #213 have agreed in writing that they intend to engage in the judicious use strategy by seeking withdrawal of approvals relating to any production uses and changing the marketing status of their products from OTC to use by VFD or prescription in order to limit the remaining therapeutic uses of these products in food-producing animals to use under the oversight or supervision of a licensed veterinarian. While GFI #213 specified a 3-year timeframe (until December 2016) for drug sponsors to voluntarily complete the recommended changes to their antimicrobial products, some sponsors have already begun to implement these changes (Ref. 13).

(Comment 44) Several comments requested clarification on how FDA intends to enforce the VFD requirements as drugs change from OTC status to VFD status as part of the implementation of GFI #213. These comments asked whether there would be a period of regulatory discretion, or the allowance of in-commerce labeling changes, in order to handle product on the market when the change occurs.

(Response 44) This question touches upon the broader implementation of GFI #213 and does not pertain specifically to the changes in this the December 2013 NPRM. However, we understand the practical implications of accommodating drug products already in distribution channels and are working to develop and provide further guidance to facilitate an orderly transition of medically important antimicrobial drugs from OTC to a marketing status (VFD or prescription) that requires veterinary oversight.

(Comment 45) One comment asked FDA to delay the implementation of the amended VFD regulation until after the implementation of GFI #213. This comment suggested that there was a conflict of interest in FDA issuing this

final rule before stakeholders had committed to GFI #213.

(Response 45) We have carefully considered all comments in finalizing this rule. As discussed in the December 2013 NPRM, it is important that the changes to increase efficiency in the VFD program occur prior to the transition of the existing medically important antimicrobial drugs approved for use in animal feed from their existing OTC status to VFD status as part of the implementation of GFI #213. Furthermore, at this time, all sponsors of the drugs identified in GFI #213 have publicly committed to fully engage in this Agency's judicious use strategy which calls for phasing out the use of medically important antimicrobials in food-producing animals for food production purposes and phasing in the oversight of a licensed veterinarian for the remaining therapeutic uses of such drugs (Ref. 13).

(Comment 46) Some comments suggested that FDA should collect and publicly report data about whether the effort to end subtherapeutic use of antibiotics is working. A few comments thought that VFDs should be submitted to FDA for compilation, analysis, and public reporting. A few comments opposed submitting VFDs to FDA because of the additional reporting burden. One comment further opposed the submission of VFDs to FDA because VFDs would not be an accurate tool in estimating antimicrobial use because they are reflective of the amount of antimicrobials authorized, not the amount of antimicrobials used. Another comment thought that FDA's access to VFDs during inspections was sufficient to assess compliance.

(Response 46) In response to the suggestion that FDA collect and publicly report data about whether the effort to end subtherapeutic use of antibiotics is working, FDA notes that the Agency has already committed to publishing information every 6 months about the progress of GFI #213 implementation (Ref. 13). In addition, FDA provides ongoing updates on its Web site regarding sponsor actions related to GFI #213 implementation (Ref. 13).

FDA does not agree that VFDs should be submitted for compilation, analysis and public reporting. Compliance with VFD regulations cannot be assessed by only reviewing the VFD. The VFD must be considered in the context of the operation. This review is ordinarily done during an inspection or investigation. FDA agrees that VFD data would not be an accurate reflection of antimicrobial use because the VFD only represents the amount of antibiotics authorized to be used, not the amount that actually is used. FDA currently receives antimicrobial sales and distribution data, collects antimicrobial resistance data under NARMS, and is developing additional mechanisms for collecting on-farm information regarding antimicrobial use and resistance (Ref. 15). It would be administratively burdensome for FDA to also receive, compile, and house VFDs in a central location. Furthermore, there are disclosure laws that would require FDA to redact most, if not all, of the information required on a VFD because it is considered confidential commercial information.

(Comment 47) Several comments were concerned that the changes to this rule did not sufficiently protect public health.

(Response 47) As previously discussed, it was not FDA's intention in the December 2013 NPRM to remove or lessen public health protections. The previous and current VFD regulatory text contains many provisions that are designed to protect public health. The VFD drug designation provides public health protection by allowing FDA to limit a drug's use in or on animal feed by requiring administration under a veterinarian's supervision and oversight as authorized in the VFD. When an animal drug has been designated a VFD drug, the veterinarian, distributor, and client must adhere to additional regulatory requirements than are applicable to the use of other animal drugs in medicated feed. These additional regulatory requirements are designed to protect public health by ensuring accountability for those individuals involved in the use of the VFD drug and VFD feed. These regulatory requirements also are designed to allow FDA to review the use of the VFD drug and VFD feed to ensure that the VFD drug and VFD feed are used according to the conditions and indications of use as specified in the approval, conditional approval or index listing, and within the supervision and oversight of a licensed veterinarian.

The veterinarian, distributor, and client all have several joint obligations that are intended to protect public health. The VFD feed may only be fed to animals by or upon a lawful VFD issued by the veterinarian. Public health is protected by limiting use of VFD drugs and VFD feed to use under the supervision of a veterinarian as indicated on the VFD because the veterinarian has medical expertise to determine when and how a VFD drug may be appropriately used in animals. All of these involved parties share responsibility in ensuring that a lawful VFD has been issued and the VFD feed is manufactured and used according to the terms of the VFD as issued by the veterinarian. Moreover, the regulations require that VFD drugs and VFD feed contain a caution statement that the VFD drug and resulting VFD feed are restricted to use by or on the order of a licensed veterinarian. In addition to the VFD, these involved parties also each have their specific responsibilities in ensuring that the VFD drug and resulting VFD feed is labeled and used according to the approval, conditional approval, or indexed conditions of use (not used in an extralabel manner). The VFD, VFD drug, and VFD feed are all required to contain a statement that ELU is not permitted. During the approval, conditional approval, or indexing process, FDA sets limitations on how animal drugs can be used based on the scientific evidence offered by the sponsor to show that the drug is safe and effective for the conditions of use. Public health is protected by limiting use of VFD drugs and VFD feed to conditions of use that are based on scientific evidence of safety and effectiveness that has been reviewed by FDA.

The veterinarian has several specific obligations that are intended to protect public health. The veterinarian is responsible for using his or her professional veterinary judgment to determine whether a VFD should be issued and what terms the VFD should contain as allowed by the relevant approval, conditional approval, or index listing. The veterinarian issuing the VFD is required to be licensed to practice veterinary medicine and be operating in compliance with applicable licensing and practice requirements. FDA has clarified that compliance with applicable licensing and practice requirements includes the expectation that the veterinarian is issuing the VFD in the context of an appropriate VCPR as discussed elsewhere in this document. The veterinarian is required to issue the VFD in writing and ensure that all of the required information is fully and accurately included on the VFD. The required information reflects several public health protections including, but not limited to information that: (1) Describes VFD drug, VFD feed, and the indication for which the VFD feed is authorized to be used; (2) describes the animal or group of animals to receive the VFD feed; (3) limits the use of the VFD feed based on the duration of feeding, the expiration date and the allowance of refills or reorders, if any; (4) allows or limits the use of the VFD drug in combination

with other animal drugs; and (5) limits the use of the VFD feed based on withdrawal times, special instructions or necessary cautionary statements. The veterinarian is also required to provide to the distributor and client a copy of the VFD. By providing the distributor and client with the required information on the written VFD, the veterinarian ensures that the distributor and client have the necessary information to manufacture and use the VFD feed according to the approval, conditional approval, or index listing, and under the veterinarian's supervision and oversight.

The distributor also has several specific obligations that are intended to protect public health. The distributor may only fill a VFD if the VFD contains all of the required information. This requirement provides an additional opportunity for the VFD to be reviewed to ensure that it is complete and prohibits the distribution of the VFD feed if it is not. The distributor is also required to keep for 2 years the records of receipt and distribution of all of the VFD feed it distributes. This requirement protects public health by requiring records that would be important for tracing the VFD feed through the distribution system if a problem with the VFD feed were to occur. The distributor must notify FDA prior to that party's first distribution of VFD feed and must notify FDA of any changes in the distributor's contact information or ownership. This notification allows FDA to protect public health by maintaining an inventory of VFD feed distributors to be used for inspection and investigational purposes.

The VFD regulation also includes requirements specific to the client (animal producer) that are intended to protect public health. For example, the client may only feed the VFD feed to animals by or upon a lawful VFD issued by a licensed veterinarian in the course of the veterinarian's professional practice. As explained previously, the client is obligated to use the VFD feed as indicated on the VFD and as allowed in the VFD drug's approval, conditional approval, or index listing. Furthermore, the VFD feed cannot be fed to the animals after the expiration date of the VFD. These requirements protect public health by ensuring that the VFD feed is being fed to the animals under the veterinarian's supervision and oversight in accordance with the VFD and the conditions of approval, conditional approval, or index listing for the VFD drug or combination VFD drug at issue.

FDA has the responsibility for enforcing these requirements and ensuring that VFD drugs and VFD feeds are used according to these requirements that are intended to protect public health. The requirements for the veterinarian, distributor, and client allow FDA to review the use of VFD drugs and VFD feed in the field to determine whether VFD drugs and VFD feeds are being used consistent with the VFD issued by the veterinarian, as well as in accordance with the VFD drug's approval, conditional approval, or index listing.

FDA intends to use a phased enforcement strategy for implementation of this final rule. FDA first intends to provide education and training for stakeholders subject to this final rule such as veterinarians, clients (animal producers), feed mill distributors, and other distributors. These education and training efforts are important for supporting effective implementation and compliance with the final rule. As products are changed to VFD status under the GFI #213 process, FDA will then engage in general surveillance, as well as for-cause inspection assignments. These assignments will be risk-based and in response to adverse observations.

(Comment 48) A few comments requested that a prescription be required for farmers to use antibiotics for animals.

(Response 48) Congress enacted legislation in 1996 establishing a new class of restricted feed use drugs that may be distributed without invoking State pharmacy laws, veterinary feed directive drugs. The resulting language in section 504(c) of the FD&C Act explicitly states that veterinary feed directive drugs are not prescription drugs. However, use of a VFD drug requires supervision from a veterinarian and other restrictions that control access to the animal feed containing the VFD drug as it moves through the distribution chain. The regulatory text for this final rule continues to implement the restrictions and supervision as required by the statute.

(Comment 49) Several comments were concerned about the potential for the use of antibiotics in animals to result in drug residues in human food.

(Response 49) During the drug approval process, drug withdrawal requirements are considered and withdrawal limitations set. These withdrawal requirements are based on scientific information and state how soon an animal or products derived from an animal can become food for humans after a drug has been administered. FDA works closely with other Federal and State Agencies to monitor human food for unsafe drug residues and has a compliance program to take enforcement action when unsafe drug residues occur (Ref. 16).

(Comment 50) A few comments stated that antibiotic use has an environmental impact.

(Response 50) FDA is required under the National Environmental Policy Act of 1969 (NEPA) to evaluate all major FDA proposed actions to determine if they will have a significant impact on the human environment. To implement NEPA mandates, the FDA's Center for Veterinary Medicine (CVM) requires sponsors to submit to FDA during the approval process for the proposed use of their animal drug either an environmental assessment (EA) or a claim that it is within a categorical exclusion established by FDA. Categorical exclusions apply to classes of actions which FDA has determined do not individually or cumulatively significantly affect the quality of the human environment, and are ordinarily are excluded from the requirement to prepare an EA or an environmental impact statement (EIS). If a sponsor claims a categorical exclusion, CVM will determine whether the categorical exclusion applies and, if so, whether there are extraordinary circumstances that would require at least an EA. When an EA is submitted, CVM will evaluate the information contained in the EA, and may include additional information in the EA when warranted. If CVM determines that the proposed action may significantly impact the quality of the environment, an EIS must be prepared. If CVM makes a finding of no significant impact on the environment (FONSI) based on the EA, it will issue a FONSI, stating CVM's conclusion not to prepare an EIS (Ref. 17).

(Comment 51) Several comments requested training and outreach on the new VFD requirements. One comment specifically requested that we mandate training on the VFD process for veterinarians prior to allowing them to issue VFDs.

(Response 51) We agree that training and outreach are important components in successfully implementing these regulatory changes. We are engaging professional and trade associations, as well as other stakeholders, to leverage our education and outreach opportunities. However, we do not agree that training should be mandated for veterinarians prior to allowing them to lawfully issue VFDs. The requirements for veterinarians issuing a VFD are not very different or more complicated than other veterinary medical activities that veterinarians perform on a daily basis. We think that voluntary training or self-education, using materials developed by

FDA or other organizations, will be sufficient.

IV. Legal Authority

FDA's authority for issuing this final rule is provided by section 504 of the FD&C Act (21 U.S.C. 354) relating to veterinary feed directive drugs. In addition, section 701(a) of the FD&C Act (21 U.S.C. 371(a)) gives FDA general rulemaking authority to issue regulations for the efficient enforcement of the FD&C Act.

V. Final Regulatory Impact Analysis

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

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the final rule would impose average annualized costs that amount to about 0.1 percent or less of average annual revenues on small entities, FDA concludes that it is very unlikely that the final rule will result in a significant impact on a substantial number of small entities.

The summary analysis of benefits and costs included in the Executive Summary of this document is drawn from the detailed FRIA, which is available at *http://www.regulations.gov* (enter Docket No. FDA–2010–N–0155), and is also available on FDA's Web site at *http://www.fda.gov.* Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $141 million, using the most current (2013) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

VI. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown in the following paragraphs with an estimate of the burden for annual reporting, recordkeeping, and third-party disclosure, including one-time burdens triggered upon implementation of this final rule. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Veterinary Feed Directives.

Description: The final rule will revise existing OMB control number 0910–0363 for veterinary feed directives by providing for greater efficiencies to the VFD process.

In 1996, the ADAA was enacted to facilitate the approval and marketing of new animal drugs and medicated feeds. Among other things, the ADAA created a new category of new animal drugs called veterinary feed directive drugs (or VFD drugs). VFD drugs are new animal drugs intended for use in or on animal feed, which are limited to use under the professional supervision of a licensed veterinarian in the course of the veterinarian's professional practice.

Currently, there are two VFD drugs under five approved animal drug applications. However, FDA has received feedback from stakeholders characterizing the current VFD process as being overly burdensome. In response to these concerns, FDA began exploring ways to improve the VFD program's efficiency. To this end, FDA published an ANPRM inviting public comment on possible VFD program efficiency improvements on March 29, 2010 (75 FR 15387). Based on the considerable public input received in response to the ANPRM, on April 13, 2012, FDA issued for public comment draft text for proposed revisions to the current VFD regulation at part 558 (77 FR 22247).

On December 12, 2013 (78 FR 75515), FDA issued a proposed rule which contained proposed revised information collection requirements at 78 FR 75522 to 75525. Many of the information collection requirements carry over from existing OMB control number 0910–0363; however, the section numbers for some of the information collection requirements have been redesignated in this final rule. Those one-time information collection requirements that are the direct result of this final rule are shown in tables under the heading ''One-Time Costs.'' The remaining information collection requirements associated with this final rule are shown in tables under the headings ''Annual'' or ''Recurring Costs.''

A. Reporting Requirements

Description of Respondents: VFD Feed Distributors, VFD Drug Sponsors

Currently, under § 558.6(d)(1) (redesignated as § 558.6(c)(4)) a distributor of animal feed containing a VFD drug must notify FDA prior to the first time he distributes such VFD feed and this notification is required one time per distributor. Therefore, all active distributors of VFD feed must have already made notification to FDA of their intention to distribute such feed in order to be in compliance with the current regulation. In addition, a distributor must provide updated information to FDA within 30 days of a change in ownership, business name, or business address.

Because the reporting requirements for distributors under redesignated § 558.6(c)(4) are the same as the current requirements under § 558.6(d)(1), there is no new reporting burden for distributors other than the one-time burden hours and costs described in Table 1. FDA understands that current VFD feed distributors must review the final rule in order to determine which actions are necessary to comply with the new regulation. For these current VFD feed distributors we estimate review of the rule will take a one-time hourly burden of 4 hours to complete.

Burden hours and costs are derived from the Final Regulatory Impact Analysis (FRIA) associated with this final rule. Wage rates have been adjusted in the tables throughout to that reported in the FRIA.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR 558.6/Activity	Number of respondents	Number of responses per respondent	Total responses	Average burden per response in hours	Total hours	Total costs
One-Time Reporting Burden						
Review of the Rule (VFD Feed Distributors).	1,376	1	1,376	4	5,504	[2] $529,000
Total One-time Reporting Burden	.....	.....	.....	.....	5,504	529,000
Annual (Recurring) Reporting Burden						
558.6(c)(4)—A distributor must notify FDA prior to the first time it distributes a VFD drug.	[3] 300	1	300	0.125 (8 minutes)	37.5	NA
558.6(c)(6)—A distributor must notify FDA within 30 days of any change in ownership, business name, or business address.	20	1	20	0.125 (8 minutes)	2.5	N/A
Total Annual Reporting Hours	.....	.....	.....	.....	40	.....

[1] There are no operating and maintenance costs associated with this collection of information.
[2] 1,376 distributors have notified FDA of their intent to distribute a VFD drug and will need to review the rule. 1,376 VFD feed distributors × approximately $96 per hour for review at the general and operations manager level × 4 hours of one-time review = approximately $529,000. Estimate rounded to be in accordance with the FRIA (see FRIA).
[3] 1,376 distributors have already notified FDA of their intent to distribute a VFD drug. FDA expects that 300 new distributors will choose to distribute VFDs each year.

The number of respondents multiplied by the number of responses per respondent equals the total responses. The total responses multiplied by the average burden per response equals the total hours.

There are additional reporting burdens for current VFD drug sponsors under OMB control numbers 0910–0032 (New Animal Drug Applications) and 0910–0669 (Abbreviated New Animal Drug Applications), described as follows:

All labeling and advertising for VFD drugs, combination VFD drugs, and feeds containing VFD drugs or combination VFD drugs also are reported to FDA under OMB control number 0910–0032 and must prominently and conspicuously display the following cautionary statement: ''Caution: Federal law restricts medicated feed containing this veterinary feed directive (VFD) drug to use by or on the order of a licensed veterinarian'' (§ 558.6(a)(6)). This labeling statement is not subject to review by OMB because it is a ''public disclosure[s] of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)). Therefore, an hourly and cost burden estimate for label supplement changes to the new specimen labeling for the Type A medicated article and the representative label for use by the feed manufacturer are not included.

The VFD must also include the following statement (§ 558.6(b)(3)(xiii)): ''Use of feed containing this veterinary feed directive (VFD) drug in a manner other than as directed on the labeling (extralabel use) is not permitted.'' The burden associated with including this verbatim statement is not subject to review by OMB under the PRA (5 CFR 1320.3(c)(2)).

The veterinarian may restrict VFD authorization to only include the VFD drug(s) cited on the VFD or such authorization may be expanded to allow the use of the cited VFD drug(s) along with one or more OTC animal drugs in an approved, conditionally approved, or indexed combination VFD drug. The veterinarian must affirm his or her intent regarding combination VFD drugs by including one of the following statements on the VFD:

1. ''This VFD only authorizes the use of the VFD drug(s) cited in this order and is not intended to authorize the use of such drug(s) in combination with any other animal drugs.''

2. ''This VFD authorizes the use of the VFD drug(s) cited in this order in the following FDA-approved, conditionally approved, or indexed combination(s) in medicated feed that contains the VFD drug(s) as a component.'' [List specific approved, conditionally approved, or indexed combination medicated feeds following this statement.]

3. ''This VFD authorizes the use of the VFD drug(s) cited in this order in any FDA-approved, conditionally approved, or indexed combination(s) in medicated feed that contains the VFD drug(s) as a component.'' (§ 558.6(b)(6)).

The burden associated with including these verbatim statements is not subject to review by OMB under the PRA (5 CFR 1320.3(c)(2)). The hourly and cost burdens to include these statements on the VFD as part of the rule are considered de minimis; however, as there are several other changes to the information on the VFD form itself that will occur as the result of this final rulemaking.

Section 558.6(b)(3) includes various changes to the information that would need to be included on the VFD form that is filled out by the veterinarian in order for the VFD to be valid, including but not limited to, deleting the requirement that the veterinarian must include the amount of feed needed to treat the animals. Each of the three drug sponsors that currently market VFD drugs have created VFD forms for their products. Three VFD drug sponsors × six VFD forms × 16 hours per respondent to make form changes = 96 total hours to change the VFD forms. Changes to the VFD form for the six approved VFD forms (for each of the three current VFD drug sponsors, there are separate VFD forms for each approved species and their related indication(s)) equals six VFD forms × $1,331 cost per form = approximately $8,000 one-time cost (see FRIA). NOTE: The hourly and cost burden estimates to include the revised verbatim statements

noted in this document (on the VFD form itself) are not subject to review by OMB under the PRA. We are unable to measure these hours and costs separately, but consider them to be de minimis. The cost to change the VFD form is considered to include these statement changes.

B. Recordkeeping Requirements

Description of Respondents: VFD Feed Distributors, Food Animal Veterinarians, and Clients (Food Animal Producers).

Under current § 558.6(f) and redesignated § 558.6(a)(1), an animal feed containing a VFD drug or a combination VFD drug may be fed to animals only by or upon a lawful VFD issued by a licensed veterinarian. Veterinarians issue three copies of the VFD: One for their own records, one for their client, and one to the client's VFD feed distributor (current § 558.6(b)(1)–(3) and redesignated § 558.6(a)(4) and redesignated § 558.6(b)(8)–(9)). The VFD includes information about the number and species of animals to receive feed containing one or more of the VFD drugs, along with all other information as required under § 558.6. Under current § 558.6(b)(4), if the veterinarian sends the VFD to the client or distributor by electronic means, he or she must assure that the distributor receives the original, signed VFD within 5 working days. Also, under current § 558.6(c), all involved parties (the veterinarian, the distributor, and the client) must retain a copy of the VFD for 2 years. In addition, VFD feed distributors must also keep receipt and distribution records of VFD feeds they manufacture and make them available for FDA inspection for 2 years (see current § 558.6(e)).

Veterinarians and clients must review the rule to ensure compliance with their respective new requirements. In Table 2, we estimate the hourly burden of this one-time review for both groups. (Review of the rule by VFD feed distributors is accounted for in Table 1.)

Recordkeeping costs are calculated as follows: 750,000 VFDs (an average of 375,000 VFDs issued for each of the two VFD drugs) issued in triplicate equals 2,250,000 VFDs issued and stored in files per year.[1]

Assuming that currently all VFDs are issued and stored in hardcopy, we estimate it takes 300 large file cabinets to store these paper copy VFDs for 2 years, assuming 15,000 copies can be stored in a large file cabinet (see 64 FR 35966 at 35970). We estimate the average cost of a new file cabinet to be $600. Thus, we estimate that the current capital outlay for industry to store hardcopy VFDs for the required 2 years is $180,000 ($600 × 300 equals $180,000).

In the 2013 proposed rule, FDA proposed to reduce the recordkeeping requirement for copies of VFDs for all involved parties (proposed § 558.6(a)(4)) from 2 years to 1 year. After considering public comment, FDA has decided not to reduce the recordkeeping requirement from 2 years to 1 year in this final rule. However, as included in § 558.6(b)(8), the veterinarian will no longer be required to assure that a paper copy is received by the distributor within 5 working days of receipt if the original was faxed or otherwise transmitted electronically. This hardcopy requirement has become outdated by modern electronic communication and presents an unnecessary burden on the industry. This provision reduces the number of paper copies requiring physical recordkeeping space.

We anticipate approximately one-half of the food animal industry will use electronic VFD generation and recordkeeping during the next 3 years of the information collection. As the use of computers for electronic storage of records has increased substantially since 2000 and is expected to continue to do so regardless of this final rule, the only marginal cost that would offset some of the reduction in file cabinet storage space costs would be the additional computer storage space that may be needed for electronic VFD forms. Because the cost of electronic storage capacity on computers has become extremely low, FDA regards this as a negligible cost and has not estimated it.

Also, we anticipate that computer storage will eliminate the need for large amounts of physical space devoted to file cabinets. If, as we expect, one-half of the VFD recordkeepers (veterinarians, distributors, and clients) use electronic recordkeeping, this would result in a cost savings of $19,575 annually ($21.75 per square foot per year rental cost of space × 6 square feet per file cabinet × 150 filing cabinets = $19,575 annual savings for switching to computer storage) (Thorpe, K., J. Edwards, and E. Bondarenko, Cassidy Turley Commercial Real Estate Services. ''U.S. Office Trends Report—2nd Quarter 2013.'' Page 10. *http://www.cassidyturley.com/Research/MarketReports/Report.aspx?topic=U_S_Office_Trends_Report&action=download,* 2nd Quarter 2013).

In summary, we anticipate that the capital costs for recordkeeping will be reduced from $180,000 (storing all VFDs as hardcopies in file cabinets for 2 years) to $90,000 (as described in the FRIA, there is a 50 percent reduction in file cabinet costs due to electronic recordkeeping for 2 years (*i.e.,* to $90,000)) plus $19,575 annual savings to keep VFD records, reflecting the reduction in rental and space costs for file cabinets.

Whether a paper copy is filed or whether the VFD is filed electronically, we calculate that the time spent to file the VFD is the same at 0.167 hours. As stated previously, distributors may receive an acknowledgement letter in lieu of a VFD when distributing VFD feed to another distributor. Such letters, like VFDs, are also subject to a 2-year record retention requirement. Thus, the recordkeeping burden for acknowledgement letters is included as a subset of the VFD recordkeeping burden. This combined recordkeeping burden, estimated at 18,788 hours in the 2000 final rule, is still cited in Table 2 of the currently approved Information Collection Request (ICR) for § 558.6 (OMB control number 0910–0363).

[1] Distributors may receive an acknowledgement letter in lieu of a VFD when distributing VFD feed to another distributor. Such letters, like VFDs, are also subject to a 2-year record retention requirement. Thus, the recordkeeping burden for acknowledgement letters is included as a subset of the VFD recordkeeping burden.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section 558.6/activity	Number of recordkeepers	Number of records per recordkeeper	Total records	Average burden per recordkeeper in hours	Total hours	Total costs
Estimated One-time Recordkeeping Burden [1]						
Review of the Rule (Food Animal Veterinarians).	3,050	1	3,050	1	3,050	[2] $255,000
Review of the Rule (Clients)	10,000	1	10,000	0.5 (30 minutes)	5,000	[3] 244,000
Recordkeeping by Electronic Storage for 2 years.						[4] (90,000)
Total One-time Recordkeeping Burden.					8,050	409,000
Estimated Annual Recordkeeping Burden [5]						
Filing of VFD copies	14,426	156	2,250,000	0.0167 (1 minute)	[6] 37,575	N/A
Total Annual Recordkeeping Hours.					37,575	

[1] There are no operating and maintenance costs associated with this one-time collection of information.
[2] A total of 3,050 veterinarians × approximately $84 per hour × 1 hour of one-time review = approximately $255,000. Estimate rounded to be in accordance with the FRIA (see FRIA).
[3] A total of 10,000 clients × approximately $49 per hour × 0.5 hours one-time review = approximately $244,000. Estimate rounded to be in accordance with the FRIA (see FRIA).
[4] There will be a one-time savings in capital costs for recordkeeping of $90,000 (as described in the FRIA, there is a 50% reduction in cost due to electronic recordkeeping for 2 years (*i.e.,* 50% reduction in cost of file cabinets needed) and there will be $19,575 annual savings, reflecting the reduction in rental and space costs for file cabinets.
[5] There are no capital costs or operating and maintenance costs associated with this annual collection of information.
[6] 14,426 recordkeepers (3,050 food animal veterinarians + 1,376 distributors + 10,000 clients = 14,426) × 156 records per recordkeeper = 2,250,000 records (3 copies × 750,000 VFDs) × 0.0167 hours to file each record = 37,575 hours.

The number of respondents multiplied by the number of records per recordkeeper equals the total records. The total records multiplied by the average burden per recordkeeper equals the total hours.

C. Third-Party Disclosure Requirements

Description of Respondents: VFD Drug Sponsors, Food Animal Veterinarians, VFD Feed Distributors, and Clients (Food Animal Producers).

VFD drug sponsors manufacture and label VFD drugs for use in medicated animal feed. FDA understands that sponsors must review the rule to ensure compliance with their disclosure requirements. In Table 3 we estimate the hourly burden of this review. (Review of the rule by VFD feed distributors is accounted for in Table 1 and by veterinarians and clients in Table 2.)

Section § 558.6(b)(8) would allow veterinarians to send VFDs to the client or distributor via fax or other electronic means (as is currently permitted under § 558.6(b)(4)). However, if a VFD is transmitted electronically, the veterinarian would no longer be required to assure that the original, signed VFD is given to the distributor within 5 days.

FDA estimates that a veterinarian currently requires about 0.25 hours to issue a VFD (*i.e.,* research, fill out, and deliver all copies, including the original, signed VFD to the distributor). At a compensation rate of about $84, the labor cost of currently issuing VFDs is estimated at $15.70 million (the estimated average of 750,000 VFDs issued annually × 0.25 hours to issue each VFD × $84 per hour = approximately $15.70 million (rounded to be in accordance with the FRIA)). FDA estimates that the effect of this rule would be to reduce the average time to issue a VFD by 50 percent, or about 0.125 hours per VFD. This would result in a cost of about $7.85 million annually (the estimated average of 750,000 VFDs issued annually × 0.125 hours to issue each VFD × $84 per hour = approximately $7.85 million (rounded to be in accordance with the FRIA)), a cost savings of about $7.85 million ($15.70 million − $7.85 million = approximately $7.85 million.

Currently, a distributor may only distribute a VFD feed to another distributor for further distribution if the originating distributor (consignor) first obtains a written acknowledgement letter from the receiving distributor (consignee) before the feed is shipped (current § 558.6(d)(2)). Because this current requirement is the same as that being finalized in § 558.6(c)(8), there is no new reporting burden.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN

21 CFR Section/activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure in hours	Total hours	Total costs
One-Time Third-party Disclosure Burden [1]						
Review of the Rule, Current VFD Drug Sponsors (General and Operations Managers)	3	1	3	6	18	[2] $2,500

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN—Continued

21 CFR Section/activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure in hours	Total hours	Total costs
Total One-Time Third-Party Disclosure Burden					18	2,500
Estimated Annual (Recurring) Third-Party Disclosure Burden [1]						
558.6(b)(7)—Veterinarian issues VFD [3]	3,050	245.9	750,000	0.125 (8 minutes)	93,750	N/A
558.6(c)(8)—Acknowledgment letter generation	[4] 1,000	5	5,000	0.125 (8 minutes)	625	N/A
Total Annual Third-Party Disclosure Hours					94,375	

[1] There are no operating and maintenance costs associated with this collection of information.
[2] Three current VFD drug sponsors × $140 × 6 hours of one-time review time = approximately $2,500 one-time cost. Estimate rounded to be in accordance with the FRIA.
[3] A total of 3,050 veterinarians × 245.9 VFDs issued per year per respondent (on average) = 750,000 VFDs issued per year. This figure × 0.125 hours per form = 93,750 hours per year × $84 per hour = approximately $7,850,000 annual cost. Estimate rounded to be in accordance with the FRIA.
[4] 1,000 VFD feed distributors (of the 1,376 total distributors) × 5 disclosures per respondent = 5,000 annual acknowledgement letters × 0.125 hours = approximately 625 hours.

The number of respondents multiplied by the number of disclosures per respondent equals the total annual disclosures. The total annual disclosures multiplied by the average burden per disclosure equals the total hours.

Additionally, we have clarified in the final rule that, if a distributor manufactures the VFD feed, the distributor must also keep VFD manufacturing records for 1 year in accordance with part 225 and that such records must be made available for inspection and copying by FDA upon request (§ 558.6(c)(4)). These record requirements are currently approved under OMB control number 0910–0152, Current Good Manufacturing Practice Regulations for Medicated Feed.

The information collection provisions in this final rule have been submitted to OMB for review as required by section 3507(d) of the Paperwork Reduction Act of 1995.

Before the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. 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.

VII. Environmental Impact

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

VIII. Federalism

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

IX. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov.* (We have verified the Web site addresses in this reference section, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. ''Guidance for Industry: The Judicious Use of Medically Important Antimicrobial Drugs in Food-Producing Animals'' (GFI #209), April 13, 2012; (*http://www.fda.gov/downloads/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/UCM216936.pdf*).
2. ''Guidance for Industry: New Animal Drugs and New Animal Drug Combination Products Administered in or on Medicated Feed or Drinking Water of Food-Producing Animals: Recommendations for Drug Sponsors for Voluntarily Aligning Product Use Conditions with GFI #209'' (GFI #213), December 2013; (*http://www.fda.gov/downloads/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/UCM299624.pdf*).
3. FDA, Warning Letters (*http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/default.htm*).
4. ''Compliance Program Guidance Manual: Feed Manufacturing'' (CPGM 7371.004); (*http://www.fda.gov/downloads/AnimalVeterinary/GuidanceComplianceEnforcement/ComplianceEnforcement/UCM113430.pdf*).
5. The Association of American Feed Control Officials (AAFCO), Regulatory Page (*http://www.aafco.org/Regulatory*).
6. ''Guidance for Industry: Veterinary Feed Directive Regulation Questions and Answers'' (GFI #120), March 26, 2009; (*http://www.fda.gov/downloads/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/UCM052660.pdf*).
7. ''Guidance for Industry Part 11, Electronic Records; Electronic Signatures—Scope and Application'' August 2003; (*http://www.fda.gov/downloads/RegulatoryInformation/Guidances/ucm125125.pdf*).
8. AVMA, Principles of Veterinary Medical Ethics of the AVMA (*https://www.avma.org/KB/Policies/Pages/Principles-of-Veterinary-Medical-Ethics-of-the-AVMA.aspx*).

9. FDA, From an Idea to the Marketplace: The Journey of an Animal Drug through the Approval Process (*http://www.fda.gov/AnimalVeterinary/ResourcesforYou/AnimalHealthLiteracy/ucm219207.htm*).
10. FDA, Conditional Approval Explained: A Resource for Veterinarians (*http://www.fda.gov/animalveterinary/resourcesforyou/ucm413948.htm*).
11. FDA, Drug Indexing (*http://www.fda.gov/AnimalVeterinary/DevelopmentApprovalProcess/MinorUseMinorSpecies/ucm070206.htm*).
12. White House, National Strategy for Combating Antibiotic-Resistant Bacteria (*http://www.whitehouse.gov/sites/default/files/docs/carb_national_strategy.pdf*).
13. FDA, FDA Secures Full Industry Engagement on Antimicrobial Resistance Strategy (*http://www.fda.gov/AnimalVeterinary/NewsEvents/CVMUpdates/ucm403285.htm*).
14. FDA, List of Affected Products (*http://www.fda.gov/AnimalVeterinary/SafetyHealth/AntimicrobialResistance/JudiciousUseofAntimicrobials/ucm390429.htm*).
15. FDA, FDA's Plans to Monitor Progress (*http://www.fda.gov/AnimalVeterinary/SafetyHealth/AntimicrobialResistance/JudiciousUseofAntimicrobials/ucm378256.htm*).
16. FDA, Compliance Policy Guide Sec. 615.200 Proper Drug Use and Residue Avoidance by Non-Veterinarians (*http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManual/ucm074660.htm*).
17. FDA, Environmental Impact Considerations (*http://www.fda.gov/AnimalVeterinary/DevelopmentApprovalProcess/EnvironmentalAssessments/default.htm*).

List of Subjects

21 CFR Part 514

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

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 514 and 558 are amended as follows:

PART 514—NEW ANIMAL DRUG APPLICATIONS

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

Authority: 21 U.S.C. 321, 331, 351, 352, 354, 356a, 360b, 371, 379e, 381.

■ 2. In § 514.1, revise paragraph (b)(9) to read as follows:

§ 514.1 Applications.

* * * * *

(b) * * *

(9) *Veterinary feed directive.* Three copies of a veterinary feed directive (VFD) must be submitted in a form that accounts for the information described under §§ 558.6(b)(3) and 558.6(b)(4) of this chapter.

* * * * *

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 3. The authority citation for 21 CFR part 558 is revised to read as follows:

Authority: 21 U.S.C. 354, 360b, 360ccc, 360ccc–1, 371.

■ 4. In § 558.3, revise paragraphs (b)(1)(ii), (b)(6), (b)(7), (b)(9), and (b)(11); and add paragraph (b)(12) to read as follows:

§ 558.3 Definitions and general considerations applicable to this part.

* * * * *

(b) * * *

(1) * * *

(ii) Category II—These drugs require a withdrawal period at the lowest use level for at least one species for which they are approved, or are regulated on a ''no-residue'' basis or with a zero tolerance because of a carcinogenic concern regardless of whether a withdrawal period is required.

* * * * *

(6) A ''veterinary feed directive (VFD) drug'' is a drug intended for use in or on animal feed which is limited by an approved application filed pursuant to section 512(b) of the Federal Food, Drug, and Cosmetic Act, a conditionally approved application filed pursuant to section 571 of the Federal Food, Drug, and Cosmetic Act, or an index listing under section 572 of the Federal Food, Drug, and Cosmetic Act to use under the professional supervision of a licensed veterinarian. Use of animal feed bearing or containing a VFD drug must be authorized by a lawful veterinary feed directive.

(7) A ''veterinary feed directive'' is a written (nonverbal) statement issued by a licensed veterinarian in the course of the veterinarian's professional practice that orders the use of a VFD drug or combination VFD drug in or on an animal feed. This written statement authorizes the client (the owner of the animal or animals or other caretaker) to obtain and use animal feed bearing or containing a VFD drug or combination VFD drug to treat the client's animals only in accordance with the conditions for use approved, conditionally approved, or indexed by the Food and Drug Administration.

* * * * *

(9) For the purposes of this part, a ''distributor'' means any person who distributes a medicated feed containing a VFD drug to another person. Such other person may be another distributor or the client-recipient of a VFD.

* * * * *

(11) An ''acknowledgment letter'' is a written (nonverbal) communication provided to a distributor (consignor) from another distributor (consignee). An acknowledgment letter must be provided either in hardcopy or through electronic media and must affirm:

(i) That the distributor will not ship such VFD feed to an animal production facility that does not have a VFD,

(ii) That the distributor will not ship such VFD feed to another distributor without receiving a similar written acknowledgment letter, and

(iii) That the distributor has complied with the distributor notification requirements of § 558.6(c)(5).

(12) A ''combination veterinary feed directive (VFD) drug'' is a combination new animal drug (as defined in § 514.4(c)(1)(i) of this chapter) intended for use in or on animal feed which is limited by an approved application filed under section 512(b) of the Federal Food, Drug, and Cosmetic Act, a conditionally approved application filed under section 571 of the Federal Food, Drug, and Cosmetic Act, or an index listing under section 572 of the Federal Food, Drug, and Cosmetic Act to use under the professional supervision of a licensed veterinarian, and at least one of the new animal drugs in the combination is a VFD drug. Use of animal feed bearing or containing a combination VFD drug must be authorized by a lawful VFD.

■ 5. Revise § 558.6 to read as follows:

§ 558.6 Veterinary feed directive drugs.

(a) *General requirements related to veterinary feed directive (VFD) drugs.* (1) Animal feed bearing or containing a VFD drug or a combination VFD drug (a VFD feed or combination VFD feed) may be fed to animals only by or upon a lawful VFD issued by a licensed veterinarian.

(2) A VFD feed or combination VFD feed must not be fed to animals after the expiration date on the VFD.

(3) Use and labeling of a VFD drug or a combination VFD drug in feed is limited to the approved, conditionally approved, or indexed conditions of use. Use of feed containing this veterinary feed directive (VFD) drug in a manner other than as directed on the labeling (extralabel use) is not permitted.

(4) All involved parties (the veterinarian, the distributor, and the

client) must retain a copy of the VFD for 2 years. The veterinarian must retain the original VFD in its original form (electronic or hardcopy). The distributor and client copies may be kept as an electronic copy or hardcopy.

(5) All involved parties must make the VFD and any other records specified in this section available for inspection and copying by FDA upon request.

(6) All labeling and advertising for VFD drugs, combination VFD drugs, and feeds containing VFD drugs or combination VFD drugs must prominently and conspicuously display the following cautionary statement: ''Caution: Federal law restricts medicated feed containing this veterinary feed directive (VFD) drug to use by or on the order of a licensed veterinarian.''

(b) *Responsibilities of the veterinarian issuing the VFD.* (1) In order for a VFD to be lawful, the veterinarian issuing the VFD must:

(i) Be licensed to practice veterinary medicine; and

(ii) Be operating in the course of the veterinarian's professional practice and in compliance with all applicable veterinary licensing and practice requirements, including issuing the VFD in the context of a veterinarian-client-patient relationship (VCPR) as defined by the State. If applicable VCPR requirements as defined by such State do not include the key elements of a valid VCPR as defined in § 530.3(i) of this chapter, the veterinarian must issue the VFD in the context of a valid VCPR as defined in § 530.3(i) of this chapter.

(2) The veterinarian must only issue a VFD that is in compliance with the conditions for use approved, conditionally approved, or indexed for the VFD drug or combination VFD drug.

(3) The veterinarian must ensure that the following information is fully and accurately included on the VFD:

(i) The veterinarian's name, address, and telephone number;

(ii) The client's name, business or home address, and telephone number;

(iii) The premises at which the animals specified in the VFD are located;

(iv) The date of VFD issuance;

(v) The expiration date of the VFD. This date must not extend beyond the expiration date specified in the approval, conditional approval, or index listing, if such date is specified. In cases where the expiration date is not specified in the approval, conditional approval, or index listing, the expiration date of the VFD must not exceed 6 months after the date of issuance;

(vi) The name of the VFD drug(s);

(vii) The species and production class of animals to be fed the VFD feed;

(viii) The approximate number of animals to be fed the VFD feed by the expiration date of the VFD. The approximate number of animals is the potential number of animals of the species and production class identified on the VFD that will be fed the VFD feed or combination VFD feed at the specified premises by the expiration date of the VFD;

(ix) The indication for which the VFD is issued;

(x) The level of VFD drug in the VFD feed and duration of use;

(xi) The withdrawal time, special instructions, and cautionary statements necessary for use of the drug in conformance with the approval;

(xii) The number of reorders (refills) authorized, if permitted by the drug approval, conditional approval, or index listing. In cases where reorders (refills) are not specified on the labeling for an approved, conditionally approved, or index listed VFD drug, reorders (refills) are not permitted;

(xiii) The statement: ''Use of feed containing this veterinary feed directive (VFD) drug in a manner other than as directed on the labeling (extralabel use) is not permitted.'';

(xiv) An affirmation of intent for combination VFD drugs as described in paragraph (6) of this section; and

(xv) The veterinarian's electronic or written signature.

(4) The veterinarian may, at his or her discretion, enter the following information on the VFD to more specifically identify the animals authorized to be treated/fed the VFD feed:

(i) A more specific description of the location of animals (*e.g.,* by site, pen, barn, stall, tank, or other descriptor that the veterinarian deems appropriate);

(ii) The approximate age range of the animals;

(iii) The approximate weight range of the animals; and

(iv) Any other information the veterinarian deems appropriate to identify the animals specified in the VFD.

(5) For VFDs intended to authorize the use of an approved, conditionally approved, or indexed combination VFD drug that includes more than one VFD drug, the veterinarian must include the drug-specific information required in paragraphs (b)(2)(vi), (ix), (x), and (xi) of this section for each VFD drug in the combination.

(6) The veterinarian may restrict VFD authorization to only include the VFD drug(s) cited on the VFD or may expand such authorization to allow the use of the cited VFD drug(s) along with one or more over-the-counter (OTC) animal drugs in an approved, conditionally approved, or indexed combination VFD drug. The veterinarian must affirm his or her intent regarding combination VFD drugs by including one of the following statements on the VFD:

(i) ''This VFD only authorizes the use of the VFD drug(s) cited in this order and is not intended to authorize the use of such drug(s) in combination with any other animal drugs.''

(ii) ''This VFD authorizes the use of the VFD drug(s) cited in this order in the following FDA-approved, conditionally approved, or indexed combination(s) in medicated feed that contains the VFD drug(s) as a component.'' [List specific approved, conditionally approved, or indexed combination medicated feeds following this statement.]

(iii) ''This VFD authorizes the use of the VFD drug(s) cited in this order in any FDA-approved, conditionally approved, or indexed combination(s) in medicated feed that contains the VFD drug(s) as a component.''

(7) The veterinarian must issue a written (nonverbal) VFD.

(8) The veterinarian must send a copy of the VFD to the distributor via hardcopy, facsimile (fax), or electronically. If in hardcopy, the veterinarian must send the copy of the VFD to the distributor either directly or through the client.

(9) The veterinarian must provide a copy of the VFD to the client.

(c) Responsibilities of any person who distributes an animal feed containing a VFD drug or a combination VFD drug:

(1) The distributor is permitted to fill a VFD only if the VFD contains all the information required in paragraph (b)(3) of this section.

(2) The distributor is permitted to distribute an animal feed containing a VFD drug or combination VFD drug only if it complies with the terms of the VFD and is manufactured and labeled in conformity with the approved, conditionally approved, or indexed conditions of use for such drug.

(3) The distributor must keep records of the receipt and distribution of all medicated animal feed containing a VFD drug for 2 years.

(4) In addition to other applicable recordkeeping requirements found in this section, if the distributor manufactures the animal feed bearing or containing the VFD drug, the distributor must also keep VFD feed manufacturing records for 1 year in accordance with part 225 of this chapter. Such records must be made available for inspection and copying by FDA upon request.

(5) A distributor of animal feed containing a VFD drug must notify FDA prior to the first time it distributes animal feed containing a VFD drug. The notification is required one time per distributor and must include the following information:

(i) The distributor's complete name and business address;

(ii) The distributor's signature or the signature of the distributor's authorized agent; and

(iii) The date the notification was signed.

(6) A distributor must also notify FDA within 30 days of any change in ownership, business name, or business address.

(7) The notifications cited in paragraphs (c)(5) and (c)(6) of this section must be submitted to the Food and Drug Administration, Center for Veterinary Medicine, Division of Animal Feeds (HFV–220), 7519 Standish Pl., Rockville, MD 20855, FAX: 240–453–6882.

(8) A distributor is permitted to distribute a VFD feed to another distributor only if the originating distributor (consignor) first obtains a written (nonverbal) acknowledgment letter, as defined in § 558.3(b)(11), from the receiving distributor (consignee) before the feed is shipped. Consignor distributors must retain a copy of each consignee distributor's acknowledgment letter for 2 years.

Dated: May 28, 2015.

Leslie Kux,

Associate Commissioner for Policy.

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Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 218

Takes of Marine Mammals Incidental to Specified Activities; U.S. Navy Training and Testing Activities in the Northwest Training and Testing Study Area; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[Docket No. 140109018–5464–01]

RIN 0648–BD89

Takes of Marine Mammals Incidental to Specified Activities; U.S. Navy Training and Testing Activities in the Northwest Training and Testing Study Area

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

ACTION: Proposed rule; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to the training and testing activities conducted in the Northwest Training and Testing (NWTT) study area from November 2015 through November 2020. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue regulations and subsequent Letters of Authorization (LOAs) to the Navy to incidentally harass marine mammals. The Navy has also requested that NMFS authorize modifications to watchstander requirements for observed behavior of marine mammals during Major Training Events (MTEs) in the Hawaii-Southern California Training and Testing (HSTT), Atlantic Fleet Training and Testing (AFTT), Mariana Islands Training and Testing (MITT), and Gulf of Alaska Training (GOA) study areas. Modifications to the Navy watchstander requirements would require a revision to regulatory text in current regulations governing the taking and importing of marine mammals during testing and/or training activities in these study areas. There are no MTEs associated with Navy training and testing activities in the NWTT study area.

DATES: Comments and information must be received no later than July 17, 2015.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2015–0031, by any of the following methods:

- *Electronic submissions:* submit all electronic public comments via the Federal eRulemaking Portal, Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0031,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit comments to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.
- *Fax: (301) 713–0376; Attn: Jolie Harrison.*

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: John Fiorentino, Office of Protected Resources, NMFS, (301) 427–8477.

SUPPLEMENTARY INFORMATION:

Availability

A copy of the Navy's LOA application, which contains a list of the references used in this document, may be obtained by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm.* The Navy also prepared a Draft Environmental Impact Statement (DEIS)/Overseas Environmental Impact Statement (OEIS) to assess the environmental impacts associated with ongoing and proposed training and testing activities in the NWTT Study Area. The NWTT DEIS/OEIS was released to the public on January 24, 2014 (79 FR 4158) for review until April 15, 2014. On October 24, 2014 (79 FR 63610), the Navy published a Notice of Intent (NOI) to prepare a Supplement to the January 2014 NWTT DEIS/OEIS. The Supplement was released to the public on December 19, 2014 (79 FR 75800) for review until February 2, 2015. The Navy is the lead agency for the NWTT EIS/OEIS, and NMFS and the U.S. Coast Guard are cooperating agencies pursuant to 40 CFR 1501.6 and 1508.5. The January 2014 NWTT DEIS/OEIS and the December 2014 Supplement, which contain a list of the references used in this document, may be viewed at: *http://www.nwtteis.com.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

The National Defense Authorization Act of 2004 (NDAA) (Public Law 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (section 3(18)(B) of the MMPA): ''(i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].''

Summary of Request

NWTT Proposed Rule

On December 18, 2013, NMFS received an application from the Navy requesting two LOAs for the take of 26 species of marine mammals incidental to Navy training and testing activities to be conducted in the NWTT Study Area over 5 years. On September 26, 2014, the Navy submitted a revised LOA application to reflect updates to exposure estimates based on emergent

changes to specific types of training activities. The revised application also provided an update to the effects analysis for Guadalupe fur seals (summarized in the Analysis of Guadalupe Fur Seal Exposures section of this proposed rule) to more realistically reflect potential impacts from offshore Navy training and testing events. On November 7, 2014, the Navy submitted a revised LOA application to address: (a) An inadvertent error in the recommended mitigation zone for mine countermeasure and neutralization training events; (b) removal of the time delay firing underwater explosive training activity; and (c) correction or clarification of certain mitigation measures applied to testing. On April 2, 2015, the Navy submitted a final revision to the LOA application (hereinafter referred to as the LOA application) to incorporate and update population density estimates for the Hood Canal stock of harbor seals.

The Navy is requesting separate 5-year LOAs for training and testing activities to be conducted from 2015 through 2020. The Study Area includes the existing Northwest Training Range Complex, the Keyport Range Complex, Carr Inlet Operations Area, Southeast Alaska Acoustic Measurement Facility (SEAFAC), and Navy pierside locations where sonar maintenance or testing may occur (see Figure 1–1 of the LOA application for a map of the NWTT Study Area). The activities conducted within the NWTT Study Area are classified as military readiness activities. The Navy states that these activities may expose some of the marine mammals present within the NWTT Study Area to sound from underwater acoustic sources and explosives. The Navy is requesting authorization to take 26 marine mammal species by Level B (behavioral) harassment; 4 of those marine mammal species may be taken by injury (Level A harassment).

The LOA application and the January 2014 NWTT DEIS/OEIS contain proposed acoustic thresholds that were used to evaluate the Navy's AFTT and HSTT activities. The thresholds are based on evaluation of recent scientific studies; a detailed explanation of how they were derived is provided in the Criteria and Thresholds for Navy Acoustic Effects Analysis Technical Report (Finneran and Jenkins, 2012). NMFS is currently updating and revising all of its acoustic thresholds. Until that process is complete, NMFS will continue its long-standing practice of considering specific modifications to the acoustic thresholds currently employed for incidental take authorizations only after providing the public with an opportunity for review and comment. NMFS is requesting comments on all aspects of the proposed rule.

Modifications to HSTT, AFTT, MITT, and GOA Final Rules

The Navy is also requesting that NMFS authorize modifications to watchstander requirements, unrelated to implementation of mitigation measures, for observed behavior of marine mammals during MTEs in the HSTT, AFTT, MITT, and GOA study areas. With these proposed modifications the Navy would no longer be required to report individual marine mammal sighting information during MTEs when mitigation is not occurring in the study area. After 5 years of collecting marine mammal sighting data for all animals sighted during MTEs, NMFS and Navy have determined that without the ability to obtain species information this data set does not provide for any meaningful analysis beyond that which may be possible using mitigation-related observations alone. The Navy and NMFS have thoroughly investigated several potential uses for the data prior to reaching this conclusion. Additionally, this reporting requirement places an undue administrative burden on ships watch teams. The Navy will continue to collect marine mammal sighting data during MTEs for every instance when any form of mitigation is employed such as powering down or securing sonar, maneuvering the ship, or delaying an event—in other words, in instances where animals are closer to the sound source around which mitigation measures are implemented. This data is useful in supporting mitigation effectiveness analyses and also may be helpful in supporting an understanding of the frequency with which marine mammals (generally, not by species) may be encountered or detected in close proximity to a particular source (*e.g.,* where the likelihood of auditory or other injury is higher). Additionally, the Navy will continue to implement their separate Integrated Comprehensive Monitoring Program, which includes studies that are specifically designed to contribute to our understanding of the animals affected and how Navy training and testing impacts them.

These modifications would be implemented through the revision of regulatory text for existing regulations governing the taking of marine mammals incidental to testing and/or training activities in HSTT, AFTT, MITT, and GOA study areas. Proposed revisions to the regulatory text are provided in the regulatory text at the end of this proposed rule. Proposed revisions to MITT regulatory text will be made in the MITT final rule, which is currently being prepared concurrent with the NWTT proposed rule and is expected to publish in the **Federal Register** prior to the NWTT final rule. There are no MTEs or marine mammal sighting reporting requirements associated with Navy training and testing activities in the NWTT study area.

Background of Request

The Navy's mission is to maintain, train, and equip combat-ready naval forces capable of winning wars, deterring aggression, and maintaining freedom of the seas. Section 5062 of Title 10 of the United States Code directs the Chief of Naval Operations to train all military forces for combat. The Chief of Naval Operations meets that direction, in part, by conducting at-sea training exercises and ensuring naval forces have access to ranges, operating areas (OPAREAs) and airspace where they can develop and maintain skills for wartime missions and conduct research, development, testing, and evaluation (RDT&E) of naval systems.

The Navy proposes to continue conducting training and testing activities within the NWTT Study Area, which have been ongoing for decades with some activities dating back to at least the early 1900s. The tempo and types of training and testing activities have fluctuated because of the introduction of new technologies, the evolving nature of international events, advances in war fighting doctrine and procedures, and force structure (organization of ships, submarines, aircraft, weapons, and personnel) changes. Such developments influence the frequency, duration, intensity, and location of required training and testing activities. The Navy analyzed many training and testing activities in the Study Area in the Tactical Training Theater Assessment and Planning Program Phase I and earlier documents, specifically the following environmental planning documents: Northwest Training Range Complex Final EIS/OEIS (U.S. Department of the Navy, 2010a), NAVSEA NUWC Keyport Range Complex Extension Final EIS/OEIS (U.S. Department of the Navy, 2010b), and the Final EIS for the Southeast Alaska Acoustic Measurement Facility (SEAFAC) (U.S. Department of the Navy, 1988). The Navy's LOA request covers training and testing activities that would occur for a 5-year period following the expiration of the first of the two current MMPA authorizations

(Northwest Training Range Complex; Keyport Range Complex). The Navy has also prepared and released to the public a January 2014 DEIS/OEIS analyzing the effects on the human environment of implementing their preferred alternative (among others). The January 2014 NWTT DEIS/OEIS (which is part of Phase II of the program) accounts for planned adjustments to tempo and types of activities dictated by military readiness requirements. A NOI to prepare a Supplement to the January 2014 NWTT DEIS/OEIS was published on October 24, 2014 and the draft Supplement was released to the public on December 19, 2014. The Supplement focused on changes to the Proposed Action due to updated training requirements and significant new information relevant to environmental concerns per 40 CFR 1502.9.

The Navy's LOA application differs from the January 2014 NWTT DEIS/OEIS in that it contains updated information on the Washington Inland Waters stocks of harbor seals (Carretta *et al.,* 2014) and their abundance in Hood Canal based on a new application of London *et al.* (2012). The January 2014 NWTT DEIS/OEIS analysis relied on NMFS' Stock Assessment Reports (SARs) through 2013 (Carretta *et al.,* 2014), which did not incorporate the London *et al.* findings. London *et al.* (2012) reported the variability of harbor seal haulout behavior in a sub-portion of Hood Canal, covering 5 months of the year (July-November). The paper provided a range of haulout probabilities in Hood Canal that differed from the single value (65 percent—Huber *et al.,* 2001) previously used by NMFS and Navy to calculate harbor seal abundance. Recently, in discussions between the Navy and NMFS it was determined that it is now appropriate to incorporate London *et al.* (2012) for the Hood Canal stock only. This resulted in increasing the population estimate of the Hood Canal stock of harbor seals by a factor of approximately 3.26, resulting in a new abundance estimate of 3,555. In addition, in calculating its exposure estimates, the Navy also applied the haulout probability of 20 percent derived from London *et al.* (2012) which changed the percentage of harbor seals in the water from 35 percent (Huber *et al.,* 2001) to 80 percent. These changes in assumptions result in a corresponding increase in estimated exposures because the Navy is assuming that there are more harbor seals present in Hood Canal and more of the animals will be in the water at any given time compared to the analysis presented in the January 2014 NWTT DEIS/OEIS. The result of these changes in the best available science is that the Navy has estimated additional Level A and Level B takes for training and testing activities per year. These changes to the estimates presented in the January 2014 NWTT DEIS/OEIS do not reflect a change in the Navy's proposed action nor a significant change to Navy's methodology. The vast majority of the increased exposure estimates are Level B harassment exposures that derive from the Navy's already conservative acoustic effects model. The Navy has determined that these Level A and Level B harassment exposures are not biologically significant to the population because (1) none of the estimated exposures result in mortality; (2) the monitoring and mitigations employed would likely reduce the severity of Level A exposures; (3) there are no indications that the historically occurring activities resulting in these behavioral harassment exposures are having any effect on this population's survival by altering behavior patterns such as breeding, nursing, feeding, or sheltering; (4) the population has been stable and likely at carrying capacity (Jeffries *et al.,* 2003); (5) the population continues to use known large haulouts in Hood Canal and Dabob Bay that are adjacent to Navy testing and training activities; (6) the population continues to use known haulouts for pupping; and (7) the population continues to use the waters in and around Dabob Bay and Hood Canal. As such, the Navy has determined, and NMFS concurs, that it is not necessary to supplement the January 2014 NWTT DEIS/OEIS analysis as this information is not new significant information to the environmental impacts. However, the Navy has advised NMFS that all comments received on the proposed rule that address the changes in take estimates for the Hood Canal stock of harbor seals will be addressed by the Navy in its Final EIS/OEIS for NWTT.

Description of the Specified Activity

The Navy is requesting authorization to take marine mammals incidental to conducting training and testing activities. The Navy has determined that sonar use and underwater detonations are the stressors most likely to result in impacts on marine mammals that could rise to the level of harassment. Detailed descriptions of these activities are provided in the January 2014 NWTT DEIS/OEIS and in the LOA application (*http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm*) and are summarized here.

Overview of Training Activities

The Navy routinely trains in the NWTT Study Area in preparation for national defense missions. Training activities and exercises covered in the Navy's LOA request are briefly described below, and in more detail within Chapter 2 of the January 2014 NWTT DEIS/OEIS. Training activities are categorized into eight functional warfare areas (anti-air warfare; amphibious warfare; strike warfare; anti-surface warfare; anti-submarine warfare; electronic warfare; mine warfare; and naval special warfare). The Navy determined that the following stressors used in these warfare areas are most likely to result in impacts on marine mammals:

- Anti-surface warfare (impulsive sources [underwater detonations])
- Anti-submarine warfare (non-impulsive sources [active sonar], impulsive underwater detonations)
- Mine warfare (non-impulsive sources, impulsive underwater detonations)

The Navy's activities in anti-air warfare, electronic warfare, and naval special warfare do not involve stressors that could result in harassment of marine mammals. Therefore, these activities are not discussed further. The analysis and rationale for excluding these warfare areas is contained in the January 2014 DEIS/OEIS.

Anti-Surface Warfare

The mission of anti-surface warfare (ASUW) is to defend against enemy ships or boats. When conducting anti-surface warfare, aircraft use cannons, air-launched cruise missiles, or other precision-guided munitions; ships use torpedoes, naval guns, and surface-to-surface missiles; and submarines use torpedoes or submarine-launched, anti-ship cruise missiles. Anti-surface warfare training includes surface-to-surface gunnery and missile exercises, air-to-surface gunnery and missile exercises, and submarine missile or exercise torpedo launch events.

Anti-Submarine Warfare

The mission of anti-submarine warfare (ASW) is to locate, neutralize, and defeat hostile submarine threats to surface forces. Anti-submarine warfare is based on the principle of a layered defense of surveillance and attack aircraft, ships, and submarines all searching for hostile submarines. These forces operate together or independently to gain early warning and detection, and to localize, track, target, and attack hostile submarine threats. Anti-submarine warfare training addresses basic skills such as detection and

classification of submarines, distinguishing between sounds made by enemy submarines and those of friendly submarines, ships, and marine life. More advanced, integrated anti-submarine warfare training exercises are conducted in coordinated, at-sea training events involving submarines, ships, and aircraft. This training integrates the full spectrum of anti-submarine warfare from detecting and tracking a submarine to attacking a target using either exercise torpedoes or simulated weapons.

Mine Warfare

The mission of mine warfare is to detect, and avoid or neutralize mines to protect Navy ships and submarines and to maintain free access to ports and shipping lanes. Mine warfare also includes offensive mine laying to gain control or deny the enemy access to sea space. Naval mines can be laid by ships, submarines, or aircraft. Mine warfare training includes exercises in which ships, aircraft, submarines, underwater vehicles, or marine mammal detection systems search for mines. Certain personnel train to destroy or disable mines by attaching and detonating underwater explosives to simulated mines. Other neutralization techniques involve impacting the mine with a bullet-like projectile or intentionally triggering the mine to detonate.

Other Activities

Other activities include pierside and at-sea maintenance of submarine and surface ship sonar systems.

Overview of Testing Activities

Testing activities covered in the Navy's LOA request are briefly described below, and in more detail within Chapter 2 of the January 2014 NWTT DEIS/OEIS. The Navy researches, develops, tests, and evaluates new platforms, systems and technologies. Many tests are conducted in realistic conditions at sea, and can range in scale from testing new software to operating portable devices to conducting tests of live weapons (such as the Service Weapon Test of a torpedo) to ensure they function as intended. Testing activities may occur independently of or in conjunction with training activities.

Many testing activities are conducted similarly to Navy training activities and are also categorized under one of the primary mission areas described above. Other testing activities are unique and are described within their specific testing categories. Because each test is conducted by a specific component of the Navy's research and acquisition community, which includes the Navy's Systems Commands and the Navy's scientific research organizations, the testing activities described in the LOA application are organized first by that particular organization as described below and in the order as presented.

The Navy describes and analyzes the effects of its testing activities within the 2014 NWTT DEIS/OEIS. In its assessment, the Navy concluded that acoustic stressors from the use of underwater acoustic sources and underwater detonations resulted in impacts on marine mammals that rose to the level of harassment as defined under the MMPA. Therefore, the LOA application for NWTT provides the Navy's assessment of potential effects from these stressors in terms of the various activities in which they would be used.

The individual commands within the research and acquisition community included in the NWTT DEIS/OEIS and in the LOA application are:

- Naval Sea Systems Command (NAVSEA). Within NAVSEA are the following field activities:
  - Naval Undersea Warfare Center (NUWC) Division, Keyport
  - Naval Surface Warfare Center, Carderock Division (NSWCCD), Detachment Puget Sound
  - NSWCCD Southeast Alaska Acoustic Measurement Facility (SEAFAC)
  - Puget Sound Naval Shipyard and Intermediate Maintenance Facility
  - Various NAVSEA program offices
- Naval Air Systems Command (NAVAIR)

Naval Sea Systems Command Testing Events

NAVSEA is responsible for engineering, building, buying, and maintaining the Navy's ships and submarines and associated combat systems. NAVSEA is broken up into two types of warfare centers: NUWC and the Naval Surface Warfare Center (NSWC).

NUWC provides Fleet readiness support for submarines, surface ships, torpedoes, mines, land attack systems, and Fleet training systems. NAVSEA has several field activities operating out of Naval Base (NAVBASE) Kitsap, including NUWC Division Keyport, NSWCCD Detachment Puget Sound, and Puget Sound Naval Shipyard and Intermediate Maintenance Facility. NSWCCD Detachment Puget Sound also operates the SEAFAC facility in Alaska.

Each major category of NAVSEA activities in the Study Area is represented below. NUWC Division, Keyport and NSWCCD Detachment Puget Sound activities are grouped together in the discussion below to simplify review due to the diversity of activity types and locations they work in. Puget Sound Naval Shipyard and Intermediate Facility activities are grouped with the general activities conducted by NAVSEA. Numerous test activities and technical evaluations, in support of NAVSEA's systems development mission, often occur in conjunction with fleet activities within the Study Area.

Naval Undersea Warfare Center Division, Keyport Testing Activities

NUWC Division Keyport's mission is to provide test and evaluation services and expertise to support the Navy's evolving manned and unmanned vehicle program activities. NUWC Keyport has historically provided facilities and capabilities to support testing of torpedoes, other unmanned vehicles, submarine readiness, diver training, and similar activities that are critical to the success of undersea warfare. Range support requirements for such activities include testing, training, and evaluation of system capabilities such as guidance, control, and sensor accuracy in multiple marine environments (*e.g.*, differing depths, salinity levels, sea states) and in surrogate and simulated war-fighting environments. Technological advancements in the materials, instrumentation, guidance systems, and tactical capabilities of manned and unmanned vehicles continue to evolve in parallel with emerging national security priorities and threat assessments. However, NUWC Keyport does not utilize explosives in any testing scenarios.

Naval Surface Warfare Center, Carderock Division

NSWCCD includes two organizations that conduct testing activities: NSWCCD, Detachment Puget Sound and NSWCCD SEAFAC. Detachment Puget Sound testing activities are aligned with its mission to provide research, development, test, and evaluation (RDT&E), analysis, acquisition support, in-service engineering, logistics and integration of surface and undersea vehicles and associated systems; develop and apply science and technology associated with naval architecture and marine engineering; and provide support to the maritime industry. Activities and support include engineering, technical, operations, diving, and logistics required for the RDT&E associated with:

- Advanced Technology Concepts, Engineering and Proofing

- Experimental Underwater Vehicles, Systems, Subsystems and Components
- Specialized Underwater Systems, Equipment, Tools and Hardware
- Acoustic Data Acquisition, Analysis and Measurement Systems (required to measure U.S. Navy Acoustic Signatures).

These activities can be broken down into four major testing categories to include: System, Subsystem and Component Acoustic Testing Pierside; Performance Testing at Sea; Development Testing and Training; and Proof of Concept Testing.

NSWCCD SEAFAC makes high fidelity directive volumetric and line arrays passive acoustic signature measurements. The SEAFAC site includes directive line arrays and data collection and processing systems for real-time data analysis and signature evaluation.

SEAFAC provides the capability to perform RDT&E analyses to determine the sources of radiated acoustic noise, to assess vulnerability, and to develop quieting measures. Unforeseen emergent Navy requirements may influence actual testing activities during the time period under consideration. Testing activities that would occur at SEAFAC are identified to the extent practicable throughout this application.

Naval Sea Systems Command Program Office Sponsored Testing Activities

NAVSEA also conducts tests that are not associated with NUWC Keyport or NSWCCD. Activities are conducted at Navy piers at NAVBASE Kitsap, Bremerton; NAVBASE Kitsap, Bangor; and Naval Station Everett; and in conjunction with fleet activities off the coast of Washington, Oregon, and northern California. Tests within this category include, but are not limited to, Life Cycle Activities, Shipboard Protection Systems and Swimmer Defense Testing, Unmanned Vehicle Testing, ASUW/ASW Testing, and New Ship Construction.

Naval Air Systems Command Testing Events

NAVAIR testing events generally fall into the primary mission areas used by the fleets. NAVAIR events include, but are not limited to, the testing of new aircraft platforms, weapons, and systems before those platforms, weapons and systems are integrated into the fleet. In this application, NAVAIR testing activities are limited to ASW testing of sonobuoys. The sonobuoys tested include both passive and active non-impulsive, sonobuoys using impulsive sources, and high duty cycle sonobuoys.

Description of Sonar, Ordnance, Targets, and Other Systems

The Navy uses a variety of sensors, platforms, weapons, and other devices to meet its mission. Training and testing with these systems may introduce acoustic (sound) energy into the environment. This section describes and organizes sonar systems, ordnance, munitions, targets, and other systems to facilitate understanding of the activities in which these systems are used. Underwater sound is described as one of two types for the purposes of the LOA application: impulsive and non-impulsive. Underwater detonations of explosives and other percussive events are impulsive sounds. Sonar and similar sound producing systems are categorized as non-impulsive sound sources.

Sonar and Other Active Acoustic Sources

Modern sonar technology includes a variety of sonar sensor and processing systems. The simplest active sonar emits sound waves, or ''pings,'' sent out in multiple directions and the sound waves then reflect off of the target object in multiple directions. The sonar source calculates the time it takes for the reflected sound waves to return; this calculation determines the distance to the target object. More sophisticated active sonar systems emit a ping and then rapidly scan or listen to the sound waves in a specific area. This provides both distance to the target and directional information. Even more advanced sonar systems use multiple receivers to listen to echoes from several directions simultaneously and provide efficient detection of both direction and distance. The Navy rarely uses active sonar continuously throughout activities. When sonar is in use, the pings occur at intervals, referred to as a duty cycle, and the signals themselves are very short in duration. For example, sonar that emits a 1-second ping every 10 seconds has a 10-percent duty cycle. The Navy utilizes sonar systems and other acoustic sensors in support of a variety of mission requirements. Primary uses include the detection of and defense against submarines (anti-submarine warfare) and mines (mine warfare); safe navigation and effective communications; use of unmanned undersea vehicles; and oceanographic surveys. Sources of sonar and other active acoustic sources include surface ship sonar, sonobuoys, torpedoes, range pingers, and unmanned underwater vehicles.

Ordnance and Munitions

Most ordnance and munitions used during training and testing events fall into three basic categories: projectiles (such as gun rounds), missiles (including rockets), and bombs. Ordnance can be further defined by their net explosive weight, which considers the type and quantity of the explosive substance without the packaging, casings, bullets, etc. Net explosive weight (NEW) is the trinitrotoluene (TNT) equivalent of energetic material, which is the standard measure of strength of bombs and other explosives. For example, a 12.7-centimeter (cm) shell fired from a Navy gun is analyzed at about 9.5 pounds (lb) (4.3 kilograms (kg)) of NEW. The Navy also uses non-explosive ordnance in place of high explosive ordnance in many training and testing events. Non-explosive ordnance munitions look and perform similarly to high explosive ordnance, but lack the main explosive charge.

Defense Countermeasures

Naval forces depend on effective defensive countermeasures to protect themselves against missile and torpedo attack. Defensive countermeasures are devices designed to confuse, distract, and confound precision guided munitions. Defensive countermeasures analyzed in the LOA application include acoustic countermeasures, which are used by surface ships and submarines to defend against torpedo attack. Acoustic countermeasures are either released from ships and submarines, or towed at a distance behind the ship.

Mine Warfare Systems

The Navy divides mine warfare systems into two categories: Mine detection and mine neutralization. Mine detection systems are used to locate, classify, and map suspected mines, on the surface, in the water column, or on the sea floor. The Navy analyzed the following mine detection systems for potential impacts to marine mammals:

- Towed or hull-mounted mine detection systems. These detection systems use acoustic and laser or video sensors to locate and classify suspect mines. Fixed and rotary wing platforms, ships, and unmanned vehicles are used for towed systems, which can rapidly assess large areas.
- Airborne Laser Mine Detection Systems. Airborne laser detection systems work in concert with neutralization systems. The detection system initially locates mines and a neutralization system is then used to relocate and neutralize the mine.

• Unmanned/remotely operated vehicles. These vehicles use acoustic and video or lasers to locate and classify mines and provide unique capabilities in nearshore littoral areas, surf zones, ports, and channels.

Mine neutralization systems disrupt, disable, or detonate mines to clear ports and shipping lanes, as well as littoral, surf, and beach areas in support of naval amphibious operations. Mine neutralization systems can clear individual mines or a large number of mines quickly. The Navy analyzed the following mine neutralization systems for potential impacts to marine mammals:

• Towed influence mine sweep systems. These systems use towed equipment that mimic a particular ship's magnetic and acoustic signature triggering the mine and causing it to explode.

• Towed mechanical mine sweeping systems.These systems tow a sweep wire to snag the line that attaches a moored mine to its anchor and then uses a series of cables and cutters to sever those lines. Once these lines are cut, the mines float to the surface where Navy personnel can neutralize the mines.

• Unmanned/remotely operated mine neutralization systems. Surface ships and helicopters operate these systems, which place explosive charges near or directly against mines to destroy the mine.

• Projectiles. Small- and medium-caliber projectiles, fired from surface ships or hovering helicopters, are used to neutralize floating and near-surface mines.

• Diver emplaced explosive charges. Operating from small craft, divers put explosive charges near or on mines to destroy the mine or disrupt its ability to function.

Explosive charges are used during mine neutralization system training activities; however, only non-explosive mines or mine shapes would be used.

Classification of Non-Impulsive and Impulsive Sources Analyzed

In order to better organize and facilitate the analysis of about 300 sources of underwater non-impulsive sound or impulsive energy, the Navy developed a series of source classifications, or source bins. This method of analysis provides the following benefits:

• Allows for new sources to be covered under existing authorizations, as long as those sources fall within the parameters of a ''bin;''

• Simplifies the data collection and reporting requirements anticipated under the MMPA;

• Ensures a conservative approach to all impact analysis because all sources in a single bin are modeled as the loudest source (*e.g.*, lowest frequency, highest source level, longest duty cycle, or largest net explosive weight within that bin);

• Allows analysis to be conducted more efficiently, without compromising the results;

• Provides a framework to support the reallocation of source usage (hours/explosives) between different source bins, as long as the total number and severity of marine mammal takes remain within the overall analyzed and authorized limits. This flexibility is required to support evolving Navy training and testing requirements, which are linked to real world events.

A description of each source classification is provided in Tables 1–3. Non-impulsive sources are grouped into bins based on the frequency, source level when warranted, and how the source would be used. Impulsive bins are based on the net explosive weight of the munitions or explosive devices. The following factors further describe how non-impulsive sources are divided:

• Frequency of the non-impulsive source:

○ Low-frequency sources operate below 1 kilohertz (kHz)

○ Mid-frequency sources operate at or above 1 kHz, up to and including 10 kHz

○ High-frequency sources operate above 10 kHz, up to and including 100 kHz

○ Very high-frequency sources operate above 100 kHz, but below 200 kHz

• Source level of the non-impulsive source:

○ Greater than 160 decibels (dB), but less than 180 dB

○ Equal to 180 dB and up to 200 dB

○ Greater than 200 dB

How a sensor is used determines how the sensor's acoustic emissions are analyzed. Factors to consider include pulse length (time source is on); beam pattern (whether sound is emitted as a narrow, focused beam, or, as with most explosives, in all directions); and duty cycle (how often a transmission occurs in a given time period during an event).

There are also non-impulsive sources with characteristics that are not anticipated to result in takes of marine mammals. These sources have low source levels, narrow beam widths, downward directed transmission, short pulse lengths, frequencies beyond known hearing ranges of marine mammals, or some combination of these factors. These sources were not modeled by the Navy, but are qualitatively analyzed in Table 1–4 of the LOA application and in the January 2014 NWTT DEIS/OEIS. These sources generally meet the following criteria:

• Acoustic sources with frequencies greater than 200 kHz (based on known marine mammal hearing ranges)

• Sources with source levels less than 160 dB

TABLE 1—IMPULSIVE TRAINING AND TESTING SOURCE CLASSES ANALYZED

Source class	Representative munitions	Net explosive weight (lbs)
E1	Medium-caliber projectiles	0.1–0.25 (45.4–113.4 g).
E3	Large-caliber projectiles	>0.5–2.5 (>226.8 g–1.1 kg).
E4	Improved Extended Echo Ranging Sonobuoy	>2.5–5.0 (1.1–2.3 kg).
E5	5 in. (12.7 cm) projectiles	>5–10 (>2.3–4.5 kg).
E8	250 lb. (113.4 kg) bomb	>60–100 (>27.2–45.4 kg).
E10	1,000 lb. (453.6 kg) bomb	>250–500 (>113.4–226.8 kg).
E11	650 lb. (294.8 kg) mine	>500–650 (>226.8–294.8 kg).
E12	2,000 lb. (907.2 kg) bomb	>650–1,000 (>294.8–453.6 kg).

TABLE 2—NON-IMPULSIVE TRAINING SOURCE CLASSES ANALYZED

Source class category	Source class	Description
Mid-Frequency (MF): Tactical and non-tactical sources that produce mid-frequency (1 to 10 kHz) signals.	MF1	Active hull-mounted surface ship sonar (*e.g.*, AN/SQS–53C and AN/SQS–60).
	MF3	Active hull-mounted submarine sonar (*e.g.*, AN/BQQ–10).
	MF4	Active helicopter-deployed dipping sonar (*e.g.*, AN/AQS–22 and AN/AQS–13).
	MF5	Active acoustic sonobuoys (*e.g.*, AN/SSQ–62 DICASS[2]).
	MF11 ...	Hull-mounted surface ship sonar with an active duty cycle greater than 80%.
High-Frequency (HF) and Very High-Frequency (VHF): Tactical and non-tactical sources that produce high-frequency (greater than 10 kHz but less than 200 kHz) signals.	HF1	Active hull-mounted submarine sonar (*e.g.*, AN/BQQ–15).
	HF4	Active mine detection, classification, and neutralization sonar (*e.g.*, AN/SQS–20).
	HF6	Active sources (equal to 180 dB and up to 200 dB).
Anti-Submarine Warfare (ASW): Tactical sources such as active sonobuoys and acoustic countermeasures systems used during ASW training activities.	ASW2 ..	MF active Multistatic Active Coherent (MAC) sonobuoy (*e.g.*, AN/SSQ–125).
	ASW3 ..	MF active towed active acoustic countermeasure systems (*e.g.*, AN/SLQ–25 NIXIE).

TABLE 3—NON-IMPULSIVE TESTING SOURCE CLASSES ANALYZED

Source class category	Source class	Description
Low-Frequency (LF): Sources that produce low-frequency (less than 1 kilohertz [kHz]) signals.	LF4	Low-frequency sources equal to 180 dB and up to 200 dB.
	LF5	Low-frequency sources less than 180 dB.
Mid-Frequency (MF): Tactical and non-tactical sources that produce mid-frequency (1 to 10 kHz) signals.	MF3	Hull-mounted submarine sonar (*e.g.*, AN/BQQ–10).
	MF4	Helicopter-deployed dipping sonar (*e.g.*, AN/AQS–22 and AN/AQS–13).
	MF5	Active acoustic sonobuoys (*e.g.*, DICASS).
	MF6	Active underwater sound signal devices (*e.g.*, MK–84).
	MF8	Active sources (greater than 200 dB).
	MF9	Active sources (equal to 180 dB and up to 200 dB).
	MF10 ...	Active sources (greater than 160 dB, but less than 180 dB) not otherwise binned.
	MF11 ...	Hull-mounted surface ship sonar with an active duty cycle greater than 80%.
	MF12 ...	High duty cycle—variable depth sonar.
High-Frequency (HF) and Very High-Frequency (VHF): Tactical and non-tactical sources that produce high-frequency (greater than 10 kHz but less than 200 kHz) signals.	HF1	Hull-mounted submarine sonar (*e.g.*, AN/BQQ–10).
	HF3	Hull-mounted submarine sonar (classified).
	HF5[1] ...	Active sources (greater than 200 dB).
	HF6	Active sources (equal to 180 dB and up to 200 dB).
	VHF2 ...	Active sources with a frequency greater than 100 kHz, up to 200 kHz with a source level less than 200 dB.
Anti-Submarine Warfare (ASW): Tactical sources such as active sonobuoys and acoustic countermeasures systems used during the conduct of ASW testing activities.	ASW1 ..	Mid-frequency Deep Water Active Distributed System (DWADS).
	ASW2 ..	Mid-frequency Multistatic Active Coherent sonobuoy (*e.g.*, AN/SSQ–125)—sources analyzed by number of items (sonobuoys).
	ASW2 ..	Mid-frequency sonobuoy (*e.g.*, high duty cycle)—Sources that are analyzed by hours.
	ASW3 ..	Mid-frequency towed active acoustic countermeasure systems (*e.g.*, AN/SLQ–25).
	ASW4 ..	Mid-frequency expendable active acoustic device countermeasures (*e.g.*, MK–3).
Torpedoes (TORP): Source classes associated with the active acoustic signals produced by torpedoes.	TORP1	Lightweight torpedo (*e.g.*, MK–46, MK–54).
	TORP2	Heavyweight torpedo (*e.g.*, MK–48, electric vehicles).
Acoustic Modems (M): Systems used to transmit data acoustically through water.	M3	Mid-frequency acoustic modems (greater than 190 dB) (*e.g.*, Underwater Emergency Warning System, Aid to Navigation).
Swimmer Detection Sonar (SD): Systems used to detect divers and submerged swimmers.	SD1	High-frequency sources with short pulse lengths, used for the detection of swimmers and other objects for the purpose of port security.
Synthetic Aperture Sonar (SAS): Sonar in which active acoustic signals are post-processed to form high-resolution images of the seafloor.	SAS2 ...	High frequency unmanned underwater vehicle (UUV) (*e.g.*, UUV payloads).

Notes: [1] For this analysis, HF5 consists of only one source; the modeling was conducted specifically for that source.
[2] DICASS = Directional Command Activated Sonobuoy System Proposed Action.

Training and Testing

The training and testing activities that the Navy proposes to conduct in the NWTT Study Area are listed in Tables 4–6. Detailed information about each proposed activity (stressor, training or testing event, description, sound source, duration, and geographic location) can be found in the LOA application and in Appendix A of the January 2014 NWTT DEIS/OEIS. NMFS used the detailed information in the LOA application and in Appendix A of the January 2014 NWTT DEIS/OEIS to analyze the potential impacts from training and testing activities on marine mammals. The Navy's proposed activities are anticipated to meet training and testing needs in the years 2015–2020.

Summary of Impulsive and Non-Impulsive Sources

Table 4 provides a quantitative annual summary of training activities by sonar and other active acoustic source class analyzed in the Navy's LOA request.

TABLE 4—ANNUAL HOURS OF SONAR AND OTHER ACTIVE ACOUSTIC SOURCES USED DURING TRAINING WITHIN THE NWTT STUDY AREA

Source class category	Source class	Annual use
Mid-Frequency (MF) Active sources from 1 to 10 kHz	MF1	166 hours.
	MF3	70 hours.
	MF4	4 hours.
	MF5	896 items.
	MF11	16 hours.
High-Frequency (HF) Tactical and non-tactical sources that produce signals greater than 10 kHz but less than 100 kHz.	HF1	48 hours.
	HF4	384 hours.
	HF6	192 hours.
Anti-Submarine Warfare (ASW)	ASW2	720 items.
	ASW3	78 hours.

Table 5 provides a quantitative annual summary of testing activities by sonar and other active sources analyzed in the Navy's LOA request.

TABLE 5—ANNUAL HOURS OF SONAR AND OTHER ACTIVE ACOUSTIC SOURCES USED DURING TESTING WITHIN THE NWTT STUDY AREA

Source class category	Source class	Annual use
Low-Frequency (LF): Sources that produce signals less than 1 kHz	LF4	110 hours.
	LF5	71 hours.
Mid-Frequency (MF): Tactical and non-tactical sources that produce signals from 1 to 10 kHz.	MF3	161 hours.
	MF4	10 hours.
	MF5	273 items.
	MF6	12 items.
	MF8	40 hours.
	MF9	1,183 hours.
	MF10	1,156 hours.
	MF11	34 hours.
	MF12	24 hours.
High-Frequency (HF) and Very High-Frequency (VHF): Tactical and non-tactical sources that produce signals greater than 10 kHz but less than 200 kHz.	HF1	161 hours.
	HF3	145 hours.
	HF5[1]	360 hours.
	HF6	2,099 hours.
Very High-Frequency (VHF): Tactical and non-tactical sources that produce signals greater than 100 kHz but less than 200 kHz.	VHF2	35 hours.
Anti-Submarine Warfare (ASW): Tactical sources used during ASW training and testing activities.	ASW1	16 hours.
	ASW2[2]	64 hours.
	ASW2[2]	170 items.
	ASW3	444 hours.
	ASW4	1,182 hours.
Torpedoes (TORP): Source classes associated with active acoustic signals produced by torpedoes.	TORP1	315 items.
	TORP2	299 items.
Acoustic Modems (M): Transmit data acoustically through the water	M3	1,519 hours.
Swimmer Detection Sonar (SD): Used to detect divers and submerged swimmers	SD1	757 hours.
Synthetic Aperture Sonar (SAS): Sonar in which active acoustic signals are post-processed to form high-resolution images of the seafloor.	SAS2	798 hours.

[1] For this analysis, HF5 consists of only one source; the modeling was conducted specifically for that source.
[2] The ASW2 bin contains sources that are analyzed by hours and some that are analyzed by count of items. There is no overlap of the numbers in the two rows.

Table 6 provides a quantitative annual summary of training explosive source classes analyzed in the Navy's LOA request.

TABLE 6—PROPOSED ANNUAL NUMBER OF IMPULSIVE SOURCE DETONATIONS DURING TRAINING IN THE NWTT STUDY AREA

Explosive class	Net explosive weight (NEW)	Annual in-water detonations (training)
E1	(0.1 lb.–0.25 lb.)	48
E3	(>0.5 lb.–2.5 lb.)	6
E5	(>5 lb.–10 lb.)	80
E10	(>250 lb.–500 lb.)	4
E12	(>650 lb.–1000 lb.)	10

Table 7 provides a quantitative annual summary of testing explosive source classes analyzed in the Navy's LOA request.

TABLE 7—PROPOSED ANNUAL NUMBER OF IMPULSIVE SOURCE DETONATIONS DURING TESTING IN THE NWTT STUDY AREA

Explosive class	Net explosive weight (NEW)	Annual In-Water Detonations (testing)
E3	(>0.5 lb.–2.5 lb.)	72
E4	(>2.5 lb.–5 lb.)	70
E8	(>60 lb.–100 lb.)	3
E11	(>500 lb.–650 lb.)	3

Other Stressors—Vessel Strikes

In addition to potential impacts to marine mammals from activities using explosives or sonar and other active acoustic sources, the Navy also considered ship strike impacts to marine mammals. The Navy assessed that no additional stressors would result in a take and require authorization under the MMPA.

Vessel strikes may occur from surface operations and sub-surface operations (excluding bottom crawling, unmanned underwater vehicles). Vessels used as part of the Navy's proposed NWTT training and testing activities (proposed action) include ships, submarines and boats ranging in size from small, 16-foot (ft.) (5-meter [m]) rigid hull inflatable boats to aircraft carriers with lengths up to 1,092 ft. (333 m). Representative Navy vessel types, lengths, and speeds used in both training and testing activities are shown in Table 8.

TABLE 8—REPRESENTATIVE NAVY VESSEL TYPES, LENGTHS, AND SPEEDS USED WITHIN THE NWTT STUDY AREA

Vessel type	Example(s)	Length	Typical operating speed	Max speed
Aircraft Carrier	Aircraft Carrier	>900 ft (>300 m)	10–15 knots	30+ knots
Surface Combatants	Cruisers, Destroyers, Frigates, Littoral Combat Ships.	330–660 ft (100–200 m)	10–15 knots	30+ knots
Support Craft/Other	Range Support Craft, Combat Rubber Raiding Craft, Landing Craft, Utility; Submarine Tenders, Yard Patrol Craft, Protection Vessels, Barge.	16–250 ft (5–80 m)	Variable	20 knots
Support Craft/Other—Specialized High Speed.	Patrol Coastal Ships, Patrol Boats, Rigid Hull Inflatable Boat, High Speed Protection Vessels.	33–130 ft (10–40 m)	Variable	50+ knots
Submarines	Fleet Ballistic Missile Submarines, Attack Submarines, Guided Missile Submarines.	330–660 ft (100–200 m)	8–13 knots	20+ knots

Large Navy ships greater than 65 ft. (20 m) generally operate at speeds in the range of 10–15 knots for fuel conservation when cruising. Submarines generally operate at speeds in the range of 8–13 knots during transit and slower for certain tactical maneuvers. Small craft (for purposes of this discussion less than 65 ft. [20 m] in length) have much more variable speeds, dependent on the mission. While these speeds are representative, some vessels operate outside of these speeds due to unique training or safety requirements for a given event. Examples include increased speeds needed for flight operations, full speed runs to test engineering equipment, time critical positioning needs, etc. Examples of decreased speeds include speeds less than 5 knots or completely stopped for launching small boats, certain tactical maneuvers, target launch or retrievals, etc.

The number of Navy vessels in the Study Area varies based on training and testing schedules. Most activities include either one or two vessels, with an average of one vessel per activity, and last from a few hours up to 2 weeks. Vessel movement and the use of in-water devices as part of the proposed action would be concentrated in certain

portions of the Study Area (such as Western Behm Canal [Alaska] or Hood Canal in the inland waters portion of the Study Area) but may occur anywhere within the Study Area.

The Navy is analyzing the potential environmental impacts of approximately 226 ongoing annual Maritime Security Operations events in Puget Sound and the Strait of Juan de Fuca. These critical events have been occurring since 2006 and exercise the Navy's Transit Protection System, where up to nine escort vessels provide protection during all nuclear ballistic missile submarine (SSBN) transits between the vessel's homeport and the dive/surface point in the Strait of Juan de Fuca or Dabob Bay. During a Transit Protection System event, the security escorts enforce a moving 1,000 yard security zone around the SSBN to prevent other vessels from approaching while the SSBN is in transit on the surface. These events include security escort vessels, U.S. Coast Guard personnel and their ancillary equipment and weapons systems. The Transit Protection System involves the movement of security vessels and also includes periodic exercises and firearms training (with blank rounds). Given the relative slow speed of the escorted and blocking vessels and multiple lookouts, no marine mammal vessel strikes are expected as a result of these events.

Navy policy (Chief of Naval Operations Instruction 3100.6H) requires Navy vessels to report all whale strikes. That information is collected by the Office of the Chief of Naval Operations Energy and Environmental Readiness Division (OPNAV N45) and cumulatively provided to NMFS on an annual basis. In addition, the Navy and NMFS also have standardized regional reporting protocols for communicating to regional NMFS stranding coordinators information on any Navy vessel strikes as soon as possible. These communication procedures will remain in place for the duration of the LOAs. There are no records of any Navy vessel strikes to marine mammals during training or testing activities in the NWTT Study Area.

Duration and Location

Training and testing activities would be conducted in the Study Area throughout the year from November 2015 through November 2020.

The Study Area is composed of established maritime operating and warning areas in the eastern North Pacific Ocean region, including areas of the Strait of Juan de Fuca, Puget Sound, and Western Behm Canal in southeastern Alaska. The Study Area includes air and water space within and outside Washington state waters, and outside state waters of Oregon and Northern California. The Study Area includes four existing range complexes and facilities: The Northwest Training Range Complex (NWTRC), the Keyport Range Complex, Carr Inlet Operations Area, and SEAFAC. In addition to these range complexes, the Study Area also includes Navy pierside locations where sonar maintenance and testing occurs as part of overhaul, modernization, maintenance and repair activities at NAVBASE Kitsap, Bremerton; NAVBASE Kitsap, Bangor; and Naval Station Everett.

A range complex is a designated set of specifically bounded geographic areas and encompasses a water component (above and below the surface), and may encompass airspace and a land component where training and testing of military platforms, tactics, munitions, explosives, and EW systems occurs. Range complexes include established OPAREAs, Restricted Areas, and special use airspace (SUA), which may be further divided to provide better control of the area and events for safety reasons. These designations are further described in Chapter 2 of the LOA application.

The Study Area includes only the at-sea components of the training and testing areas and facilities. The Navy is using ''at-sea'' to cover activity in, on, and over the water, but not activity on or over the land, which may include activities in the surf zone or supported from shore-side locations.

Military activities in the Study Area occur (1) on the ocean surface, (2) beneath the ocean surface, and (3) in the air. To aid in the description of the ranges covered in the January 2014 NWTT DEIS/OEIS, the ranges are divided into three distinct geographic and functional subdivisions. All of the training and testing activities proposed in this application would occur in one or more of these three range subdivisions:

- The Offshore Area
- The Inland Waters
- Western Behm Canal, Alaska

Offshore Area

The Offshore Area of the Study Area includes air, surface, and subsurface OPAREAs extending generally west from the coastline of Washington, Oregon, and Northern California for a distance of approximately 250 nm into international waters. The eastern boundary of the Offshore Area is 12 nm off the coastline for most of the Study Area, including southern Washington, Oregon, and Northern California. The Offshore Area includes the ocean all the way to the coastline only along the Washington coast beneath the airspace of W–237 and the Olympic Military Operations Area (MOA) and the Washington coastline north of the Olympic MOA. The components of the Offshore Area are described below.

Airspace

The SUA in the Offshore Area is comprised of Warning Area 237 (W–237), which extends westward off the coast of Northern Washington State and is divided into nine sub-areas (A–H, and J). The eastern boundary of W–237 lies 3 nm off the coast of Washington. The floor of W–237 extends to the ocean surface and the ceiling of the airspace varies between 27,000 ft. (8,200 m) in areas E, H, and J; 50,000 ft. (15,200 m) in areas A and B; and unlimited in areas C, D, F, and G, with a total area of 25,331 square nautical miles (nm^2).

The Olympic MOA overlays both land (the Olympic Peninsula) and sea (extending to 3 nm off the coast of Washington into the Pacific Ocean). The MOA lower limit is 6,000 ft. (1,800 m) above mean sea level but not below 1,200 ft. above ground level, and the upper limit is up to, but not including, 18,000 ft. (5,500 m), with a total area coverage of 1,614 nm^2.

Above the Olympic MOA is the Olympic Air Traffic Controlled Assigned Airspace (ATCAA), which has a floor coinciding with the Olympic MOA ceiling. The ATCAA has an upper limit of 35,000 ft. (10,700 m).

For the LOA application, the Olympic MOA and the Olympic ATCAA Are components of the Offshore Area

Inland Waters

The Inland Waters includes air, sea, and undersea space inland of the coastline, from buoy ''J'' at 48° 29.6′ N, 125° W, eastward to include all waters of the Strait of Juan de Fuca and the Puget Sound. None of this area extends into Oregon or California. Within the Inland Waters are specific geographic components in which training and testing occur. The Inland Waters and its component areas are described below.

Airspace

Restricted Area 6701 (R–6701, Admiralty Bay) is a Restricted Area over Admiralty Bay, Washington with a lower limit at the ocean surface and an upper limit of 5,000 ft. This airspace covers a total area of 56 nm^2.

Chinook A and B MOAs are 56 nm^2 of airspace south and west of Admiralty Bay. The Chinook MOAs extend from 300 ft. to 5,000 ft. above the ocean surface.

Sea and Undersea Space

Explosive Ordnance Disposal Underwater Ranges—Two active EOD ranges are located in the Inland Waters at the following locations:

- Hood Canal EOD Training Range
- Crescent Harbor EOD Training Range

Surface and Subsurface Testing Sites—There are three geographically distinct range sites in the Inland Waters where the Navy conducts surface and subsurface testing and some limited training. The Keyport Range Site is located in Kitsap County and includes portions of Liberty Bay and Port Orchard Reach (also known as Port Orchard Narrows). The Dabob Bay Range Complex (DBRC) Site is located in Hood Canal and Dabob Bay, in Jefferson, Kitsap, and Mason counties. The Carr Inlet OPAREA is located in southern Puget Sound.

The Keyport Range Site is located adjacent to NAVBASE Kitsap, Keyport, providing approximately 3.2 nm^2 for testing, including in-shore shallow water sites and a shallow lagoon to support integrated undersea warfare systems and vehicle maintenance and engineering activities. Water depth at the Keyport Range Site is less than 100 ft. (30.5 m). Underwater tracking of test activities can be accomplished by using temporary or portable range equipment. The Navy has conducted testing at the Keyport Range Site since 1914.

The DBRC Site includes the Dabob Bay and the Hood Canal from 1 mi. (1.6 km) south of the Hood Canal Bridge to the Hamma Hamma River, a total area of approximately 45.7 nm^2. The Navy has conducted underwater testing at the DBRC Site since 1956, beginning with a control center at Whitney Point. The control center was subsequently moved to Zelatched Point.

Dabob Bay is a deep-water area in Jefferson County approximately 14.5 nm^2 in size and contains an acoustic tracking range. The acoustic tracking space within the range is approximately 7.3 nm by 1.3 nm (9 nm^2) with a maximum depth of 600 ft. (182.9 m). The Dabob Bay tracking range, the only component of the DBRC Site with extensive acoustic monitoring instrumentation installed on the seafloor, provides for object tracking, communications, passive sensing, and target simulation. Many activities conducted within Dabob Bay are supported by land-based facilities at Zelatched Point.

Hood Canal averages a depth of 200 ft. (61 m) and is used for vessel sensor accuracy tests and launch and recovery of test systems where tracking is optional.

The Carr Inlet OPAREA is a quiet deep-water inland range approximately 12 nm^2 in size. It is located in an arm of water between Key Peninsula and Gig Harbor Peninsula. Its southern end is connected to the southern basin of Puget Sound. Northward, it separates McNeil Island and Fox Island as well as the peninsulas of Key and Gig Harbor. The acoustic tracking space within the range is approximately 6 nm by 2 nm with a maximum depth of 545 ft. (166 m). The Navy performed underwater acoustic testing at Carr Inlet from the 1950s through 2009, when activities were relocated to NAVBASE Kitsap, Bangor. While no permanently installed structures are present in the Carr Inlet OPAREA, the waterway remains a Navy-restricted area.

Pierside Testing Facilities—In addition to the training and testing ranges, at which most of the training and testing assessed in this document occurs, the Navy conducts some testing at or near Navy piers. Most of this testing is sonar maintenance and testing while ships are in port for maintenance or system re-fitting. These piers within the Study Area are all within Puget Sound and include the NAVBASE Kitsap, Bremerton in Sinclair Inlet; NAVBASE Kitsap, Bangor Waterfront in Hood Canal, and Naval Station Everett.

Navy Surface Operations Areas—In addition to the areas mentioned above, there are two surface and subsurface operations areas used for Navy training and testing within the Inland Waters. Navy 3 OPAREA is a surface and subsurface area off the west coast of northern Whidbey Island. Navy 7 OPAREA is the surface and subsurface area that lies beneath R–6701. This area covers a total area of 61 nm^2.

Western Behm Canal, Alaska

The Western Behm Canal is located in Southeast Alaska, near the city of Ketchikan, Alaska. SEAFAC is located in the Western Behm Canal and covers an area of 48 nm^2. The Navy has been conducting testing activities at SEAFAC since 1992. The facility replaced the Santa Cruz Acoustic Range Facility in Southern California and is now the location for some acoustic testing previously conducted at the NSWC Carr Inlet Acoustic Range in Washington State.

SEAFAC is comprised of land-based facilities and in-water assets. The land-based facilities are located within 5.5 acres (2 hectares) on Back Island and are not included in the scope of this analysis. The in-water assets include two sites: the underway site and the static site. These assets and the operational area of SEAFAC are located in five restricted areas. The underway site arrays are in Area 1. The static site is in Area 2. All associated underwater cabling and other devices associated with the underway site are located in Area 3. Area 4 provides a corridor for utility power and a phone cable. Area 5 is an operational area to allow for safe passage of local vessel traffic. Notifications of invoking restriction of Area 5 occur at least 72 hours prior to SEAFAC operations in accordance with 33 CFR 34.1275. During test periods, all vessels entering Area 5 are requested to contact SEAFAC to coordinate safe passage through the area. Area 5 defines the SEAFAC Study Area boundary, which is comprised only of the in-water area and excludes the land-based supporting facilities and operations.

The SEAFAC at-sea areas are:

- Restricted Areas 1 through 5. The five restricted areas are located within Western Behm Canal. The main purposes of the restricted areas are to provide for vessel and public safety, lessen acoustic encroachment from non-participating vessels, and prohibit certain activities that could damage SEAFAC's sensitive in-water acoustic instruments and associated cables. Area 5 encompasses the entire SEAFAC operations area.
- Underway Measurement Site. The underway measurement site is in the center of Western Behm Canal and is 5,000 yards (yd.) (4,572 m) wide and 12,000 yd. (10,973 m) long. The acoustic arrays are located at the center of this area (Area 1).
- Static Site. The static site is approximately 2 nm northwest of Back Island. During testing, a vessel is tethered between two surface barges. In most scenarios, the vessel submerges to conduct acoustic measurements. The static site is located at the center of Area 2.
- Area 3 and Area 4. These restricted areas provide protection to underwater cables and bottom-mounted equipment they encompass.

Bottom-moored acoustic measurement arrays are located in the middle of the site. These instrumented arrays are established for measuring vessel signatures when a vessel is underway (underway site) and is at rest and moored (static site). The instruments are passive arrays of hydrophones sensing the acoustic signature of the vessels (*i.e.,* the sounds emitted when sonar units are not in operation). Hydrophones on the arrays pick up noise in the water and transmit it to shore facilities, where the data are processed. SEAFAC's sensitive and well-positioned acoustic measurement equipment provides the ability to listen to and record the

radiated signature of submarines, as well as other submerged manned and unmanned vehicles, selected NOAA surface vessels, and cruise ships.

The sensors at SEAFAC are passive and measure radiated noise in the water, such as machinery on submarines and other underwater vessels. Vessels do not use tactical mid-frequency active sonar while undergoing testing at SEAFAC. Active acoustic sources are used for communications, range calibration, and to provide position information for units operating submerged on the range.

Description of Marine Mammals in the Area of the Specified Activities

Twenty-nine marine mammal species are known to occur in the Study Area, including seven mysticetes (baleen whales), 16 odontocetes (dolphins and toothed whales), and six pinnipeds (seals and sea lions). Among these species, there are 50 stocks managed by NMFS or the U.S. Fish and Wildlife Service (USFWS) in the U.S. Exclusive Economic Zone (EEZ). These species and their numbers are presented in Table 9. Consistent with NMFS most recent Pacific Stock Assessment Report, a single species may include multiple stocks recognized for management purposes (e.g., killer whale), while other species are grouped into a single stock due to limited species-specific information (e.g., beaked whales belonging to the genus Mesoplodon).

TABLE 9—MARINE MAMMALS WITH POSSIBLE OR CONFIRMED PRESENCE WITHIN THE NWTT STUDY AREA

Common name	Scientific name	Stock	Stock abundance	ESA/MMPA
North Pacific right whale	*Eubalaena japonica*	Eastern North Pacific	31	Endangered/Depleted.
Humpback whale	*Megaptera novaeangliae*	Central North Pacific	10,103	Endangered/Depleted.
		California, Oregon, & Washington.	1,918	Endangered/Depleted.
Blue whale	*Balaenoptera musculus*	Eastern North Pacific	1,647	Endangered/Depleted.
Fin whale	*Balaenoptera physalus*	Northeast Pacific	1,214 (minimum estimate)	Endangered/Depleted.
		California, Oregon, & Washington.	3,051	Endangered/Depleted.
Sei whale	*Balaenoptera borealis*	Eastern North Pacific	126	Endangered/Depleted.
Minke whale	*Balaenoptera acutorostrata*	Alaska	Not available.	
		California, Oregon, & Washington.	478.	
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	19,126.	
		Western North Pacific	155	Endangered/Depleted.
Sperm whale	*Physeter macrocephalus*	North Pacific	Not available	Endangered/Depleted.
		California, Oregon, & Washington.	971	Endangered/Depleted.
Pygmy sperm whale	*Kogia breviceps*	California, Oregon, & Washington.	579.	
Dwarf sperm whale	*Kogia sima*	California, Oregon, & Washington.	Not available.	
Killer whale	*Orcinus orca*	Alaskan Resident	2,347.	
		Northern Resident	261.	
		West Coast Transient	243.	
		Eastern North Pacific Offshore.	240.	
		Eastern North Pacific Southern Resident.	85 (direct count)	Endangered/Depleted.
Short-finned pilot whale	*Globicephala macrorhynchus.*	California, Oregon, & Washington.	760.	
Short-beaked common dolphin.	*Delphinus delphis*	California, Oregon, & Washington.	411,211.	
Bottlenose dolphin	*Tursiops truncatus*	California, Oregon, & Washington Offshore.	1,006.	
Striped dolphin	*Stenella coeruleoalba*	California, Oregon, & Washington.	10,908.	
Pacific white-sided dolphin	*Lagenorhynchus obliquidens.*	North Pacific	26,880.	
		California, Oregon, & Washington.	26,930.	
Northern right whale dolphin	*Lissodelphis borealis*	California, Oregon, & Washington.	8,334.	
Risso's dolphin	*Grampus griseus*	California, Oregon, & Washington.	6,272.	
Harbor porpoise	*Phocoena phocoena*	Southeast Alaska	11,146.	
		Northern Oregon/WA Coast	21,487.	
		Northern CA/southern OR	35,769.	
		WA Inland Waters	10,682.	
		Alaska	83,400.	
Dall's porpoise	*Phocoenoides dalli*	California, Oregon, & Washington.	42,000.	
Cuvier's beaked whale	*Ziphius cavirostris*	Alaska	Not available.	
		California, Oregon, & Washington.	6,590.	
Baird's beaked whale	*Berardius bairdii*	Alaska	Not available.	
		California, Oregon, & Washington.	847.	

TABLE 9—MARINE MAMMALS WITH POSSIBLE OR CONFIRMED PRESENCE WITHIN THE NWTT STUDY AREA—Continued

Common name	Scientific name	Stock	Stock abundance	ESA/MMPA
Mesoplodont beaked whales [1].	*Mesoplodon spp.*	California, Oregon, & Washington.	694.	
Steller sea lion	*Eumetopias jubatus*	Eastern U.S.	63,160–78,198.	
California sea lion	*Zalophus californianus*	U.S.	296,750.	
Northern fur seal	*Callorhinus ursinus*	Eastern Pacific	639,545	Depleted.
		California Breeding	12,844.	
Guadalupe fur seal	*Arctocephalus townsendi*	Mexico	14,000–15,000	Threatened/Depleted.
Northern elephant seal	*Mirounga angustirostris*	California Breeding	124,000.	
Harbor seal	*Phoca vitulina*	Southeast Alaska (Clarence Strait).	152,602.	
		OR/WA Coast	24,732.	
		California	30,196.	
		WA Northern Inland Waters	11,036.	
		Southern Puget Sound	1,568.	
		Hood Canal	3,555. [2]	

[1] In waters off the U.S. west coast, the *Mesoplodon* species *M. carlhubbsi, M. ginkgodens, M. perrini, M. peruvianus, M. stejnegeri* and *M. densirostris* have been grouped by NMFS into a single management unit (*Mesoplodon* spp.) in the 2014 Pacific Stock Assessment report (Carretta *et al.,* 2014).

[2] The most recent SAR (2014) divided the harbor seals within the Inland Waters into three stocks: The Washington Northern Inland Waters stock; the Southern Puget Sound stock, and the Hood Canal stock.

Based on recent discussion with regional NMFS subject matter experts and subsequent to the publication of the 2014 SAR, the Navy and NMFS applied research presented in London *et al.* (2012) to reevaluate the Hood Canal stock abundance. Using updated tag data from London *et al.* 2012, the count of harbor seals collected in 1999 (n=711) from aerial surveys (Jeffries *et al.,* 2003) was corrected to account for harbor seal haulout behavior that most closely aligned with the season and time of day in which the original survey was conducted. The tag data showed that during this month and time of day, approximately 80 percent of the animals would be in the water. Therefore, the corrected Hood Canal stock abundance (based on the 1999 aerial survey) is calculated as 711/0.20 or 711*5 = 3,555. While this aerial survey data is considered out of date based on the standards of NOAA stock assessment reports, this revised Hood Canal harbor seal abundance represents the best available science based on publically available data.

Information on the status, distribution, abundance, and vocalizations of marine mammal species in the Study Area may be viewed in Chapter 4 of the LOA application (*http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm*). Further information on the general biology and ecology of marine mammals is included in the NWTT DEIS/OEIS. In addition, NMFS publishes annual SARs for marine mammals, including stocks that occur within the Study Area (*http://www.nmfs.noaa.gov/pr/species/mammals;* Carretta *et al.,* 2014; Allen and Angliss, 2014).

Marine Mammal Hearing and Vocalizations

Cetaceans have an auditory anatomy that follows the basic mammalian pattern, with some changes to adapt to the demands of hearing underwater. The typical mammalian ear is divided into an outer ear, middle ear, and inner ear. The outer ear is separated from the inner ear by a tympanic membrane, or eardrum. In terrestrial mammals, the outer ear, eardrum, and middle ear transmit airborne sound to the inner ear, where the sound waves are propagated through the cochlear fluid. Since the impedance of water is close to that of the tissues of a cetacean, the outer ear is not required to transduce sound energy as it does when sound waves travel from air to fluid (inner ear). Sound waves traveling through the inner ear cause the basilar membrane to vibrate. Specialized cells, called hair cells, respond to the vibration and produce nerve pulses that are transmitted to the central nervous system. Acoustic energy causes the basilar membrane in the cochlea to vibrate. Sensory cells at different positions along the basilar membrane are excited by different frequencies of sound (Pickles, 1998).

Marine mammal vocalizations often extend both above and below the range of human hearing; vocalizations with frequencies lower than 20 Hz are labeled as infrasonic and those higher than 20 kHz as ultrasonic (National Research Council (NRC), 2003; Figure 4–1). Measured data on the hearing abilities of cetaceans are sparse, particularly for the larger cetaceans such as the baleen whales. The auditory thresholds of some of the smaller odontocetes have been determined in captivity. It is generally believed that cetaceans should at least be sensitive to the frequencies of their own vocalizations. Comparisons of the anatomy of cetacean inner ears and models of the structural properties and the response to vibrations of the ear's components in different species provide an indication of likely sensitivity to various sound frequencies. The ears of small toothed whales are optimized for receiving high-frequency sound, while baleen whale inner ears are best in low to infrasonic frequencies (Ketten, 1992; 1997; 1998).

Baleen whale vocalizations are composed primarily of frequencies below 1 kHz, and some contain fundamental frequencies as low as 16 Hz (Watkins *et al.,* 1987; Richardson *et al.,* 1995; Rivers, 1997; Moore *et al.,* 1998; Stafford *et al.,* 1999; Wartzok and Ketten, 1999) but can be as high as 24 kHz (humpback whale; Au *et al.,* 2006). Clark and Ellison (2004) suggested that baleen whales use low-frequency sounds not only for long-range communication, but also as a simple form of echo ranging, using echoes to navigate and orient relative to physical features of the ocean. Information on auditory function in baleen whales is extremely lacking. Sensitivity to low-frequency sound by baleen whales has been inferred from observed vocalization frequencies, observed reactions to playback of sounds, and anatomical analyses of the auditory system. Although there is apparently much variation, the source levels of most baleen whale vocalizations lie in the range of 150–190 dB re 1 microPascal (μPa) at 1 m. Low-

frequency vocalizations made by baleen whales and their corresponding auditory anatomy suggest that they have good low-frequency hearing (Ketten, 2000), although specific data on sensitivity, frequency or intensity discrimination, or localization abilities are lacking. Marine mammals, like all mammals, have typical U-shaped audiograms that begin with relatively low sensitivity (high threshold) at some specified low frequency with increased sensitivity (low threshold) to a species specific optimum followed by a generally steep rise at higher frequencies (high threshold) (Fay, 1988).

The toothed whales produce a wide variety of sounds, which include species-specific broadband ''clicks'' with peak energy between 10 and 200 kHz, individually variable ''burst pulse'' click trains, and constant frequency or frequency-modulated (FM) whistles ranging from 4 to 16 kHz (Wartzok and Ketten, 1999). The general consensus is that the tonal vocalizations (whistles) produced by toothed whales play an important role in maintaining contact between dispersed individuals, while broadband clicks are used during echolocation (Wartzok and Ketten, 1999). Burst pulses have also been strongly implicated in communication, with some scientists suggesting that they play an important role in agonistic encounters (McCowan and Reiss, 1995), while others have proposed that they represent ''emotive'' signals in a broader sense, possibly representing graded communication signals (Herzing, 1996). Sperm whales, however, are known to produce only clicks, which are used for both communication and echolocation (Whitehead, 2003). Most of the energy of toothed whale social vocalizations is concentrated near 10 kHz, with source levels for whistles as high as 100 to 180 dB re 1 µPa at 1 m (Richardson *et al.,* 1995). No odontocete has been shown audiometrically to have acute hearing (<80 dB re 1 µPa) below 500 Hz (DoN, 2001). Sperm whales produce clicks, which may be used to echolocate (Mullins *et al.,* 1988), with a frequency range from less than 100 Hz to 30 kHz and source levels up to 230 dB re 1 µPa 1 m or greater (Mohl *et al.,* 2000).

Brief Background on Sound

An understanding of the basic properties of underwater sound is necessary to comprehend many of the concepts and analyses presented in this document. A summary is included below.

Sound is a wave of pressure variations propagating through a medium (*e.g.,* water). Pressure variations are created by compressing and relaxing the medium. Sound measurements can be expressed in two forms: intensity and pressure. Acoustic intensity is the average rate of energy transmitted through a unit area in a specified direction and is expressed in watts per square meter (W/m^2). Acoustic intensity is rarely measured directly, but rather from ratios of pressures; the standard reference pressure for underwater sound is 1 µPa; for airborne sound, the standard reference pressure is 20 µPa (Richardson *et al.,* 1995).

Acousticians have adopted a logarithmic scale for sound intensities, which is denoted in decibels (dB). Decibel measurements represent the ratio between a measured pressure value and a reference pressure value (in this case 1 µPa or, for airborne sound, 20 µPa). The logarithmic nature of the scale means that each 10-dB increase is a ten-fold increase in acoustic power (and a 20-dB increase is then a 100-fold increase in power; and a 30-dB increase is a 1,000-fold increase in power). A ten-fold increase in acoustic power does not mean that the sound is perceived as being ten times louder, however. Humans perceive a 10-dB increase in sound level as a doubling of loudness, and a 10-dB decrease in sound level as a halving of loudness. The term ''sound pressure level'' implies a decibel measure and a reference pressure that is used as the denominator of the ratio. Throughout this document, NMFS uses 1 µPa (denoted re: 1µPa) as a standard reference pressure unless noted otherwise.

It is important to note that decibel values underwater and decibel values in air are not the same (different reference pressures and densities/sound speeds between media) and should not be directly compared. Because of the different densities of air and water and the different decibel standards (*i.e.,* reference pressures) in air and water, a sound with the same level in air and in water would be approximately 62 dB lower in air. Thus, a sound that measures 160 dB (re 1 µPa) underwater would have the same approximate effective level as a sound that is 98 dB (re 20 µPa) in air.

Sound frequency is measured in cycles per second, or Hertz (abbreviated Hz), and is analogous to musical pitch; high-pitched sounds contain high frequencies and low-pitched sounds contain low frequencies. Natural sounds in the ocean span a huge range of frequencies: from earthquake noise at 5 Hz to harbor porpoise clicks at 150,000 Hz (150 kHz). These sounds are so low or so high in pitch that humans cannot even hear them; acousticians call these infrasonic (typically below 20 Hz) and ultrasonic (typically above 20,000 Hz) sounds, respectively. A single sound may be made up of many different frequencies together. Sounds made up of only a small range of frequencies are called ''narrowband'', and sounds with a broad range of frequencies are called ''broadband''; explosives are an example of a broadband sound source and active tactical sonars are an example of a narrowband sound source.

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Current data indicate that not all marine mammal species have equal hearing capabilities (Richardson *et al.,* 1995; Southall *et al.,* 1997; Wartzok and Ketten, 1999; Au and Hastings, 2008).

Southall *et al.* (2007) designated ''functional hearing groups'' for marine mammals based on available behavioral data; audiograms derived from auditory evoked potentials; anatomical modeling; and other data. Southall *et al.* (2007) also estimated the lower and upper frequencies of functional hearing for each group. However, animals are less sensitive to sounds at the outer edges of their functional hearing range and are more sensitive to a range of frequencies within the middle of their functional hearing range. Note that no direct measurements of hearing ability have been successfully completed for low-frequency cetaceans. The functional groups and the associated frequencies are indicated below (note that these frequency ranges correspond to the range for the composite group, with the entire range not necessarily reflecting the capabilities of every species within that group):

- Low frequency cetaceans (13 species of mysticetes): Functional hearing estimates occur between approximately 7 Hz and 30 kilohertz (kHz) (extended from 22 kHz based on data indicating that some mysticetes can hear above 22 kHz; Watkins, 1986; Ketten, 1998; Houser *et al.,* 2001; Au *et al.,* 2006; Lucifredi and Stein, 2007; Ketten *et al.,* 2007; Parks *et al.,* 2007a; Ketten and Mountain, 2009; Tubelli *et al.,* 2012);
- Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz, with best hearing from 10 to less than 100 kHz (Johnson, 1967; White, 1977; Richardson *et al.,* 1995; Szymanski *et al.,* 1999; Kastelein *et al.,* 2003; Finneran *et al.,* 2005a, 2009; Nachtigall *et al.,* 2005, 2008; Yuen *et al.,* 2005;

Popov *et al.,* 2007; Au and Hastings, 2008; Houser *et al.,* 2008; Pacini *et al.,* 2010, 2011; Schlundt *et al.,* 2011);

• High-frequency cetaceans (porpoises, river dolphins, and members of the genera *Kogia* and *Cephalorhynchus*; including two members of the genus *Lagenorhynchus,* including the hourglass dolphin, on the basis of recent echolocation data and genetic data [May-Collado and Agnarsson, 2006; Kyhn *et al.,* 2009, 2010; Tougaard *et al.,* 2010]): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz (Popov and Supin, 1990a,b; Kastelein *et al.,* 2002; Popov *et al.,* 2005); and

• Pinnipeds in water; Phocidae (true seals): Functional hearing is estimated to occur between approximately 75 Hz to 100 kHz, with best hearing between 1–50 kHz (Møhl, 1968; Terhune and Ronald, 1971, 1972; Richardson *et al.,* 1995; Kastak and Schusterman, 1999; Reichmuth, 2008; Kastelein *et al.,* 2009);

• Pinnipeds in water; Otariidae (eared seals): Functional hearing is estimated to occur between 100 Hz and 40 kHz for Otariidae, with best hearing between 2–48 kHz (Schusterman *et al.,* 1972; Moore and Schusterman, 1987; Babushina *et al.,* 1991; Richardson *et al.,* 1995; Kastak and Schusterman, 1998; Kastelein *et al.,* 2005a; Mulsow and Reichmuth, 2007; Mulsow *et al.,* 2011a, b).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth *et al.,* 2013).

Concurrent with the development of NOAA's Ocean Noise Strategy and draft ''Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammals,'' NMFS is currently considering additional modifications to some of the functional hearing ranges proposed by Southall *et al.* (2007). As more data from more species and/or individuals become available, these estimated hearing ranges may require additional modifications.

When sound travels (propagates) from its source, its loudness decreases as the distance traveled by the sound increases. Thus, the loudness of a sound at its source is higher than the loudness of that same sound a kilometer away. Acousticians often refer to the loudness of a sound at its source (typically referenced to one meter from the source) as the source level and the loudness of sound elsewhere as the received level (*i.e.,* typically the receiver). For example, a humpback whale 3 km from a device that has a source level of 230 dB may only be exposed to sound that is 160 dB loud, depending on how the sound travels through water (*e.g.,* spherical spreading [3 dB reduction with doubling of distance] was used in this example). As a result, it is important to understand the difference between source levels and received levels when discussing the loudness of sound in the ocean or its impacts on the marine environment.

As sound travels from a source, its propagation in water is influenced by various physical characteristics, including water temperature, depth, salinity, and surface and bottom properties that cause refraction, reflection, absorption, and scattering of sound waves. Oceans are not homogeneous and the contribution of each of these individual factors is extremely complex and interrelated. The physical characteristics that determine the sound's speed through the water will change with depth, season, geographic location, and with time of day (as a result, in actual active sonar operations, crews will measure oceanic conditions, such as sea water temperature and depth, to calibrate models that determine the path the sonar signal will take as it travels through the ocean and how strong the sound signal will be at a given range along a particular transmission path). As sound travels through the ocean, the intensity associated with the wavefront diminishes, or attenuates. This decrease in intensity is referred to as propagation loss, also commonly called transmission loss.

Metrics Used in This Document

This section includes a brief explanation of the two sound measurements (sound pressure level (SPL) and sound exposure level (SEL)) frequently used to describe sound levels in the discussions of acoustic effects in this document.

Sound pressure level (SPL)—Sound pressure is the sound force per unit area, and is usually measured in micropascals (μPa), where 1 Pa is the pressure resulting from a force of one newton exerted over an area of one square meter. SPL is expressed as the ratio of a measured sound pressure and a reference level.

SPL (in dB) = 20 log (pressure/reference pressure)

The commonly used reference pressure level in underwater acoustics is 1 μPa, and the units for SPLs are dB re: 1 μPa. SPL is an instantaneous pressure measurement and can be expressed as the peak, the peak-peak, or the root mean square (rms). Root mean square pressure, which is the square root of the arithmetic average of the squared instantaneous pressure values, is typically used in discussions of the effects of sounds on vertebrates and all references to SPL in this document refer to the root mean square. SPL does not take the duration of exposure into account. SPL is the applicable metric used in the risk continuum, which is used to estimate behavioral harassment takes (see Level B Harassment Risk Function (Behavioral Harassment) Section).

Sound exposure level (SEL)—SEL is an energy metric that integrates the squared instantaneous sound pressure over a stated time interval. The units for SEL are dB re: 1 μPa^2-s. Below is a simplified formula for SEL.

SEL = SPL + 10 log (duration in seconds)

As applied to active sonar, the SEL includes both the SPL of a sonar ping and the total duration. Longer duration pings and/or pings with higher SPLs will have a higher SEL. If an animal is exposed to multiple pings, the SEL in each individual ping is summed to calculate the cumulative SEL. The cumulative SEL depends on the SPL, duration, and number of pings received. The thresholds that NMFS uses to indicate at what received level the onset of temporary threshold shift (TTS) and permanent threshold shift (PTS) in hearing are likely to occur are expressed as cumulative SEL.

Potential Effects of Specified Activities on Marine Mammals

The Navy has requested authorization for the take of marine mammals that may occur incidental to training and testing activities in the Study Area. The Navy has analyzed potential impacts to marine mammals from impulsive and non-impulsive sound sources and vessel strike.

Other potential impacts to marine mammals from training activities in the Study Area were analyzed in the Navy's January 2014 NWTT DEIS/OEIS, in consultation with NMFS as a cooperating agency, and determined to be unlikely to result in marine mammal harassment. Therefore, the Navy has not requested authorization for take of marine mammals that might occur incidental to other components of their proposed activities. In this document, NMFS analyzes the potential effects on marine mammals from exposure to non-impulsive sound sources (sonar and other active acoustic sources), impulsive sound sources (underwater detonations), and vessel strikes.

For the purpose of MMPA authorizations, NMFS' effects assessments serve four primary purposes: (1) To prescribe the permissible methods of taking (*i.e.,* Level B harassment (behavioral harassment), Level A harassment (injury), or mortality, including an identification of the number and types of take that could occur by harassment or mortality) and to prescribe other means of effecting the least practicable adverse impact on such species or stock and its habitat (*i.e.,* mitigation); (2) to determine whether the specified activity would have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity would adversely affect the species or stock through effects on annual rates of recruitment or survival); (3) to determine whether the specified activity would have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses; and (4) to prescribe requirements pertaining to monitoring and reporting.

More specifically, for activities involving non-impulsive or impulsive sources, NMFS' analysis will identify the probability of lethal responses, physical trauma, sensory impairment (permanent and temporary threshold shifts and acoustic masking), physiological responses (particular stress responses), behavioral disturbance (that rises to the level of harassment), and social responses (effects to social relationships) that would be classified as a take and whether such take would have a negligible impact on such species or stocks. This section focuses qualitatively on the different ways that non-impulsive and impulsive sources may affect marine mammals (some of which NMFS would not classify as harassment). Then, in the Estimated Take of Marine Mammals section, the potential effects to marine mammals from non-impulsive and impulsive sources will be related to the MMPA definitions of Level A and Level B harassment, along with the potential effects from vessel strikes, and we will attempt to quantify those effects.

Non-Impulsive Sources

Direct Physiological Effects

Based on the literature, there are two basic ways that non-impulsive sources might directly result in physical trauma or damage: Noise-induced loss of hearing sensitivity (more commonly-called ''threshold shift'') and acoustically mediated bubble growth. Separately, an animal's behavioral reaction to an acoustic exposure could lead to physiological effects that might ultimately lead to injury or death, which is discussed later in the Stranding section.

Threshold Shift (noise-induced loss of hearing)—When animals exhibit reduced hearing sensitivity (*i.e.,* sounds must be louder for an animal to detect them) following exposure to an intense sound or sound for long duration, it is referred to as a noise-induced threshold shift (TS). An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (*i.e.,* there is complete recovery), can occur in specific frequency ranges (*i.e.,* an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 dB or reduced by 30 dB). PTS is permanent, but some recovery is possible. PTS can also occur in a specific frequency range and amount as mentioned above for TTS.

The following physiological mechanisms are thought to play a role in inducing auditory TS: Effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.,* 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all can affect the amount of associated TS and the frequency range in which it occurs. As amplitude and duration of sound exposure increase, so, generally, does the amount of TS, along with the recovery time. For intermittent sounds, less TS could occur than compared to a continuous exposure with the same energy (some recovery could occur between intermittent exposures depending on the duty cycle between sounds) (Kryter *et al.,* 1966; Ward, 1997). For example, one short but loud (higher SPL) sound exposure may induce the same impairment as one longer but softer sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, prolonged exposure to sounds strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). Although in the case of mid- and high-frequency active sonar (MFAS/HFAS), animals are not expected to be exposed to levels high enough or durations long enough to result in PTS.

PTS is considered auditory injury (Southall *et al.,* 2007). Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007).

Although the published body of scientific literature contains numerous theoretical studies and discussion papers on hearing impairments that can occur with exposure to a loud sound, only a few studies provide empirical information on the levels at which noise-induced loss in hearing sensitivity occurs in nonhuman animals. For marine mammals, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran *et al.,* 2000, 2002b, 2003, 2005a, 2007, 2010a, 2010b; Finneran and Schlundt, 2010; Lucke *et al.,* 2009; Mooney *et al.,* 2009a, 2009b; Popov *et al.,* 2011a, 2011b; Kastelein *et al.,* 2012a; Schlundt *et al.,* 2000; Nachtigall *et al.,* 2003, 2004). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and California sea lions (Kastak *et al.,* 1999, 2005; Kastelein *et al.,* 2012b).

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent

condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so one can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Acoustically Mediated Bubble Growth—One theoretical cause of injury to marine mammals is rectified diffusion (Crum and Mao, 1996), the process of increasing the size of a bubble by exposing it to a sound field. This process could be facilitated if the environment in which the ensonified bubbles exist is supersaturated with gas. Repetitive diving by marine mammals can cause the blood and some tissues to accumulate gas to a greater degree than is supported by the surrounding environmental pressure (Ridgway and Howard, 1979). The deeper and longer dives of some marine mammals (for example, beaked whales) are theoretically predicted to induce greater supersaturation (Houser *et al.,* 2001b). If rectified diffusion were possible in marine mammals exposed to high-level sound, conditions of tissue supersaturation could theoretically speed the rate and increase the size of bubble growth. Subsequent effects due to tissue trauma and emboli would presumably mirror those observed in humans suffering from decompression sickness.

It is unlikely that the short duration of sonar pings or explosion sounds would be long enough to drive bubble growth to any substantial size, if such a phenomenon occurs. However, an alternative but related hypothesis has also been suggested: Stable bubbles could be destabilized by high-level sound exposures such that bubble growth then occurs through static diffusion of gas out of the tissues. In such a scenario the marine mammal would need to be in a gas-supersaturated state for a long enough period of time for bubbles to become of a problematic size. Recent research with *ex vivo* supersaturated bovine tissues suggested that, for a 37 kHz signal, a sound exposure of approximately 215 dB referenced to (re) 1 μPa would be required before microbubbles became destabilized and grew (Crum *et al.,* 2005). Assuming spherical spreading loss and a nominal sonar source level of 235 dB re 1 μPa at 1 m, a whale would need to be within 10 m (33 ft.) of the sonar dome to be exposed to such sound levels. Furthermore, tissues in the study were supersaturated by exposing them to pressures of 400–700 kilopascals for periods of hours and then releasing them to ambient pressures. Assuming the equilibration of gases with the tissues occurred when the tissues were exposed to the high pressures, levels of supersaturation in the tissues could have been as high as 400–700 percent. These levels of tissue supersaturation are substantially higher than model predictions for marine mammals (Houser *et al.,* 2001; Saunders *et al.,* 2008). It is improbable that this mechanism is responsible for stranding events or traumas associated with beaked whale strandings. Both the degree of supersaturation and exposure levels observed to cause microbubble destabilization are unlikely to occur, either alone or in concert.

Yet another hypothesis (decompression sickness) has speculated that rapid ascent to the surface following exposure to a startling sound might produce tissue gas saturation sufficient for the evolution of nitrogen bubbles (Jepson *et al.,* 2003; Fernandez *et al.,* 2005; Fernández *et al.,* 2012). In this scenario, the rate of ascent would need to be sufficiently rapid to compromise behavioral or physiological protections against nitrogen bubble formation. Alternatively, Tyack *et al.* (2006) studied the deep diving behavior of beaked whales and concluded that: ''Using current models of breath-hold diving, we infer that their natural diving behavior is inconsistent with known problems of acute nitrogen supersaturation and embolism.'' Collectively, these hypotheses can be referred to as ''hypotheses of acoustically mediated bubble growth.''

Although theoretical predictions suggest the possibility for acoustically mediated bubble growth, there is considerable disagreement among scientists as to its likelihood (Piantadosi and Thalmann, 2004; Evans and Miller, 2003). Crum and Mao (1996) hypothesized that received levels would have to exceed 190 dB in order for there to be the possibility of significant bubble growth due to supersaturation of gases in the blood (*i.e.,* rectified diffusion). More recent work conducted by Crum *et al.* (2005) demonstrated the possibility of rectified diffusion for short duration signals, but at SELs and tissue saturation levels that are highly improbable to occur in diving marine mammals. To date, energy levels (ELs) predicted to cause in vivo bubble formation within diving cetaceans have not been evaluated (NOAA, 2002b). Although it has been argued that traumas from some recent beaked whale strandings are consistent with gas emboli and bubble-induced tissue separations (Jepson *et al.,* 2003), there is no conclusive evidence of this. However, Jepson *et al.* (2003, 2005) and Fernandez *et al.* (2004, 2005, 2012) concluded that in vivo bubble formation, which may be exacerbated by deep, long-duration, repetitive dives may explain why beaked whales appear to be particularly vulnerable to sonar exposures. Further investigation is needed to further assess the potential validity of these hypotheses. More information regarding hypotheses that attempt to explain how behavioral responses to non-impulsive sources can lead to strandings is included in the Stranding and Mortality section.

Acoustic Masking

Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, and learning about their environment (Erbe and Farmer, 2000; Tyack, 2000). Masking, or auditory interference, generally occurs when sounds in the environment are louder than and of a similar frequency to, auditory signals an animal is trying to receive. Masking is a phenomenon that affects animals that are trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations.

The extent of the masking interference depends on the spectral, temporal, and spatial relationships between the signals an animal is trying to receive and the masking noise, in addition to other factors. In humans, significant masking of tonal signals occurs as a result of exposure to noise in a narrow band of similar frequencies. As the sound level increases, though, the detection of frequencies above those of the masking stimulus decreases also. This principle is expected to apply to marine mammals as well because of common biomechanical cochlear properties across taxa.

Richardson *et al.* (1995b) argued that the maximum radius of influence of an industrial noise (including broadband low frequency sound transmission) on a marine mammal is the distance from the source to the point at which the noise can barely be heard. This range is determined by either the hearing sensitivity of the animal or the background noise level present. Industrial masking is most likely to affect some species' ability to detect communication calls and natural sounds (*i.e.,* surf noise, prey noise, etc.; Richardson *et al.,* 1995).

The echolocation calls of toothed whales are subject to masking by high frequency sound. Human data indicate low-frequency sound can mask high-frequency sounds (*i.e.,* upward masking). Studies on captive odontocetes by Au *et al.* (1974, 1985, 1993) indicate that some species may use various processes to reduce masking effects (*e.g.,* adjustments in echolocation call intensity or frequency as a function of background noise conditions). There is also evidence that the directional hearing abilities of odontocetes are useful in reducing masking at the high-frequencies these cetaceans use to echolocate, but not at the low-to-moderate frequencies they use to communicate (Zaitseva *et al.,* 1980). A recent study by Nachtigall and Supin (2008) showed that false killer whales adjust their hearing to compensate for ambient sounds and the intensity of returning echolocation signals.

As mentioned previously, the functional hearing ranges of mysticetes, odontocetes, and pinnipeds underwater all encompass the frequencies of the sonar sources used in the Navy's MFAS/HFAS training exercises. Additionally, almost all species' vocal repertoires span across the frequencies of these sonar sources used by the Navy. The closer the characteristics of the masking signal to the signal of interest, the more likely masking is to occur. For hull-mounted sonar, which accounts for the largest takes of marine mammals (because of the source strength and number of hours it's conducted), the pulse length and low duty cycle of the MFAS/HFAS signal makes it less likely that masking would occur as a result.

Impaired Communication

In addition to making it more difficult for animals to perceive acoustic cues in their environment, anthropogenic sound presents separate challenges for animals that are vocalizing. When they vocalize, animals are aware of environmental conditions that affect the ''active space'' of their vocalizations, which is the maximum area within which their vocalizations can be detected before it drops to the level of ambient noise (Brenowitz, 2004; Brumm *et al.,* 2004; Lohr *et al.,* 2003). Animals are also aware of environmental conditions that affect whether listeners can discriminate and recognize their vocalizations from other sounds, which is more important than simply detecting that a vocalization is occurring (Brenowitz, 1982; Brumm *et al.,* 2004; Dooling, 2004, Marten and Marler, 1977; Patricelli *et al.,* 2006). Most animals that vocalize have evolved with an ability to make adjustments to their vocalizations to increase the signal-to-noise ratio, active space, and recognizability/distinguishability of their vocalizations in the face of temporary changes in background noise (Brumm *et al.,* 2004; Patricelli *et al.,* 2006). Vocalizing animals can make adjustments to vocalization characteristics such as the frequency structure, amplitude, temporal structure, and temporal delivery.

Many animals will combine several of these strategies to compensate for high levels of background noise. Anthropogenic sounds that reduce the signal-to-noise ratio of animal vocalizations, increase the masked auditory thresholds of animals listening for such vocalizations, or reduce the active space of an animal's vocalizations impair communication between animals. Most animals that vocalize have evolved strategies to compensate for the effects of short-term or temporary increases in background or ambient noise on their songs or calls. Although the fitness consequences of these vocal adjustments remain unknown, like most other trade-offs animals must make, some of these strategies probably come at a cost (Patricelli *et al.,* 2006). For example, vocalizing more loudly in noisy environments may have energetic costs that decrease the net benefits of vocal adjustment and alter a bird's energy budget (Brumm, 2004; Wood and Yezerinac, 2006). Shifting songs and calls to higher frequencies may also impose energetic costs (Lambrechts, 1996).

Stress Responses

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg, 2000; Sapolsky *et al.,* 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses.

In the case of many stressors, an animal's first and sometimes most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical ''fight or flight'' response which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with ''stress.'' These responses have a relatively short duration and may or may not have significant long-term effect on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine systems; the system that has received the most study has been the hypothalmus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, virtually all neuro-endocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier, 1995), altered metabolism (Elasser *et al.,* 2000), reduced immune competence (Blecha, 2000), and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.,* 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic function, which impairs those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When mounting a stress response diverts energy from a fetus, an animal's reproductive success and its fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called ''distress'' (Seyle, 1950) or ''allostatic loading'' (McEwen and Wingfield, 2003). This pathological state will last until the animal replenishes its biotic

reserves sufficient to restore normal function. Note that these examples involved a long-term (days or weeks) stress response exposure to stimuli.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiments; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005; Reneerkens *et al.,* 2002; Thompson and Hamer, 2000). Information has also been collected on the physiological responses of marine mammals to exposure to anthropogenic sounds (Fair and Becker, 2000; Romano *et al.,* 2002; Wright *et al.,* 2008). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. In a conceptual model developed by the Population Consequences of Acoustic Disturbance (PCAD) working group, serum hormones were identified as possible indicators of behavioral effects that are translated into altered rates of reproduction and mortality. The Office of Naval Research hosted a workshop (Effects of Stress on Marine Mammals Exposed to Sound) in 2009 that focused on this very topic (ONR, 2009).

Studies of other marine animals and terrestrial animals would also lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as ''distress'' upon exposure to high frequency, mid-frequency and low-frequency sounds. For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans (for example, elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b), for example, identified noise-induced physiological transient stress responses in hearing-specialist fish (*i.e.,* goldfish) that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses marine mammals use to gather information about their environment and to communicate with conspecifics. Although empirical information on the relationship between sensory impairment (TTS, PTS, and acoustic masking) on marine mammals remains limited, it seems reasonable to assume that reducing an animal's ability to gather information about its environment and to communicate with other members of its species would be stressful for animals that use hearing as their primary sensory mechanism. Therefore, we assume that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses because terrestrial animals exhibit those responses under similar conditions (NRC, 2003). More importantly, marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress responses (Moberg, 2000), we also assume that stress responses are likely to persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS.

Behavioral Disturbance

Behavioral responses to sound are highly variable and context-specific. Many different variables can influence an animal's perception of and response to (nature and magnitude) an acoustic event. An animal's prior experience with a sound or sound source effects whether it is less likely (habituation) or more likely (sensitization) to respond to certain sounds in the future (animals can also be innately pre-disposed to respond to certain sounds in certain ways) (Southall *et al.,* 2007). Related to the sound itself, the perceived nearness of the sound, bearing of the sound (approaching vs. retreating), similarity of a sound to biologically relevant sounds in the animal's environment (*i.e.,* calls of predators, prey, or conspecifics), and familiarity of the sound may affect the way an animal responds to the sound (Southall *et al.,* 2007). Individuals (of different age, gender, reproductive status, etc.) among most populations will have variable hearing capabilities, and differing behavioral sensitivities to sounds that will be affected by prior conditioning, experience, and current activities of those individuals. Often, specific acoustic features of the sound and contextual variables (*i.e.,* proximity, duration, or recurrence of the sound or the current behavior that the marine mammal is engaged in or its prior experience), as well as entirely separate factors such as the physical presence of a nearby vessel, may be more relevant to the animal's response than the received level alone.

Exposure of marine mammals to sound sources can result in no response or responses including, but not limited to: increased alertness; orientation or attraction to a sound source; vocal modifications; cessation of feeding; cessation of social interaction; alteration of movement or diving behavior; habitat abandonment (temporary or permanent); and, in severe cases, panic, flight, stampede, or stranding, potentially resulting in death (Southall *et al.,* 2007). A review of marine mammal responses to anthropogenic sound was first conducted by Richardson and others in 1995. A more recent review (Nowacek *et al.,* 2007) addresses studies conducted since 1995 and focuses on observations where the received sound level of the exposed marine mammal(s) was known or could be estimated. The following sub-sections provide examples of behavioral responses that provide an idea of the variability in behavioral responses that would be expected given the differential sensitivities of marine mammal species to sound and the wide range of potential acoustic sources to which a marine mammal may be exposed. Estimates of the types of behavioral responses that could occur for a given sound exposure should be determined from the literature that is available for each species, or extrapolated from closely related species when no information exists.

Flight Response—A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). Flight responses have been speculated as being a component of marine mammal strandings associated with sonar activities (Evans and England, 2001).

Response to Predator—Evidence suggests that at least some marine mammals have the ability to acoustically identify potential predators. For example, harbor seals that reside in

the coastal waters off British Columbia are frequently targeted by certain groups of killer whales, but not others. The seals discriminate between the calls of threatening and non-threatening killer whales (Deecke *et al.,* 2002), a capability that should increase survivorship while reducing the energy required for attending to and responding to all killer whale calls. The occurrence of masking or hearing impairment provides a means by which marine mammals may be prevented from responding to the acoustic cues produced by their predators. Whether or not this is a possibility depends on the duration of the masking/hearing impairment and the likelihood of encountering a predator during the time that predator cues are impeded.

Diving—Changes in dive behavior can vary widely. They may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive. Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. Variations in dive behavior may also expose an animal to potentially harmful conditions (*e.g.,* increasing the chance of ship-strike) or may serve as an avoidance response that enhances survivorship. The impact of a variation in diving resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Nowacek *et al.* (2004) reported disruptions of dive behaviors in foraging North Atlantic right whales when exposed to an alerting stimulus, an action, they noted, that could lead to an increased likelihood of ship strike. However, the whales did not respond to playbacks of either right whale social sounds or vessel noise, highlighting the importance of the sound characteristics in producing a behavioral reaction. Conversely, Indo-Pacific humpback dolphins have been observed to dive for longer periods of time in areas where vessels were present and/or approaching (Ng and Leung, 2003). In both of these studies, the influence of the sound exposure cannot be decoupled from the physical presence of a surface vessel, thus complicating interpretations of the relative contribution of each stimulus to the response. Indeed, the presence of surface vessels, their approach, and speed of approach, seemed to be significant factors in the response of the Indo-Pacific humpback dolphins (Ng and Leung, 2003). Low frequency signals of the Acoustic Thermometry of Ocean Climate (ATOC) sound source were not found to affect dive times of humpback whales in Hawaiian waters (Frankel and Clark, 2000) or to overtly affect elephant seal dives (Costa *et al.,* 2003). They did, however, produce subtle effects that varied in direction and degree among the individual seals, illustrating the equivocal nature of behavioral effects and consequent difficulty in defining and predicting them.

Due to past incidents of beaked whale strandings associated with sonar operations, feedback paths are provided between avoidance and diving and indirect tissue effects. This feedback accounts for the hypothesis that variations in diving behavior and/or avoidance responses can possibly result in nitrogen tissue supersaturation and nitrogen off-gassing, possibly to the point of deleterious vascular bubble formation (Jepson *et al.,* 2003). Although hypothetical, discussions surrounding this potential process are controversial.

Foraging—Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. Noise from seismic surveys was not found to impact the feeding behavior in western grey whales off the coast of Russia (Yazvenko *et al.,* 2007) and sperm whales engaged in foraging dives did not abandon dives when exposed to distant signatures of seismic airguns (Madsen *et al.,* 2006). However, Miller *et al.* (2009) reported buzz rates (a proxy for feeding) 19 percent lower during exposure to distant signatures of seismic airguns. Balaenopterid whales exposed to moderate low-frequency signals similar to the ATOC sound source demonstrated no variation in foraging activity (Croll *et al.,* 2001), whereas five out of six North Atlantic right whales exposed to an acoustic alarm interrupted their foraging dives (Nowacek *et al.,* 2004). Although the received sound pressure levels were similar in the latter two studies, the frequency, duration, and temporal pattern of signal presentation were different. These factors, as well as differences in species sensitivity, are likely contributing factors to the differential response. Blue whales exposed to simulated mid-frequency sonar in the Southern California Bight were less likely to produce low frequency calls usually associated with feeding behavior (Melcón *et al.,* 2012). It is not known whether the lower rates of calling actually indicated a reduction in feeding behavior or social contact since the study used data from remotely deployed, passive acoustic monitoring buoys. In contrast, blue whales increased their likelihood of calling when ship noise was present, and decreased their likelihood of calling in the presence of explosive noise, although this result was not statistically significant (Melcón *et al.,* 2012). Additionally, the likelihood of an animal calling decreased with the increased received level of mid-frequency sonar, beginning at a SPL of approximately 110–120 dB re 1 μPa (Melcón *et al.,* 2012). Preliminary results from the 2010–2011 field season of an ongoing behavioral response study in Southern California waters indicated that, in some cases and at low received levels, tagged blue whales responded to mid-frequency sonar but that those responses were mild and there was a quick return to their baseline activity (Southall *et al.,* 2011). A determination of whether foraging disruptions incur fitness consequences will require information on or estimates of the energetic requirements of the individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal. Goldbogen *et al.,* (2013) monitored behavioral responses of tagged blue whales located in feeding areas when exposed simulated MFA sonar. Responses varied depending on behavioral context, with deep feeding whales being more significantly affected (*i.e.,* generalized avoidance; cessation of feeding; increased swimming speeds; or directed travel away from the source) compared to surface feeding individuals that typically showed no change in behavior. Non-feeding whales also seemed to be affected by exposure. The authors indicate that disruption of feeding and displacement could impact individual fitness and health.

Breathing—Variations in respiration naturally vary with different behaviors and variations in respiration rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Mean exhalation rates of gray whales at rest and while diving were found to be unaffected by seismic surveys conducted adjacent to the whale feeding grounds (Gailey *et al.,* 2007). Studies with captive harbor porpoises showed increased respiration rates upon introduction of acoustic alarms

(Kastelein *et al.,* 2001; Kastelein *et al.,* 2006a) and emissions for underwater data transmission (Kastelein *et al.,* 2005). However, exposure of the same acoustic alarm to a striped dolphin under the same conditions did not elicit a response (Kastelein *et al.,* 2006a), again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (Southall *et al.,* 2007; Henderson *et al.,* 2014).

Social Relationships—Social interactions between mammals can be affected by noise via the disruption of communication signals or by the displacement of individuals. Disruption of social relationships therefore depends on the disruption of other behaviors (*e.g.,* caused avoidance, masking, etc.) and no specific overview is provided here. However, social disruptions must be considered in context of the relationships that are affected. Long-term disruptions of mother/calf pairs or mating displays have the potential to affect the growth and survival or reproductive effort/success of individuals, respectively.

Vocalizations (also see Masking Section)—Vocal changes in response to anthropogenic noise can occur across the repertoire of sound production modes used by marine mammals, such as whistling, echolocation click production, calling, and singing. Changes may result in response to a need to compete with an increase in background noise or may reflect an increased vigilance or startle response. For example, in the presence of low-frequency active sonar, humpback whales have been observed to increase the length of their ''songs'' (Miller *et al.,* 2000; Fristrup *et al.,* 2003), possibly due to the overlap in frequencies between the whale song and the low-frequency active sonar. A similar compensatory effect for the presence of low-frequency vessel noise has been suggested for right whales; right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). Killer whales off the northwestern coast of the U.S. have been observed to increase the duration of primary calls once a threshold in observing vessel density (*e.g.,* whale watching) was reached, which has been suggested as a response to increased masking noise produced by the vessels (Foote *et al.,* 2004; NOAA, 2014b). In contrast, both sperm and pilot whales potentially ceased sound production during the Heard Island feasibility test (Bowles *et al.,* 1994), although it cannot be absolutely determined whether the inability to acoustically detect the animals was due to the cessation of sound production or the displacement of animals from the area.

Avoidance—Avoidance is the displacement of an individual from an area as a result of the presence of a sound. Richardson *et al.,* (1995) noted that avoidance reactions are the most obvious manifestations of disturbance in marine mammals. It is qualitatively different from the flight response, but also differs in the magnitude of the response (*i.e.,* directed movement, rate of travel, etc.). Oftentimes avoidance is temporary, and animals return to the area once the noise has ceased. Longer term displacement is possible, however, which can lead to changes in abundance or distribution patterns of the species in the affected region if they do not become acclimated to the presence of the sound (Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006). Acute avoidance responses have been observed in captive porpoises and pinnipeds exposed to a number of different sound sources (Kastelein *et al.,* 2001; Finneran *et al.,* 2003; Kastelein *et al.,* 2006a; Kastelein *et al.,* 2006b). Short-term avoidance of seismic surveys, low frequency emissions, and acoustic deterrents have also been noted in wild populations of odontocetes (Bowles *et al.,* 1994; Goold, 1996; 1998; Stone *et al.,* 2000; Morton and Symonds, 2002) and to some extent in mysticetes (Gailey *et al.,* 2007), while longer term or repetitive/chronic displacement for some dolphin groups and for manatees has been suggested to be due to the presence of chronic vessel noise (Haviland-Howell *et al.,* 2007; Miksis-Olds *et al.,* 2007).

Maybaum (1993) conducted sound playback experiments to assess the effects of MFAS on humpback whales in Hawaiian waters. Specifically, she exposed focal pods to sounds of a 3.3-kHz sonar pulse, a sonar frequency sweep from 3.1 to 3.6 kHz, and a control (blank) tape while monitoring behavior, movement, and underwater vocalizations. The two types of sonar signals (which both contained mid- and low-frequency components) differed in their effects on the humpback whales, but both resulted in avoidance behavior. The whales responded to the pulse by increasing their distance from the sound source and responded to the frequency sweep by increasing their swimming speeds and track linearity. In the Caribbean, sperm whales avoided exposure to mid-frequency submarine sonar pulses, in the range of 1000 Hz to 10,000 Hz (IWC 2005).

Kvadsheim *et al.,* (2007) conducted a controlled exposure experiment in which killer whales fitted with D-tags were exposed to mid-frequency active sonar (Source A: a 1.0 second upsweep 209 dB @ 1–2 kHz every 10 seconds for 10 minutes; Source B: with a 1.0 second upsweep 197 dB @ 6–7 kHz every 10 seconds for 10 minutes). When exposed to Source A, a tagged whale and the group it was traveling with did not appear to avoid the source. When exposed to Source B, the tagged whales along with other whales that had been carousel feeding, ceased feeding during the approach of the sonar and moved rapidly away from the source. When exposed to Source B, Kvadsheim and his co-workers reported that a tagged killer whale seemed to try to avoid further exposure to the sound field by the following behaviors: Immediately swimming away (horizontally) from the source of the sound; engaging in a series of erratic and frequently deep dives that seemed to take it below the sound field; or swimming away while engaged in a series of erratic and frequently deep dives. Although the sample sizes in this study are too small to support statistical analysis, the behavioral responses of the orcas were consistent with the results of other studies.

In 2007, the first in a series of behavioral response studies, a collaboration by the Navy, NMFS, and other scientists showed one beaked whale (*Mesoplodon densirostris*) responding to an MFAS playback. Tyack *et al.* (2011) indicates that the playback began when the tagged beaked whale was vocalizing at depth (at the deepest part of a typical feeding dive), following a previous control with no sound exposure. The whale appeared to stop clicking significantly earlier than usual, when exposed to mid-frequency signals in the 130–140 dB (rms) received level range. After a few more minutes of the playback, when the received level reached a maximum of 140–150 dB, the whale ascended on the slow side of normal ascent rates with a longer than normal ascent, at which point the exposure was terminated. The results are from a single experiment and a greater sample size is needed before robust and definitive conclusions can be drawn.

Tyack *et al.* (2011) also indicates that Blainville's beaked whales appear to be sensitive to noise at levels well below expected TTS (~160 dB re1μPa). This sensitivity is manifest by an adaptive movement away from a sound source. This response was observed irrespective of whether the signal transmitted was within the band width of MFAS, which suggests that beaked whales may not

respond to the specific sound signatures. Instead, they may be sensitive to any pulsed sound from a point source in this frequency range. The response to such stimuli appears to involve maximizing the distance from the sound source.

Stimpert *et al.* (2014) tagged a Baird's beaked whale, which was subsequently exposed to simulated mid-frequency sonar. Changes in the animal's dive behavior and locomotion were observed when received level reached 127 dB re1μPa.

Results from a 2007–2008 study conducted near the Bahamas showed a change in diving behavior of an adult Blainville's beaked whale to playback of mid-frequency source and predator sounds (Boyd *et al.,* 2008; Southall *et al.* 2009; Tyack *et al.,* 2011). Reaction to mid-frequency sounds included premature cessation of clicking and termination of a foraging dive, and a slower ascent rate to the surface. Results from a similar behavioral response study in southern California waters have been presented for the 2010–2011 field season (Southall *et al.* 2011; DeRuiter *et al.,* 2013b). DeRuiter *et al.* (2013b) presented results from two Cuvier's beaked whales that were tagged and exposed to simulated mid-frequency active sonar during the 2010 and 2011 field seasons of the southern California behavioral response study. The 2011 whale was also incidentally exposed to mid-frequency active sonar from a distant naval exercise. Received levels from the mid-frequency active sonar signals from the controlled and incidental exposures were calculated as 84–144 and 78–106 dB re 1 μPa root mean square (rms), respectively. Both whales showed responses to the controlled exposures, ranging from initial orientation changes to avoidance responses characterized by energetic fluking and swimming away from the source. However, the authors did not detect similar responses to incidental exposure to distant naval sonar exercises at comparable received levels, indicating that context of the exposures (*e.g.,* source proximity, controlled source ramp-up) may have been a significant factor. Cuvier's beaked whale responses suggested particular sensitivity to sound exposure as consistent with results for Blainville's beaked whale. Similarly, beaked whales exposed to sonar during British training exercises stopped foraging (DSTL, 2007), and preliminary results of controlled playback of sonar may indicate feeding/foraging disruption of killer whales and sperm whales (Miller *et al.,* 2011).

In the 2007–2008 Bahamas study, playback sounds of a potential predator—a killer whale—resulted in a similar but more pronounced reaction, which included longer inter-dive intervals and a sustained straight-line departure of more than 20 km from the area. The authors noted, however, that the magnified reaction to the predator sounds could represent a cumulative effect of exposure to the two sound types since killer whale playback began approximately 2 hours after mid-frequency source playback. Pilot whales and killer whales off Norway also exhibited horizontal avoidance of a transducer with outputs in the mid-frequency range (signals in the 1–2 kHz and 6–7 kHz ranges) (Miller *et al.,* 2011). Additionally, separation of a calf from its group during exposure to mid-frequency sonar playback was observed on one occasion (Miller *et al.,* 2011). In contrast, preliminary analyses suggest that none of the pilot whales or false killer whales in the Bahamas showed an avoidance response to controlled exposure playbacks (Southall *et al.,* 2009).

Through analysis of the behavioral response studies, a preliminary overarching effect of greater sensitivity to all anthropogenic exposures was seen in beaked whales compared to the other odontocetes studied (Southall *et al.,* 2009). Therefore, recent studies have focused specifically on beaked whale responses to active sonar transmissions or controlled exposure playback of simulated sonar on various military ranges (Defence Science and Technology Laboratory, 2007; Claridge and Durban, 2009; Moretti *et al.,* 2009; McCarthy *et al.,* 2011; Tyack *et al.,* 2011). In the Bahamas, Blainville's beaked whales located on the range will move off-range during sonar use and return only after the sonar transmissions have stopped, sometimes taking several days to do so (Claridge and Durban 2009; Moretti *et al.,* 2009; McCarthy *et al.,* 2011; Tyack *et al.,* 2011). Moretti *et al.* (2014) used recordings from seafloor-mounted hydrophones at the Atlantic Undersea Test and Evaluation Center (AUTEC) to analyze the probability of Blainsville's beaked whale dives before, during, and after Navy sonar exercises.

Orientation—A shift in an animal's resting state or an attentional change via an orienting response represent behaviors that would be considered mild disruptions if occurring alone. As previously mentioned, the responses may co-occur with other behaviors; for instance, an animal may initially orient toward a sound source, and then move away from it. Thus, any orienting response should be considered in context of other reactions that may occur.

There are few empirical studies of avoidance responses of free-living cetaceans to MFAS. Much more information is available on the avoidance responses of free-living cetaceans to other acoustic sources, such as seismic airguns and low-frequency tactical sonar, than MFAS.

Behavioral Responses

Southall *et al.* (2007) reports the results of the efforts of a panel of experts in acoustic research from behavioral, physiological, and physical disciplines that convened and reviewed the available literature on marine mammal hearing and physiological and behavioral responses to human-made sound with the goal of proposing exposure criteria for certain effects. This peer-reviewed compilation of literature is very valuable, though Southall *et al.* (2007) note that not all data are equal, some have poor statistical power, insufficient controls, and/or limited information on received levels, background noise, and other potentially important contextual variables—such data were reviewed and sometimes used for qualitative illustration but were not included in the quantitative analysis for the criteria recommendations. All of the studies considered, however, contain an estimate of the received sound level when the animal exhibited the indicated response.

In the Southall *et al.* (2007) publication, for the purposes of analyzing responses of marine mammals to anthropogenic sound and developing criteria, the authors differentiate between single pulse sounds, multiple pulse sounds, and non-pulse sounds. MFAS/HFAS sonar is considered a non-pulse sound. Southall *et al.* (2007) summarize the studies associated with low-frequency, mid-frequency, and high-frequency cetacean and pinniped responses to non-pulse sounds, based strictly on received level, in Appendix C of their article (incorporated by reference and summarized in the three paragraphs below).

The studies that address responses of low-frequency cetaceans to non-pulse sounds include data gathered in the field and related to several types of sound sources (of varying similarity to MFAS/HFAS) including: Vessel noise, drilling and machinery playback, low-frequency M-sequences (sine wave with multiple phase reversals) playback, tactical low-frequency active sonar playback, drill ships, Acoustic Thermometry of Ocean Climate (ATOC) source, and non-pulse playbacks. These studies generally indicate no (or very

limited) responses to received levels in the 90 to 120 dB re: 1 µPa range and an increasing likelihood of avoidance and other behavioral effects in the 120 to 160 dB range. As mentioned earlier, though, contextual variables play a very important role in the reported responses and the severity of effects are not linear when compared to received level. Also, few of the laboratory or field datasets had common conditions, behavioral contexts or sound sources, so it is not surprising that responses differ.

The studies that address responses of mid-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to MFAS/HFAS) including: Pingers, drilling playbacks, ship and ice-breaking noise, vessel noise, Acoustic Harassment Devices (AHDs), Acoustic Deterrent Devices (ADDs), MFAS, and non-pulse bands and tones. Southall *et al.* (2007) were unable to come to a clear conclusion regarding the results of these studies. In some cases, animals in the field showed significant responses to received levels between 90 and 120 dB, while in other cases these responses were not seen in the 120 to 150 dB range. The disparity in results was likely due to contextual variation and the differences between the results in the field and laboratory data (animals typically responded at lower levels in the field).

The studies that address responses of high frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to MFAS/HFAS) including: pingers, AHDs, and various laboratory non-pulse sounds. All of these data were collected from harbor porpoises. Southall *et al.* (2007) concluded that the existing data indicate that harbor porpoises are likely sensitive to a wide range of anthropogenic sounds at low received levels (~ 90 to 120 dB), at least for initial exposures. All recorded exposures above 140 dB induced profound and sustained avoidance behavior in wild harbor porpoises (Southall *et al.,* 2007). Rapid habituation was noted in some but not all studies. There is no data to indicate whether other high frequency cetaceans are as sensitive to anthropogenic sound as harbor porpoises are.

The studies that address the responses of pinnipeds in water to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to MFAS/HFAS) including: AHDs, ATOC, various non-pulse sounds used in underwater data communication; underwater drilling, and construction noise. Few studies exist with enough information to include them in the analysis. The limited data suggested that exposures to non-pulse sounds between 90 and 140 dB generally do not result in strong behavioral responses in pinnipeds in water, but no data exist at higher received levels.

Potential Effects of Behavioral Disturbance

The different ways that marine mammals respond to sound are sometimes indicators of the ultimate effect that exposure to a given stimulus will have on the well-being (survival, reproduction, etc.) of an animal. There is limited marine mammal data quantitatively relating the exposure of marine mammals to sound to effects on reproduction or survival, though data exists for terrestrial species to which we can draw comparisons for marine mammals.

Attention is the cognitive process of selectively concentrating on one aspect of an animal's environment while ignoring other things (Posner, 1994). Because animals (including humans) have limited cognitive resources, there is a limit to how much sensory information they can process at any time. The phenomenon called ''attentional capture'' occurs when a stimulus (usually a stimulus that an animal is not concentrating on or attending to) ''captures'' an animal's attention. This shift in attention can occur consciously or subconsciously (for example, when an animal hears sounds that it associates with the approach of a predator) and the shift in attention can be sudden (Dukas, 2002; van Rij, 2007). Once a stimulus has captured an animal's attention, the animal can respond by ignoring the stimulus, assuming a ''watch and wait'' posture, or treat the stimulus as a disturbance and respond accordingly, which includes scanning for the source of the stimulus or ''vigilance'' (Cowlishaw *et al.,* 2004).

Vigilance is normally an adaptive behavior that helps animals determine the presence or absence of predators, assess their distance from conspecifics, or to attend cues from prey (Bednekoff and Lima, 1998; Treves, 2000). Despite those benefits, however, vigilance has a cost of time; when animals focus their attention on specific environmental cues, they are not attending to other activities such as foraging. These costs have been documented best in foraging animals, where vigilance has been shown to substantially reduce feeding rates (Saino, 1994; Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002). Animals will spend more time being vigilant, which may translate to less time foraging or resting, when disturbance stimuli approach them more directly, remain at closer distances, have a greater group size (for example, multiple surface vessels), or when they co-occur with times that an animal perceives increased risk (for example, when they are giving birth or accompanied by a calf). Most of the published literature, however, suggests that direct approaches will increase the amount of time animals will dedicate to being vigilant. For example, bighorn sheep and Dall's sheep dedicated more time being vigilant, and less time resting or foraging, when aircraft made direct approaches over them (Frid, 2001; Stockwell *et al.,* 1991).

Several authors have established that long-term and intense disturbance stimuli can cause population declines by reducing the body condition of individuals that have been disturbed, followed by reduced reproductive success, reduced survival, or both (Daan *et al.,* 1996; Madsen, 1994; White, 1983). For example, Madsen (1994) reported that pink-footed geese in undisturbed habitat gained body mass and had about a 46-percent reproductive success rate compared with geese in disturbed habitat (being consistently scared off the fields on which they were foraging) which did not gain mass and had a 17-percent reproductive success rate. Similar reductions in reproductive success have been reported for mule deer disturbed by all-terrain vehicles (Yarmoloy *et al.,* 1988), caribou disturbed by seismic exploration blasts (Bradshaw *et al.,* 1998), caribou disturbed by low-elevation military jet-fights (Luick *et al.,* 1996), and caribou disturbed by low-elevation jet flights (Harrington and Veitch, 1992). Similarly, a study of elk that were disturbed experimentally by pedestrians concluded that the ratio of young to mothers was inversely related to disturbance rate (Phillips and Alldredge, 2000).

The primary mechanism by which increased vigilance and disturbance appear to affect the fitness of individual animals is by disrupting an animal's time budget and, as a result, reducing the time they might spend foraging and resting (which increases an animal's activity rate and energy demand). For example, a study of grizzly bears reported that bears disturbed by hikers reduced their energy intake by an average of 12 kcal/minute (50.2×10^3kJ/minute), and spent energy fleeing or acting aggressively toward hikers (White

et al., 1999). Alternately, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a 5-day period did not cause any sleep deprivation or stress effects such as changes in cortisol or epinephrine levels.

Lusseau and Bejder (2007) present data from three long-term studies illustrating the connections between disturbance from whale-watching boats and population-level effects in cetaceans. In Sharks Bay Australia, the abundance of bottlenose dolphins was compared within adjacent control and tourism sites over three consecutive 4.5-year periods of increasing tourism levels. Between the second and third time periods, in which tourism doubled, dolphin abundance decreased by 15 percent in the tourism area and did not change significantly in the control area. In Fiordland, New Zealand, two populations (Milford and Doubtful Sounds) of bottlenose dolphins with tourism levels that differed by a factor of seven were observed and significant increases in travelling time and decreases in resting time were documented for both. Consistent short-term avoidance strategies were observed in response to tour boats until a threshold of disturbance was reached (average 68 minutes between interactions), after which the response switched to a longer term habitat displacement strategy. For one population tourism only occurred in a part of the home range, however, tourism occurred throughout the home range of the Doubtful Sound population and once boat traffic increased beyond the 68-minute threshold (resulting in abandonment of their home range/preferred habitat), reproductive success drastically decreased (increased stillbirths) and abundance decreased significantly (from 67 to 56 individuals in short period). Last, in a study of northern resident killer whales off Vancouver Island, exposure to boat traffic was shown to reduce foraging opportunities and increase traveling time. A simple bioenergetics model was applied to show that the reduced foraging opportunities equated to a decreased energy intake of 18 percent, while the increased traveling incurred an increased energy output of 3–4 percent, which suggests that a management action based on avoiding interference with foraging might be particularly effective.

On a related note, many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Substantive behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than 1 day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multiple-day substantive behavioral reactions and multiple-day anthropogenic activities. For example, just because an at-sea exercise lasts for multiple days does not necessarily mean that individual animals are either exposed to that exercise for multiple days or, further, exposed in a manner resulting in a sustained multiple day substantive behavioral responses.

In order to understand how the effects of activities may or may not impact stocks and populations of marine mammals, it is necessary to understand not only what the likely disturbances are going to be, but how those disturbances may affect the reproductive success and survivorship of individuals, and then how those impacts to individuals translate to population changes. Following on the earlier work of a committee of the U.S. National Research Council (NRC, 2005), New *et al.* (2014), in an effort termed the Potential Consequences of Disturbance (PCoD), outline an updated conceptual model of the relationships linking disturbance to changes in behavior and physiology, health, vital rates, and population dynamics (below). As depicted, behavioral and physiological changes can either have direct (acute) effects on vital rates, such as when changes in habitat use or increased stress levels raise the probability of mother-calf separation or predation, or they can have indirect and long-term (chronic) effects on vital rates, such as when changes in time/energy budgets or increased disease susceptibility affect health, which then affects vital rates (New *et al.,* 2014).

In addition to outlining this general framework and compiling the relevant literature that supports it, New *et al.* (2014) have chosen four example species for which extensive long-term monitoring data exist (southern elephant seals, North Atlantic right whales, Ziphidae beaked whales, and bottlenose dolphins) and developed state-space energetic models that can be used to effectively forecast longer-term, population-level impacts from behavioral changes. While these are very specific models with very specific data requirements that cannot yet be applied broadly to project-specific risk assessments, they are a critical first step.

Stranding and Mortality

When a live or dead marine mammal swims or floats onto shore and becomes ''beached'' or incapable of returning to sea, the event is termed a ''stranding'' (Geraci *et al.,* 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; NMFS, 2007). The legal definition for a stranding within the U.S. is that (A) ''a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance.'' (16 U.S.C. 1421h).

Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most strandings are unknown (Geraci *et al.,* 1976; Eaton, 1979, Odell *et al.,* 1980; Best, 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos, 2000; Creel, 2005; DeVries *et al.,* 2003; Fair and Becker, 2000; Foley *et al.,* 2001; Moberg, 2000; Relyea, 2005a; 2005b, Romero, 2004; Sih *et al.,* 2004). For reference, between 2001 and 2009, there was an annual average of 1,400 cetacean strandings and 4,300 pinniped strandings along the coasts of the continental U.S. and Alaska (NMFS, 2011).

Several sources have published lists of mass stranding events of cetaceans in an attempt to identify relationships between those stranding events and military sonar (Hildebrand, 2004; IWC, 2005; Taylor *et al.,* 2004). For example,

based on a review of stranding records between 1960 and 1995, the International Whaling Commission (2005) identified ten mass stranding events of Cuvier's beaked whales had been reported and one mass stranding of four Baird's beaked whale. The IWC concluded that, out of eight stranding events reported from the mid-1980s to the summer of 2003, seven had been coincident with the use of tactical mid-frequency sonar, one of those seven had been associated with the use of tactical low-frequency sonar, and the remaining stranding event had been associated with the use of seismic airguns.

Most of the stranding events reviewed by the International Whaling Commission involved beaked whales. A mass stranding of Cuvier's beaked whales in the eastern Mediterranean Sea occurred in 1996 (Frantzis, 1998) and mass stranding events involving Gervais' beaked whales, Blainville's beaked whales, and Cuvier's beaked whales occurred off the coast of the Canary Islands in the late 1980s (Simmonds and Lopez-Jurado, 1991). The stranding events that occurred in the Canary Islands and Kyparissiakos Gulf in the late 1990s and the Bahamas in 2000 have been the most intensively-studied mass stranding events and have been associated with naval maneuvers involving the use of tactical sonar.

Between 1960 and 2006, 48 strandings (68 percent) involved beaked whales, three (4 percent) involved dolphins, and 14 (20 percent) involved whale species. Cuvier's beaked whales were involved in the greatest number of these events (48 or 68 percent), followed by sperm whales (seven or 10 percent), and Blainville's and Gervais' beaked whales (four each or 6 percent). Naval activities (not just activities conducted by the U.S. Navy) that might have involved active sonar are reported to have coincided with nine or 10 (13 to 14 percent) of those stranding events. Between the mid-1980s and 2003 (the period reported by the International Whaling Commission), NMFS identified reports of 44 mass cetacean stranding events of which at least seven were coincident with naval exercises that were using MFAS.

Strandings Associated With Impulse Sound

During a Navy training event on March 4, 2011, at the Silver Strand Training Complex in San Diego, California, three or possibly four dolphins were killed in an explosion. During an underwater detonation training event, a pod of 100 to 150 long-beaked common dolphins were observed moving towards the 700-yd (640.1-m) exclusion zone around the explosive charge, monitored by personnel in a safety boat and participants in a dive boat. Approximately 5 minutes remained on a time-delay fuse connected to a single 8.76 lb (3.97 kg) explosive charge (C–4 and detonation cord). Although the dive boat was placed between the pod and the explosive in an effort to guide the dolphins away from the area, that effort was unsuccessful and three long-beaked common dolphins near the explosion died. In addition to the three dolphins found dead on March 4, the remains of a fourth dolphin were discovered on March 7, 2011 near Ocean Beach, California (3 days later and approximately 11.8 mi. [19 km] from Silver Strand where the training event occurred), which might also have been related to this event. Association of the fourth stranding with the training event is uncertain because dolphins strand on a regular basis in the San Diego area. Details such as the dolphins' depth and distance from the explosive at the time of the detonation could not be estimated from the 250 yd (228.6 m) standoff point of the observers in the dive boat or the safety boat.

These dolphin mortalities are the only known occurrence of a U.S. Navy training or testing event involving impulse energy (underwater detonation) that caused mortality or injury to a marine mammal. Despite this being a rare occurrence, the Navy has reviewed training requirements, safety procedures, and possible mitigation measures and implemented changes to reduce the potential for this to occur in the future. Discussions of procedures associated with these and other training and testing events are presented in the Mitigation section.

Strandings Associated With MFAS

Over the past 16 years, there have been five stranding events coincident with military mid-frequency sonar use in which exposure to sonar is believed to have been a contributing factor: Greece (1996); the Bahamas (2000); Madeira (2000); Canary Islands (2002); and Spain (2006). Additionally, in 2004, during the Rim of the Pacific (RIMPAC) exercises, between 150 and 200 usually pelagic melon-headed whales occupied the shallow waters of Hanalei Bay, Kauai, Hawaii for over 28 hours. NMFS determined that MFAS was a plausible, if not likely, contributing factor in what may have been a confluence of events that led to the stranding. A number of other stranding events coincident with the operation of mid-frequency sonar, including the death of beaked whales or other species (minke whales, dwarf sperm whales, pilot whales), have been reported; however, the majority have not been investigated to the degree necessary to determine the cause of the stranding and only one of these stranding events, the Bahamas (2000), was associated with exercises conducted by the U.S. Navy. Most recently, the Independent Scientific Review Panel investigating potential contributing factors to a 2008 mass stranding of melon-headed whales in Antsohihy, Madagascar released its final report suggesting that the stranding was likely initially triggered by an industry seismic survey. This report suggests that the operation of a commercial high-powered 12 kHz multi-beam echosounder during an industry seismic survey was a plausible and likely initial trigger that caused a large group of melon-headed whales to leave their typical habitat and then ultimately strand as a result of secondary factors such as malnourishment and dehydration. The report indicates that the risk of this particular convergence of factors and ultimate outcome is likely very low, but recommends that the potential be considered in environmental planning. Because of the association between tactical mid-frequency active sonar use and a small number of marine mammal strandings, the Navy and NMFS have been considering and addressing the potential for strandings in association with Navy activities for years. In addition to a suite of mitigation intended to more broadly minimize impacts to marine mammals, the Navy and NMFS have a detailed Stranding Response Plan that outlines reporting, communication, and response protocols intended both to minimize the impacts of, and enhance the analysis of, any potential stranding in areas where the Navy operates.

Greece (1996)—Twelve Cuvier's beaked whales stranded atypically (in both time and space) along a 38.2-km strand of the Kyparissiakos Gulf coast on May 12 and 13, 1996 (Frantzis, 1998). From May 11 through May 15, the North Atlantic Treaty Organization (NATO) research vessel *Alliance* was conducting sonar tests with signals of 600 Hz and 3 kHz and source levels of 228 and 226 dB re: 1μPa, respectively (D'Amico and Verboom, 1998; D'Spain *et al.,* 2006). The timing and location of the testing encompassed the time and location of the strandings (Frantzis, 1998).

Necropsies of eight of the animals were performed but were limited to basic external examination and sampling of stomach contents, blood, and skin. No ears or organs were

collected, and no histological samples were preserved. No apparent abnormalities or wounds were found. Examination of photos of the animals, taken soon after their death, revealed that the eyes of at least four of the individuals were bleeding. Photos were taken soon after their death (Frantzis, 2004). Stomach contents contained the flesh of cephalopods, indicating that feeding had recently taken place (Frantzis, 1998).

All available information regarding the conditions associated with this stranding event were compiled, and many potential causes were examined including major pollution events, prominent tectonic activity, unusual physical or meteorological events, magnetic anomalies, epizootics, and conventional military activities (International Council for the Exploration of the Sea, 2005a). However, none of these potential causes coincided in time or space with the mass stranding, or could explain its characteristics (International Council for the Exploration of the Sea, 2005a). The robust condition of the animals, plus the recent stomach contents, is inconsistent with pathogenic causes. In addition, environmental causes can be ruled out as there were no unusual environmental circumstances or events before or during this time period and within the general proximity (Frantzis, 2004).

Because of the rarity of this mass stranding of Cuvier's beaked whales in the Kyparissiakos Gulf (first one in history), the probability for the two events (the military exercises and the strandings) to coincide in time and location, while being independent of each other, was thought to be extremely low (Frantzis, 1998). However, because full necropsies had not been conducted, and no abnormalities were noted, the cause of the strandings could not be precisely determined (Cox *et al.,* 2006). A Bioacoustics Panel convened by NATO concluded that the evidence available did not allow them to accept or reject sonar exposures as a causal agent in these stranding events. The analysis of this stranding event provided support for, but no clear evidence for, the cause-and-effect relationship of tactical sonar training activities and beaked whale strandings (Cox *et al.,* 2006).

Bahamas (2000)—NMFS and the Navy prepared a joint report addressing the multi-species stranding in the Bahamas in 2000, which took place within 24 hours of U.S. Navy ships using MFAS as they passed through the Northeast and Northwest Providence Channels on March 15–16, 2000. The ships, which operated both AN/SQS–53C and AN/SQS–56, moved through the channel while emitting sonar pings approximately every 24 seconds. Of the 17 cetaceans that stranded over a 36-hr period (Cuvier's beaked whales, Blainville's beaked whales, minke whales, and a spotted dolphin), seven animals died on the beach (five Cuvier's beaked whales, one Blainville's beaked whale, and the spotted dolphin), while the other 10 were returned to the water alive (though their ultimate fate is unknown). As discussed in the Bahamas report (DOC/DON, 2001), there is no likely association between the minke whale and spotted dolphin strandings and the operation of MFAS.

Necropsies were performed on five of the stranded beaked whales. All five necropsied beaked whales were in good body condition, showing no signs of infection, disease, ship strike, blunt trauma, or fishery related injuries, and three still had food remains in their stomachs. Auditory structural damage was discovered in four of the whales, specifically bloody effusions or hemorrhaging around the ears. Bilateral intracochlear and unilateral temporal region subarachnoid hemorrhage, with blood clots in the lateral ventricles, were found in two of the whales. Three of the whales had small hemorrhages in their acoustic fats (located along the jaw and in the melon).

A comprehensive investigation was conducted and all possible causes of the stranding event were considered, whether they seemed likely at the outset or not. Based on the way in which the strandings coincided with ongoing naval activity involving tactical MFAS use, in terms of both time and geography, the nature of the physiological effects experienced by the dead animals, and the absence of any other acoustic sources, the investigation team concluded that MFAS aboard U.S. Navy ships that were in use during the active sonar exercise in question were the most plausible source of this acoustic or impulse trauma to beaked whales. This sound source was active in a complex environment that included the presence of a surface duct, unusual and steep bathymetry, a constricted channel with limited egress, intensive use of multiple, active sonar units over an extended period of time, and the presence of beaked whales that appear to be sensitive to the frequencies produced by these active sonars. The investigation team concluded that the cause of this stranding event was the confluence of the Navy MFAS and these contributory factors working together, and further recommended that the Navy avoid operating MFAS in situations where these five factors would be likely to occur. This report does not conclude that all five of these factors must be present for a stranding to occur, nor that beaked whales are the only species that could potentially be affected by the confluence of the other factors. Based on this, NMFS believes that the operation of MFAS in situations where surface ducts exist, or in marine environments defined by steep bathymetry and/or constricted channels may increase the likelihood of producing a sound field with the potential to cause cetaceans (especially beaked whales) to strand, and therefore, suggests the need for increased vigilance while operating MFAS in these areas, especially when beaked whales (or potentially other deep divers) are likely present.

Madeira, Spain (2000)—From May 10–14, 2000, three Cuvier's beaked whales were found atypically stranded on two islands in the Madeira archipelago, Portugal (Cox *et al.,* 2006). A fourth animal was reported floating in the Madeiran waters by fisherman but did not come ashore (Woods Hole Oceanographic Institution, 2005). Joint NATO amphibious training peacekeeping exercises involving participants from 17 countries 80 warships, took place in Portugal during May 2–15, 2000.

The bodies of the three stranded whales were examined post mortem (Woods Hole Oceanographic Institution, 2005), though only one of the stranded whales was fresh enough (24 hours after stranding) to be necropsied (Cox *et al.,* 2006). Results from the necropsy revealed evidence of hemorrhage and congestion in the right lung and both kidneys (Cox *et al.,* 2006). There was also evidence of intercochlear and intracranial hemorrhage similar to that which was observed in the whales that stranded in the Bahamas event (Cox *et al.,* 2006). There were no signs of blunt trauma, and no major fractures (Woods Hole Oceanographic Institution, 2005). The cranial sinuses and airways were found to be clear with little or no fluid deposition, which may indicate good preservation of tissues (Woods Hole Oceanographic Institution, 2005).

Several observations on the Madeira stranded beaked whales, such as the pattern of injury to the auditory system, are the same as those observed in the Bahamas strandings. Blood in and around the eyes, kidney lesions, pleural hemorrhages, and congestion in the lungs are particularly consistent with the pathologies from the whales stranded in the Bahamas, and are consistent with stress and pressure related trauma. The similarities in pathology and stranding patterns between these two events suggest that a

similar pressure event may have precipitated or contributed to the strandings at both sites (Woods Hole Oceanographic Institution, 2005).

Even though no definitive causal link can be made between the stranding event and naval exercises, certain conditions may have existed in the exercise area that, in their aggregate, may have contributed to the marine mammal strandings (Freitas, 2004): exercises were conducted in areas of at least 547 fathoms (1,000 m) depth near a shoreline where there is a rapid change in bathymetry on the order of 547 to 3,281 fathoms (1,000 to 6,000 m) occurring across a relatively short horizontal distance (Freitas, 2004); multiple ships were operating around Madeira, though it is not known if MFAS was used, and the specifics of the sound sources used are unknown (Cox *et al.,* 2006, Freitas, 2004); and exercises took place in an area surrounded by landmasses separated by less than 35 nm (65 km) and at least 10 nm (19 km) in length, or in an embayment. Exercises involving multiple ships employing MFAS near land may produce sound directed towards a channel or embayment that may cut off the lines of egress for marine mammals (Freitas, 2004).

Canary Islands, Spain (2002)—The southeastern area within the Canary Islands is well known for aggregations of beaked whales due to its ocean depths of greater than 547 fathoms (1,000 m) within a few hundred meters of the coastline (Fernandez *et al.,* 2005). On September 24, 2002, 14 beaked whales were found stranded on Fuerteventura and Lanzarote Islands in the Canary Islands (International Council for Exploration of the Sea, 2005a). Seven whales died, while the remaining seven live whales were returned to deeper waters (Fernandez *et al.,* 2005). Four beaked whales were found stranded dead over the next three days either on the coast or floating offshore. These strandings occurred within near proximity of an international naval exercise that utilized MFAS and involved numerous surface warships and several submarines. Strandings began about 4 hours after the onset of MFAS activity (International Council for Exploration of the Sea, 2005a; Fernandez *et al.,* 2005).

Eight Cuvier's beaked whales, one Blainville's beaked whale, and one Gervais' beaked whale were necropsied, six of them within 12 hours of stranding (Fernandez *et al.,* 2005). No pathogenic bacteria were isolated from the carcasses (Jepson *et al.,* 2003). The animals displayed severe vascular congestion and hemorrhage especially around the tissues in the jaw, ears, brain, and kidneys, displaying marked disseminated microvascular hemorrhages associated with widespread fat emboli (Jepson *et al.,* 2003; International Council for Exploration of the Sea, 2005a). Several organs contained intravascular bubbles, although definitive evidence of gas embolism in vivo is difficult to determine after death (Jepson *et al.,* 2003). The livers of the necropsied animals were the most consistently affected organ, which contained macroscopic gas-filled cavities and had variable degrees of fibrotic encapsulation. In some animals, cavitary lesions had extensively replaced the normal tissue (Jepson *et al.,* 2003). Stomachs contained a large amount of fresh and undigested contents, suggesting a rapid onset of disease and death (Fernandez *et al.,* 2005). Head and neck lymph nodes were enlarged and congested, and parasites were found in the kidneys of all animals (Fernandez *et al.,* 2005).

The association of NATO MFAS use close in space and time to the beaked whale strandings, and the similarity between this stranding event and previous beaked whale mass strandings coincident with sonar use, suggests that a similar scenario and causative mechanism of stranding may be shared between the events. Beaked whales stranded in this event demonstrated brain and auditory system injuries, hemorrhages, and congestion in multiple organs, similar to the pathological findings of the Bahamas and Madeira stranding events. In addition, the necropsy results of Canary Islands stranding event lead to the hypothesis that the presence of disseminated and widespread gas bubbles and fat emboli were indicative of nitrogen bubble formation, similar to what might be expected in decompression sickness (Jepson *et al.,* 2003; Fernández *et al.,* 2005; Fernández *et al.,* 2012).

Hanalei Bay (2004)—On July 3 and 4, 2004, approximately 150 to 200 melon-headed whales occupied the shallow waters of the Hanalei Bay, Kaua'i, Hawaii for over 28 hrs. Attendees of a canoe blessing observed the animals entering the Bay in a single wave formation at 7 a.m. on July 3, 2004. The animals were observed moving back into the shore from the mouth of the Bay at 9 a.m. The usually pelagic animals milled in the shallow bay and were returned to deeper water with human assistance beginning at 9:30 a.m. on July 4, 2004, and were out of sight by 10:30 a.m.

Only one animal, a calf, was known to have died following this event. The animal was noted alive and alone in the Bay on the afternoon of July 4, 2004, and was found dead in the Bay the morning of July 5, 2004. A full necropsy, magnetic resonance imaging, and computerized tomography examination were performed on the calf to determine the manner and cause of death. The combination of imaging, necropsy and histological analyses found no evidence of infectious, internal traumatic, congenital, or toxic factors. Cause of death could not be definitively determined, but it is likely that maternal separation, poor nutritional condition, and dehydration contributed to the final demise of the animal. Although it is not known when the calf was separated from its mother, the animals' movement into the Bay and subsequent milling and re-grouping may have contributed to the separation or lack of nursing, especially if the maternal bond was weak or this was an inexperienced mother with her first calf.

Environmental factors, abiotic and biotic, were analyzed for any anomalous occurrences that would have contributed to the animals entering and remaining in Hanalei Bay. The Bay's bathymetry is similar to many other sites within the Hawaiian Island chain and dissimilar to sites that have been associated with mass strandings in other parts of the U.S. The weather conditions appeared to be normal for that time of year with no fronts or other significant features noted. There was no evidence of unusual distribution, occurrence of predator or prey species, or unusual harmful algal blooms, although Mobley *et al.,* 2007 suggested that the full moon cycle that occurred at that time may have influenced a run of squid into the Bay. Weather patterns and bathymetry that have been associated with mass strandings elsewhere were not found to occur in this instance.

The Hanalei event was spatially and temporally correlated with RIMPAC. Official sonar training and tracking exercises in the Pacific Missile Range Facility (PMRF) warning area did not commence until approximately 8 a.m. on July 3 and were thus ruled out as a possible trigger for the initial movement into the Bay. However, six naval surface vessels transiting to the operational area on July 2 intermittently transmitted active sonar (for approximately 9 hours total from 1:15 p.m. to 12:30 a.m.) as they approached from the south. The potential for these transmissions to have triggered the whales' movement into Hanalei Bay was investigated. Analyses with the information available indicated that animals to the south and east of

Kaua'i could have detected active sonar transmissions on July 2, and reached Hanalei Bay on or before 7 a.m. on July 3. However, data limitations regarding the position of the whales prior to their arrival in the Bay, the magnitude of sonar exposure, behavioral responses of melon-headed whales to acoustic stimuli, and other possible relevant factors preclude a conclusive finding regarding the role of sonar in triggering this event. Propagation modeling suggests that transmissions from sonar use during the July 3 exercise in the PMRF warning area may have been detectable at the mouth of the Bay. If the animals responded negatively to these signals, it may have contributed to their continued presence in the Bay. The U.S. Navy ceased all active sonar transmissions during exercises in this range on the afternoon of July 3. Subsequent to the cessation of sonar use, the animals were herded out of the Bay.

While causation of this stranding event may never be unequivocally determined, NMFS consider the active sonar transmissions of July 2–3, 2004, a plausible, if not likely, contributing factor in what may have been a confluence of events. This conclusion is based on the following: (1) The evidently anomalous nature of the stranding; (2) its close spatiotemporal correlation with wide-scale, sustained use of sonar systems previously associated with stranding of deep-diving marine mammals; (3) the directed movement of two groups of transmitting vessels toward the southeast and southwest coast of Kauai; (4) the results of acoustic propagation modeling and an analysis of possible animal transit times to the Bay; and (5) the absence of any other compelling causative explanation. The initiation and persistence of this event may have resulted from an interaction of biological and physical factors. The biological factors may have included the presence of an apparently uncommon, deep-diving cetacean species (and possibly an offshore, non-resident group), social interactions among the animals before or after they entered the Bay, and/or unknown predator or prey conditions. The physical factors may have included the presence of nearby deep water, multiple vessels transiting in a directed manner while transmitting active sonar over a sustained period, the presence of surface sound ducting conditions, and/or intermittent and random human interactions while the animals were in the Bay.

A separate event involving melon-headed whales and rough-toothed dolphins took place over the same period of time in the Northern Mariana Islands (Jefferson *et al.,* 2006), which is several thousand miles from Hawaii. Some 500 to 700 melon-headed whales came into Sasanhaya Bay on July 4, 2004, near the island of Rota and then left of their own accord after 5.5 hours; no known active sonar transmissions occurred in the vicinity of that event. The Rota incident led to scientific debate regarding what, if any, relationship the event had to the simultaneous events in Hawaii and whether they might be related by some common factor (*e.g.,* there was a full moon on July 2, 2004, as well as during other melon-headed whale strandings and nearshore aggregations (Brownell *et al.,* 2009; Lignon *et al.,* 2007; Mobley *et al.,* 2007). Brownell *et al.* (2009) compared the two incidents, along with one other stranding incident at Nuka Hiva in French Polynesia and normal resting behaviors observed at Palmyra Island, in regard to physical features in the areas, melon-headed whale behavior, and lunar cycles. Brownell *et al.,* (2009) concluded that the rapid entry of the whales into Hanalei Bay, their movement into very shallow water far from the 100-m contour, their milling behavior (typical pre-stranding behavior), and their reluctance to leave the bay constituted an unusual event that was not similar to the events that occurred at Rota (but was similar to the events at Palmyra), which appear to be similar to observations of melon-headed whales resting normally at Palmyra Island. Additionally, there was no correlation between lunar cycle and the types of behaviors observed in the Brownell *et al.* (2009) examples. Since that time there have been two ''out of habitat'' or ''near mass strandings'' of melon-headed whales in the Philippines (Aragones *et al.,* 2010). Pictures of one of these events depict grouping behavior like that displayed at Hanalei Bay in July 2004. No naval sonar activity was noted it the area, although it was suspected by the authors, based on personal communication with a government fisheries representative, that dynamite blasting in the area may have occurred within the days prior to one of the events (Aragones *et al.,* 2010). Although melon-headed whales entering embayments may be infrequent and rare, there is precedent for this type of occurrence on other occasions in the absence of naval activity.

Spain (2006)—The Spanish Cetacean Society reported an atypical mass stranding of four beaked whales that occurred January 26, 2006, on the southeast coast of Spain, near Mojacar (Gulf of Vera) in the Western Mediterranean Sea. According to the report, two of the whales were discovered the evening of January 26 and were found to be still alive (these later died). Two other whales were discovered during the day on January 27, but had already died. The first three animals were located near the town of Mojacar and the fourth animal was found dead, a few kilometers north of the first three animals. From January 25–26, 2006, Standing NATO Response Force Maritime Group Two (five of seven ships including one U.S. ship under NATO Operational Control) had conducted active sonar training against a Spanish submarine within 50 nm (93 km) of the stranding site.

Veterinary pathologists necropsied the two male and two female Cuvier's beaked whales. According to the pathologists, the most likely primary cause of this type of beaked whale mass stranding event was anthropogenic acoustic activities, most probably anti-submarine MFAS used during the military naval exercises. However, no positive acoustic link was established as a direct cause of the stranding. Even though no causal link can be made between the stranding event and naval exercises, certain conditions may have existed in the exercise area that, in their aggregate, may have contributed to the marine mammal strandings (Freitas, 2004): exercises were conducted in areas of at least 547 fathoms (1,000 m) depth near a shoreline where there is a rapid change in bathymetry on the order of 547 to 3,281 fathoms (1,000 to 6,000 m) occurring across a relatively short horizontal distance (Freitas, 2004); multiple ships (in this instance, five) were operating MFAS in the same area over extended periods of time (in this case, 20 hours) in close proximity; and exercises took place in an area surrounded by landmasses, or in an embayment. Exercises involving multiple ships employing MFAS near land may have produced sound directed towards a channel or embayment that may have cut off the lines of egress for the affected marine mammals (Freitas, 2004).

Association Between Mass Stranding Events and Exposure to MFAS

Several authors have noted similarities between some of these stranding incidents: They occurred in islands or archipelagoes with deep water nearby, several appeared to have been associated with acoustic waveguides like surface ducting, and the sound fields created by ships transmitting MFAS (Cox *et al.,* 2006, D'Spain *et al.,* 2006). Although Cuvier's beaked whales have been the most

common species involved in these stranding events (81 percent of the total number of stranded animals), other beaked whales (including *Mesoplodon europeaus, M. densirostris,* and *Hyperoodon ampullatus*) comprise 14 percent of the total. Other species (*Stenella coeruleoalba, Kogia breviceps* and *Balaenoptera acutorostrata*) have stranded, but in much lower numbers and less consistently than beaked whales.

Based on the evidence available, however, NMFS cannot determine whether (a) Cuvier's beaked whale is more prone to injury from high-intensity sound than other species; (b) their behavioral responses to sound makes them more likely to strand; or (c) they are more likely to be exposed to MFAS than other cetaceans (for reasons that remain unknown). Because the association between active sonar exposures and marine mammals mass stranding events is not consistent—some marine mammals strand without being exposed to sonar and some sonar transmissions are not associated with marine mammal stranding events despite their co-occurrence—other risk factors or a grouping of risk factors probably contribute to these stranding events.

Behaviorally Mediated Responses to MFAS That May Lead to Stranding

Although the confluence of Navy MFAS with the other contributory factors noted in the report was identified as the cause of the 2000 Bahamas stranding event, the specific mechanisms that led to that stranding (or the others) are not understood, and there is uncertainty regarding the ordering of effects that led to the stranding. It is unclear whether beaked whales were directly injured by sound (*e.g.,* acoustically mediated bubble growth, as addressed above) prior to stranding or whether a behavioral response to sound occurred that ultimately caused the beaked whales to be injured and strand.

Although causal relationships between beaked whale stranding events and active sonar remain unknown, several authors have hypothesized that stranding events involving these species in the Bahamas and Canary Islands may have been triggered when the whales changed their dive behavior in a startled response to exposure to active sonar or to further avoid exposure (Cox *et al.,* 2006, Rommel *et al.,* 2006). These authors proposed three mechanisms by which the behavioral responses of beaked whales upon being exposed to active sonar might result in a stranding event. These include the following: Gas bubble formation caused by excessively fast surfacing; remaining at the surface too long when tissues are supersaturated with nitrogen; or diving prematurely when extended time at the surface is necessary to eliminate excess nitrogen. More specifically, beaked whales that occur in deep waters that are in close proximity to shallow waters (for example, the ''canyon areas'' that are cited in the Bahamas stranding event; see D'Spain and D'Amico, 2006), may respond to active sonar by swimming into shallow waters to avoid further exposures and strand if they were not able to swim back to deeper waters. Second, beaked whales exposed to active sonar might alter their dive behavior. Changes in their dive behavior might cause them to remain at the surface or at depth for extended periods of time which could lead to hypoxia directly by increasing their oxygen demands or indirectly by increasing their energy expenditures (to remain at depth) and increase their oxygen demands as a result. If beaked whales are at depth when they detect a ping from an active sonar transmission and change their dive profile, this could lead to the formation of significant gas bubbles, which could damage multiple organs or interfere with normal physiological function (Cox *et al.,* 2006; Rommel *et al.,* 2006; Zimmer and Tyack, 2007). Baird *et al.* (2005) found that slow ascent rates from deep dives and long periods of time spent within 50 m of the surface were typical for both Cuvier's and Blainville's beaked whales, the two species involved in mass strandings related to naval sonar. These two behavioral mechanisms may be necessary to purge excessive dissolved nitrogen concentrated in their tissues during their frequent long dives (Baird *et al.,* 2005). Baird *et al.* (2005) further suggests that abnormally rapid ascents or premature dives in response to high-intensity sonar could indirectly result in physical harm to the beaked whales, through the mechanisms described above (gas bubble formation or non-elimination of excess nitrogen).

Because many species of marine mammals make repetitive and prolonged dives to great depths, it has long been assumed that marine mammals have evolved physiological mechanisms to protect against the effects of rapid and repeated decompressions. Although several investigators have identified physiological adaptations that may protect marine mammals against nitrogen gas supersaturation (alveolar collapse and elective circulation; Kooyman *et al.,* 1972; Ridgway and Howard, 1979), Ridgway and Howard (1979) reported that bottlenose dolphins that were trained to dive repeatedly had muscle tissues that were substantially supersaturated with nitrogen gas. Houser *et al.* (2001) used these data to model the accumulation of nitrogen gas within the muscle tissue of other marine mammal species and concluded that cetaceans that dive deep and have slow ascent or descent speeds would have tissues that are more supersaturated with nitrogen gas than other marine mammals. Based on these data, Cox *et al.* (2006) hypothesized that a critical dive sequence might make beaked whales more prone to stranding in response to acoustic exposures. The sequence began with (1) very deep (to depths as deep as 2 kilometers) and long (as long as 90 minutes) foraging dives; (2) relatively slow, controlled ascents; and (3) a series of ''bounce'' dives between 100 and 400 m in depth (also see Zimmer and Tyack, 2007). They concluded that acoustic exposures that disrupted any part of this dive sequence (for example, causing beaked whales to spend more time at surface without the bounce dives that are necessary to recover from the deep dive) could produce excessive levels of nitrogen supersaturation in their tissues, leading to gas bubble and emboli formation that produces pathologies similar to decompression sickness.

Zimmer and Tyack (2007) modeled nitrogen tension and bubble growth in several tissue compartments for several hypothetical dive profiles and concluded that repetitive shallow dives (defined as a dive where depth does not exceed the depth of alveolar collapse, approximately 72 m for *Ziphius*), perhaps as a consequence of an extended avoidance reaction to sonar sound, could pose a risk for decompression sickness and that this risk should increase with the duration of the response. Their models also suggested that unrealistically rapid ascent rates of ascent from normal dive behaviors are unlikely to result in supersaturation to the extent that bubble formation would be expected. Tyack *et al.* (2006) suggested that emboli observed in animals exposed to mid-frequency range sonar (Jepson *et al.,* 2003; Fernandez *et al.,* 2005; Fernández *et al.,* 2012) could stem from a behavioral response that involves repeated dives shallower than the depth of lung collapse. Given that nitrogen gas accumulation is a passive process (*i.e.* nitrogen is metabolically inert), a bottlenose dolphin was trained to repetitively dive a profile predicted to elevate nitrogen saturation to the point

that nitrogen bubble formation was predicted to occur. However, inspection of the vascular system of the dolphin via ultrasound did not demonstrate the formation of asymptomatic nitrogen gas bubbles (Houser *et al.,* 2007). Baird *et al.* (2008), in a beaked whale tagging study off Hawaii, showed that deep dives are equally common during day or night, but ''bounce dives'' are typically a daytime behavior, possibly associated with visual predator avoidance. This may indicate that ''bounce dives'' are associated with something other than behavioral regulation of dissolved nitrogen levels, which would be necessary day and night.

If marine mammals respond to a Navy vessel that is transmitting active sonar in the same way that they might respond to a predator, their probability of flight responses should increase when they perceive that Navy vessels are approaching them directly, because a direct approach may convey detection and intent to capture (Burger and Gochfeld, 1981, 1990; Cooper, 1997, 1998). The probability of flight responses should also increase as received levels of active sonar increase (and the ship is, therefore, closer) and as ship speeds increase (that is, as approach speeds increase). For example, the probability of flight responses in Dall's sheep (*Ovis dalli dalli*) (Frid 2001a, b), ringed seals (*Phoca hispida*) (Born *et al.,* 1999), Pacific brant (*Branta bernic nigricans*) and Canada geese (*B. Canadensis*) increased as a helicopter or fixed-wing aircraft approached groups of these animals more directly (Ward *et al.,* 1999). Bald eagles (*Haliaeetus leucocephalus*) perched on trees alongside a river were also more likely to flee from a paddle raft when their perches were closer to the river or were closer to the ground (Steidl and Anthony, 1996).

Despite the many theories involving bubble formation (both as a direct cause of injury (see Acoustically Mediated Bubble Growth Section) and an indirect cause of stranding (See Behaviorally Mediated Bubble Growth Section), Southall *et al.*, (2007) summarizes that there is either scientific disagreement or a lack of information regarding each of the following important points: (1) Received acoustical exposure conditions for animals involved in stranding events; (2) pathological interpretation of observed lesions in stranded marine mammals; (3) acoustic exposure conditions required to induce such physical trauma directly; (4) whether noise exposure may cause behavioral reactions (such as atypical diving behavior) that secondarily cause bubble formation and tissue damage; and (5) the extent the post mortem artifacts introduced by decomposition before sampling, handling, freezing, or necropsy procedures affect interpretation of observed lesions.

Impulsive Sources

Underwater explosive detonations send a shock wave and sound energy through the water and can release gaseous by-products, create an oscillating bubble, or cause a plume of water to shoot up from the water surface. The shock wave and accompanying noise are of most concern to marine animals. Depending on the intensity of the shock wave and size, location, and depth of the animal, an animal can be injured, killed, suffer non-lethal physical effects, experience hearing related effects with or without behavioral responses, or exhibit temporary behavioral responses or tolerance from hearing the blast sound. Generally, exposures to higher levels of impulse and pressure levels would result in greater impacts to an individual animal.

Injuries resulting from a shock wave take place at boundaries between tissues of different densities. Different velocities are imparted to tissues of different densities, and this can lead to their physical disruption. Blast effects are greatest at the gas-liquid interface (Landsberg, 2000). Gas-containing organs, particularly the lungs and gastrointestinal tract, are especially susceptible (Goertner, 1982; Hill, 1978; Yelverton *et al.*, 1973). In addition, gas-containing organs including the nasal sacs, larynx, pharynx, trachea, and lungs may be damaged by compression/expansion caused by the oscillations of the blast gas bubble (Reidenberg and Laitman, 2003). Intestinal walls can bruise or rupture, with subsequent hemorrhage and escape of gut contents into the body cavity. Less severe gastrointestinal tract injuries include contusions, petechiae (small red or purple spots caused by bleeding in the skin), and slight hemorrhaging (Yelverton *et al.*, 1973).

Because the ears are the most sensitive to pressure, they are the organs most susceptible to injury (Ketten, 2000). Sound-related damage associated with sound energy from detonations can be theoretically distinct from injury from the shock wave, particularly farther from the explosion. If a noise is audible to an animal, it has the potential to damage the animal's hearing by causing decreased sensitivity (Ketten, 1995). Sound-related trauma can be lethal or sublethal. Lethal impacts are those that result in immediate death or serious debilitation in or near an intense source and are not, technically, pure acoustic trauma (Ketten, 1995). Sublethal impacts include hearing loss, which is caused by exposures to perceptible sounds. Severe damage (from the shock wave) to the ears includes tympanic membrane rupture, fracture of the ossicles, damage to the cochlea, hemorrhage, and cerebrospinal fluid leakage into the middle ear. Moderate injury implies partial hearing loss due to tympanic membrane rupture and blood in the middle ear. Permanent hearing loss also can occur when the hair cells are damaged by one very loud event, as well as by prolonged exposure to a loud noise or chronic exposure to noise. The level of impact from blasts depends on both an animal's location and, at outer zones, on its sensitivity to the residual noise (Ketten, 1995).

There have been fewer studies addressing the behavioral effects of explosives on marine mammals compared to MFAS/HFAS. However, though the nature of the sound waves emitted from an explosion are different (in shape and rise time) from MFAS/HFAS, NMFS still anticipates the same sorts of behavioral responses to result from repeated explosive detonations (a smaller range of likely less severe responses (*i.e.*, not rising to the level of MMPA harassment)) would be expected to occur as a result of exposure to a single explosive detonation that was not powerful enough or close enough to the animal to cause TTS or injury.

Baleen whales have shown a variety of responses to impulse sound sources, including avoidance, reduced surface intervals, altered swimming behavior, and changes in vocalization rates (Richardson *et al.*, 1995; Gordon *et al.*, 2003; Southall, 2007). While most bowhead whales did not show active avoidance until within 8 km of seismic vessels (Richardson *et al.*, 1995), some whales avoided vessels by more than 20 km at received levels as low as 120 dB re 1 μPa rms. Additionally, Malme *et al.* (1988) observed clear changes in diving and respiration patterns in bowheads at ranges up to 73 km from seismic vessels, with received levels as low as 125 dB re 1 μPa.

Gray whales migrating along the U.S. west coast showed avoidance responses to seismic vessels by 10 percent of animals at 164 dB re 1 μPa, and by 90 percent of animals at 190 dB re 1 μPa, with similar results for whales in the Bering Sea (Malme 1986, 1988). In contrast, noise from seismic surveys was not found to impact feeding behavior or exhalation rates while resting or diving in western gray whales off the coast of Russia (Yazvenko *et al.*, 2007; Gailey *et al.*, 2007).

Humpback whales showed avoidance behavior at ranges of 5–8 km from a seismic array during observational studies and controlled exposure experiments in western Australia (McCauley, 1998; Todd *et al.*, 1996) found no clear short-term behavioral responses by foraging humpbacks to explosions associated with construction operations in Newfoundland, but did see a trend of increased rates of net entanglement and a shift to a higher incidence of net entanglement closer to the noise source.

Seismic pulses at average received levels of 131 dB re 1 micropascal squared second (μPa^2-s) caused blue whales to increase call production (Di Iorio and Clark, 2010). In contrast, McDonald *et al.* (1995) tracked a blue whale with seafloor seismometers and reported that it stopped vocalizing and changed its travel direction at a range of 10 km from the seismic vessel (estimated received level 143 dB re 1 µPa peak-to-peak). These studies demonstrate that even low levels of noise received far from the noise source can induce behavioral responses.

Madsen *et al.* (2006) and Miller *et al.* (2009) tagged and monitored eight sperm whales in the Gulf of Mexico exposed to seismic airgun surveys. Sound sources were from approximately 2 to 7 nm away from the whales and based on multipath propagation received levels were as high as 162 dB SPL re 1 µPa with energy content greatest between 0.3 and 3.0 kHz (Madsen, 2006). The whales showed no horizontal avoidance, although the whale that was approached most closely had an extended resting period and did not resume foraging until the airguns had ceased firing (Miller *et al.*, 2009). The remaining whales continued to execute foraging dives throughout exposure; however, swimming movements during foraging dives were 6 percent lower during exposure than control periods, suggesting subtle effects of noise on foraging behavior (Miller *et al.*, 2009). Captive bottlenose dolphins sometimes vocalized after an exposure to impulse sound from a seismic watergun (Finneran *et al.*, 2010a).

A review of behavioral reactions by pinnipeds to impulse noise can be found in Richardson *et al.* (1995) and Southall *et al.* (2007). Blackwell *et al.* (2004) observed that ringed seals exhibited little or no reaction to pipe-driving noise with mean underwater levels of 157 dB re 1 µPa rms and in air levels of 112 dB re 20 µPa, suggesting that the seals had habituated to the noise. In contrast, captive California sea lions avoided sounds from an impulse source at levels of 165–170 dB re 1 µPa (Finneran *et al.*, 2003b). Experimentally, Götz and Janik (2011) tested underwater, startle responses to a startling sound (sound with a rapid rise time and a 93 dB sensation level [the level above the animal's threshold at that frequency]) and a non-startling sound (sound with the same level, but with a slower rise time) in wild-captured gray seals. The animals exposed to the startling treatment avoided a known food source, whereas animals exposed to the non-startling treatment did not react or habituated during the exposure period. The results of this study highlight the importance of the characteristics of the acoustic signal in an animal's response of habituation.

Vessels

Commercial and Navy ship strikes of cetaceans can cause major wounds, which may lead to the death of the animal. An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or an animal just below the surface could be cut by a vessel's propeller. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus, 2001; Laist *et al.*, 2001; Vanderlaan and Taggart, 2007). The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (*e.g.*, the sperm whale). In addition, some baleen whales, such as the North Atlantic right whale, seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.*, 2004). These species are primarily large, slow moving whales. Smaller marine mammals (*e.g.*, bottlenose dolphin) move quickly through the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC, 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death (Knowlton and Kraus, 2001; Laist *et al.*, 2001; Jensen and Silber, 2003; Vanderlaan and Taggart, 2007). In assessing records in which vessel speed was known, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 13 knots.

Jensen and Silber (2003) detailed 292 records of known or probable ship strikes of all large whale species from 1975 to 2002. Of these, vessel speed at the time of collision was reported for 58 cases. Of these cases, 39 (or 67 percent) resulted in serious injury or death (19 of those resulted in serious injury as determined by blood in the water, propeller gashes or severed tailstock, and fractured skull, jaw, vertebrae, hemorrhaging, massive bruising or other injuries noted during necropsy and 20 resulted in death). Operating speeds of vessels that struck various species of large whales ranged from 2 to 51 knots. The majority (79 percent) of these strikes occurred at speeds of 13 knots or greater. The average speed that resulted in serious injury or death was 18.6 knots. Pace and Silber (2005) found that the probability of death or serious injury increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious injury or death increased from 45 to 75 percent as vessel speed increased from 10 to 14 knots, and exceeded 90 percent at 17 knots. Higher speeds during collisions result in greater force of impact and also appear to increase the chance of severe injuries or death. While modeling studies have suggested that hydrodynamic forces pulling whales toward the vessel hull increase with increasing speed (Clyne, 1999; Knowlton *et al.*, 1995), this is inconsistent with Silber *et al.* (2010), which demonstrated that there is no such relationship (*i.e.*, hydrodynamic forces are independent of speed).

The Jensen and Silber (2003) report notes that the database represents a minimum number of collisions, because the vast majority probably goes undetected or unreported. In contrast, Navy vessels are likely to detect any strike that does occur, and they are required to report all ship strikes involving marine mammals. Overall, the percentages of Navy traffic relative to overall large shipping traffic are very small (on the order of 2 percent).

There are no records of any Navy vessel strikes to marine mammals during training or testing activities in the NWTT Study Area. There has been only one whale strike in the Pacific Northwest by the Navy since such records have been kept (June 1994–present). In August 2012, a San Diego homeported DDG (destroyer) at-sea about 35 nm west of Coos Bay, Oregon struck a whale (believed to be a minke) while transiting to San Diego from Seattle. There have been Navy strikes of large whales in areas outside the Study Area, such as Hawaii and Southern California. However, these areas differ significantly from the Study Area given that both Hawaii and Southern

California have a much higher number of Navy vessel activities.

Other efforts have been undertaken to investigate the impact from vessels (both whale-watching and general vessel traffic noise) and demonstrated impacts do occur (Bain, 2002; Erbe, 2002; Lusseau, 2009; Williams *et al.*, 2006, 2009, 2011b, 2013, 2014a, 2014b; Noren *et al.*, 2009; Read *et al.*, 2014; Rolland *et al.*, 2012; Pirotta *et al.*, 2015). This body of research for the most part has investigated impacts associated with the presence of chronic stressors, which differ significantly from generally intermittent Navy training and testing activities. For example, in an analysis of energy costs to killer whales, Williams *et al.* (2009) suggested that whale-watching in the Johnstone Strait resulted in lost feeding opportunities due to vessel disturbance, which could carry higher costs than other measures of behavioral change might suggest. Ayres *et al.* (2012) recently reported on research in the Salish Sea involving the measurement of southern resident killer whale fecal hormones to assess two potential threats to the species recovery: Lack of prey (salmon) and impacts to behavior from vessel traffic. Ayres *et al.* (2012) suggested that the lack of prey overshadowed any population-level physiological impacts on southern resident killer whales from vessel traffic.

Marine Mammal Habitat

The Navy's proposed training and testing activities could potentially affect marine mammal habitat through the introduction of sound into the water column, impacts to the prey species of marine mammals, bottom disturbance, or changes in water quality. Each of these components was considered in the January 2014 NWTT DEIS/OEIS and was determined by the Navy to have no effect on marine mammal habitat. Based on the information below and the supporting information included in the January 2014 NWTT DEIS/OEIS, NMFS has preliminarily determined that the proposed training and testing activities would not have adverse or long-term impacts on marine mammal habitat.

Critical Habitat

The southern resident killer whale (in the inshore area) is the only ESA-listed marine mammal species with designated critical habitat located in the Study Area. The majority of the Navy's proposed training and testing activities would, however, not occur in the southern resident killer whale's designated critical habitat (NMFS, 2006). For all substressors that would occur within the critical habitat, those training and testing activities are not expected to impact the identified primary constituent elements of that habitat and therefore would have no effect on that critical habitat. Effects to designated critical habitat will be fully analyzed in the Navy's and NMFS' internal ESA Section 7 consultations for NWTT.

Expected Effects on Habitat

Unless the sound source or explosive detonation is stationary and/or continuous over a long duration in one area, the effects of the introduction of sound into the environment are generally considered to have a less severe impact on marine mammal habitat than the physical alteration of the habitat. Acoustic exposures are not expected to result in long-term physical alteration of the water column or bottom topography, as the occurrences are of limited duration and are intermittent in time. Surface vessels associated with the activities are present in limited duration and are intermittent as they move relatively rapidly through any given area. Most of the high-explosive military expended materials would detonate at or near the water surface. Only bottom-laid explosives are likely to affect bottom substrate; habitat used for underwater detonations and seafloor device placement would primarily be soft-bottom sediment. Once on the seafloor, military expended material would likely be colonized by benthic organisms because the materials would serve as anchor points in the shifting bottom substrates, similar to a reef. The surface area of bottom substrate affected would make up a very small percentage of the total training area available in the NWTT Study Area.

Effects on Marine Mammal Prey

Invertebrates—Marine invertebrate distribution in the NWTT Study Area is influenced by habitat, ocean currents, and water quality factors such as temperature, salinity, and nutrient content (Levinton, 2009). The distribution of invertebrates is also influenced by their distance from the equator (latitude); in general, the number of marine invertebrate species increases toward the equator (Macpherson, 2002). The higher number of species (diversity) and abundance of marine invertebrates in coastal habitats, compared with the open ocean, is a result of more nutrient availability from terrestrial environments and the variety of habitats and substrates found in coastal waters (Levinton, 2009).

Marine invertebrates in the Study Area inhabit coastal waters and benthic habitats, including salt marshes, kelp forests, soft sediments, canyons, and the continental shelf. Salt marsh invertebrates include oysters, crabs, and worms that are important prey for birds and small mammals. Mudflats provide habitat for substantial amounts of crustaceans, bivalves, and worms. The sandy intertidal area is dominated by species that are highly mobile and can burrow. One of the most abundant invertebrates found in the near shore areas of the Study Area on soft sediments are geoduck clams (*Panopea generosa*).

All marine invertebrate taxonomic groups are represented in the NWTT Study Area. Major invertebrate phyla (taxonomic range)—those with greater than 1,000 species and the general zones they inhabit in the Study Area are described in Chapter 3 of the January 2014 NWTT DEIS/OEIS.

Very little is known about sound detection and use of sound by aquatic invertebrates (Budelmann 2010; Montgomery *et al.*, 2006; Popper *et al.*, 2001). Organisms may detect sound by sensing either the particle motion or pressure component of sound, or both. Aquatic invertebrates probably do not detect pressure since many are generally the same density as water and few, if any, have air cavities that would function like the fish swim bladder in responding to pressure (Budelmann, 2010; Popper *et al.*, 2001). Many marine invertebrates, however, have ciliated ''hair'' cells that may be sensitive to water movements, such as those caused by currents or water particle motion very close to a sound source (Budelmann, 2010; Mackie and Singla, 2003). These cilia may allow invertebrates to sense nearby prey or predators or help with local navigation. Marine invertebrates may produce and use sound in territorial behavior, to deter predators, to find a mate, and to pursue courtship (Popper *et al.*, 2001).

Both behavioral and auditory brainstem response studies suggest that crustaceans may sense sounds up to three kilohertz (kHz), but best sensitivity is likely below 200 Hz (Lovell *et al.*, 2005; Lovell *et al.*, 2006; Goodall *et al.*, 1990). Most cephalopods (*e.g.*, octopus and squid) likely sense low-frequency sound below 1,000 Hz, with best sensitivities at lower frequencies (Budelmann, 2010; Mooney *et al.*, 2010; Packard *et al.*, 1990). A few cephalopods may sense higher frequencies up to 1,500 Hz (Hu *et al.*, 2009). Squid did not respond to toothed whale ultrasonic echolocation clicks at sound pressure levels ranging from 199 to 226 dB re 1 μPa peak-to-peak, likely because these clicks were outside of squid hearing range (Wilson *et al.*,

2007). However, squid exhibited alarm responses when exposed to broadband sound from an approaching seismic airgun with received levels exceeding 145 to 150 dB re 1 µPa root mean square (McCauley *et al.*, 2000b).

Little information is available on the potential impacts on marine invertebrates of exposure to sonar, explosions, and other sound-producing activities. It is expected that most marine invertebrates would not sense mid- or high-frequency sounds, distant sounds, or aircraft noise transmitted through the air-water interface. Most marine invertebrates would not be close enough to intense sound sources, such as some sonars, to potentially experience impacts to sensory structures. Any marine invertebrate capable of sensing sound may alter its behavior if exposed to non-impulsive sound, although it is unknown if responses to non-impulsive sounds occur. Continuous noise, such as from vessels, may contribute to masking of relevant environmental sounds, such as reef noise. Because the distance over which most marine invertebrates are expected to detect any sounds is limited and vessels would be in transit, any sound exposures with the potential to cause masking or behavioral responses would be brief and long-term impacts are not expected. Although non-impulsive underwater sounds produced during training and testing activities may briefly impact individuals, intermittent exposures to non-impulsive sounds are not expected to impact survival, growth, recruitment, or reproduction of widespread marine invertebrate populations.

Most detonations would occur greater than 3 nm from shore. As water depth increases away from shore, benthic invertebrates would be less likely to be impacted by detonations at or near the surface. In addition, detonations near the surface would release a portion of their explosive energy into the air, reducing the explosive impacts in the water. Some marine invertebrates may be sensitive to the low-frequency component of impulsive sound, and they may exhibit startle reactions or temporary changes in swim speed in response to an impulsive exposure. Because exposures are brief, limited in number, and spread over a large area, no long-term impacts due to startle reactions or short-term behavioral changes are expected. Although individual marine invertebrates may be injured or killed during an explosion or pile driving, no long-term impacts on the survival, growth, recruitment, or reproduction of marine invertebrate populations are expected.

Fish—Fish are not distributed uniformly throughout the NWTT Study Area, but are closely associated with a variety of habitats. Some species range across thousands of square miles while others have small home ranges and restricted distributions (Helfman *et al.*, 2009). The movements of some open-ocean species may never overlap with coastal fishes that spend their lives within several hundred feet (a few hundred meters) of the shore. Even within a single fish species, the distribution and specific habitats in which individuals occur may be influenced by its developmental stage, size, sex, reproductive condition, and other factors.

The distribution and abundance of fishes depends greatly on the physical and biological factors of the marine ecosystem, such as salinity, temperature, dissolved oxygen, population dynamics, predator and prey interaction oscillations, seasonal movements, reproduction and life cycles, and recruitment success (Helfman *et al.*, 1997). A single factor is rarely responsible for the distribution of fish species; more often, a combination of factors is accountable. For example, open ocean species optimize their growth, reproduction, and survival by tracking gradients of temperature, oxygen, or salinity (Helfman *et al.*, 1997). Another major component in understanding species distribution is the location of highly productive regions, such as frontal zones. These areas concentrate various prey species and their predators, such as tuna, and provide visual cues for the location of target species for commercial fisheries (NMFS, 2001).

There are 17 major taxonomic groups of marine fishes within the NWTT Study Area. Detailed information on taxa presence, distribution, and characteristics are provided in Chapter 3 of the January 2014 NWTT DEIS/OEIS.

All fish have two sensory systems to detect sound in the water: The inner ear, which functions very much like the inner ear in other vertebrates, and the lateral line, which consists of a series of receptors along the fish's body (Popper, 2008). The inner ear generally detects relatively higher-frequency sounds, while the lateral line detects water motion at low frequencies (below a few hundred Hz) (Hastings and Popper, 2005a). Although hearing capability data only exist for fewer than 100 of the 32,000 fish species, current data suggest that most species of fish detect sounds from 50 to 1,000 Hz, with few fish hearing sounds above 4 kHz (Popper, 2008). It is believed that most fish have their best hearing sensitivity from 100 to 400 Hz (Popper, 2003b). Additionally, some clupeids (shad in the subfamily Alosinae) possess ultrasonic hearing (*i.e.*, able to detect sounds above 100,000 Hz) (Astrup, 1999). Permanent hearing loss, or permanent threshold shift has not been documented in fish. The sensory hair cells of the inner ear in fish can regenerate after they are damaged, unlike in mammals where sensory hair cells loss is permanent (Lombarte *et al.*, 1993; Smith *et al.*, 2006). As a consequence, any hearing loss in fish may be as temporary as the timeframe required to repair or replace the sensory cells that were damaged or destroyed (*e.g.*, Smith *et al.*, 2006).

Potential direct injuries from non-impulsive sound sources, such as sonar, are unlikely because of the relatively lower peak pressures and slower rise times than potentially injurious sources such as explosives. Non-impulsive sources also lack the strong shock waves associated with an explosion. Therefore, direct injury is not likely to occur from exposure to non-impulsive sources such as sonar, vessel noise, or subsonic aircraft noise. Only a few fish species are able to detect high-frequency sonar and could have behavioral reactions or experience auditory masking during these activities. These effects are expected to be transient and long-term consequences for the population are not expected. MFAS is unlikely to impact fish species because most species are unable to detect sounds in this frequency range and vessels operating MFAS would be transiting an area (not stationary). While a large number of fish species may be able to detect low-frequency sonar and other active acoustic sources, low-frequency active usage is rare and mostly conducted in deeper waters. Overall effects to fish from would be localized and infrequent.

Physical effects from pressure waves generated by underwater sounds (*e.g.* underwater explosions) could potentially affect fish within proximity of training or testing activities. In particular, the rapid oscillation between high- and low-pressure peaks has the potential to burst the swim bladders and other gas-containing organs of fish (Keevin and Hemen, 1997). Sublethal effects, such as changes in behavior of fish, have been observed in several occasions as a result of noise produced by explosives (National Research Council of the National Academies, 2003; Wright, 1982). If an individual fish were repeatedly exposed to sounds from underwater explosions that caused alterations in natural behavioral patterns or physiological stress, these impacts could lead to long-term consequences for the individual such as

reduced survival, growth, or reproductive capacity. However, the time scale of individual explosions is very limited, and training exercises involving explosions are dispersed in space and time. Consequently, repeated exposure of individual fish to sounds from underwater explosions is not likely and most acoustic effects are expected to be short-term and localized. Long-term consequences for populations would not be expected. A limited number of fish may be killed in the immediate proximity of pile driving locations and additional fish may be injured. Short-term effects such as masking, stress, behavioral change, and hearing threshold shifts are also expected during pile driving operations. However, given the relatively small area that would be affected, and the abundance and distribution of the species concerned, no population-level effects are expected. The abundances of various fish and invertebrates near the detonation point of an explosion or around a pile driving location could be altered for a few hours before animals from surrounding areas repopulate the area; however these populations would be replenished as waters near the sound source are mixed with adjacent waters.

Marine Mammal Avoidance

Marine mammals may be temporarily displaced from areas where Navy training and testing is occurring, but the area should be utilized again after the activities have ceased. Avoidance of an area can help the animal avoid further acoustic effects by avoiding or reducing further exposure. The intermittent or short duration of many activities should prevent animals from being exposed to stressors on a continuous basis. In areas of repeated and frequent acoustic disturbance, some animals may habituate or learn to tolerate the new baseline or fluctuations in noise level. While some animals may not return to an area, or may begin using an area differently due to training and testing activities, most animals are expected to return to their usual locations and behavior.

Other Expected Effects

Other sources that may affect marine mammal habitat were considered in the January 2014 NWTT DEIS/OEIS and potentially include the introduction of fuel, debris, ordnance, and chemical residues into the water column. The majority of high-order explosions would occur at or above the surface of the ocean, and would have no impacts on sediments and minimal impacts on water quality. While disturbance or strike from an item falling through the water column is possible, it is unlikely because (1) objects sink slowly, (2) most projectiles are fired at targets (and hit those targets), and (3) animals are generally widely dispersed throughout the water column and over the NWTT Study Area. Chemical, physical, or biological changes in sediment or water quality would not be detectable. In the event of an ordnance failure, the energetic materials it contained would remain mostly intact. The explosive materials in failed ordnance items and metal components from training and testing would leach slowly and would quickly disperse in the water column. Chemicals from other explosives would not be introduced into the water column in large amounts and all torpedoes would be recovered following training and testing activities, reducing the potential for chemical concentrations to reach levels that can affect sediment quality, water quality, or benthic habitats.

Proposed Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(A) of the MMPA, NMFS must set forth the ''permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.'' NMFS' duty under this ''least practicable adverse impact'' standard is to prescribe mitigation reasonably designed to minimize, to the extent practicable, any adverse population-level impacts, as well as habitat impacts. While population-level impacts can be minimized by reducing impacts on individual marine mammals, not all takes translate to population-level impacts. NMFS' primary objective under the ''least practicable adverse impact'' standard is to design mitigation targeting those impacts on individual marine mammals that are most likely to lead to adverse population-level effects.

The NDAA of 2004 amended the MMPA as it relates to military-readiness activities and the ITA process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity.'' The training and testing activities described in the LOA application are considered military readiness activities.

NMFS reviewed the proposed activities and the proposed mitigation measures as described in the LOA application to determine if they would result in the least practicable adverse effect on marine mammals, which includes a careful balancing of the likely benefit of any particular measure to the marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the effectiveness of the ''military-readiness activity.'' Included below are the mitigation measures the Navy proposed in their LOA application. NMFS worked with the Navy to develop these proposed measures, and they are informed by years of experience and monitoring. In addition, the adaptive management process (see Adaptive management) and annual meetings between NMFS and the Navy allows NMFS to consider new information from different sources to determine (with input from the Navy regarding practicability) on an annual or biennial basis if mitigation measures should be refined or modified.

The Navy's proposed mitigation measures are modifications to the proposed activities that are implemented for the sole purpose of reducing a specific potential environmental impact on a particular resource. These do not include standard operating procedures, which are established for reasons other than environmental benefit. Most of the following proposed mitigation measures are currently, or were previously, implemented as a result of past environmental compliance documents. The Navy's overall approach to assessing potential mitigation measures is based on two principles: (1) Mitigation measures will be effective at reducing potential impacts on the resource, and (2) from a military perspective, the mitigation measures are practicable, executable, and safety and readiness will not be impacted.

Lookouts

The use of Lookouts is a critical component of Navy procedural measures and implementation of mitigation zones. Navy Lookouts are highly qualified and experienced observers of the marine environment. Their duties require that they report all objects sighted in the water to the Officer of the Deck (OOD) (*e.g.*, trash, a periscope, marine mammals, sea turtles) and all disturbances (*e.g.*, surface disturbance, discoloration) that may be indicative of a threat to the vessel and its crew. There are personnel standing watch on station at all times (day and night) when a ship or surfaced submarine is moving through the water.

The Navy would have two types of Lookouts for the purposes of conducting visual observations: (1) Those positioned on surface ships, and (2)

those positioned ashore, in aircraft or on boats. Lookouts positioned on surface ships would be dedicated solely to diligent observation of the air and surface of the water. They would have multiple observation objectives, which include but are not limited to detecting the presence of biological resources and recreational or fishing boats, observing mitigation zones, and monitoring for vessel and personnel safety concerns.

Due to manning and space restrictions on aircraft, small boats, and some Navy ships, Lookouts for these platforms may be supplemented by the aircraft crew or pilot, boat crew, range site personnel, or shore-side personnel. Lookouts positioned in minimally manned platforms may be responsible for tasks in addition to observing the air or surface of the water (*e.g.*, navigation of a helicopter or small boat). However, all Lookouts will (considering personnel safety, practicality of implementation, and impact on the effectiveness of the activity) comply with the observation objectives described above for Lookouts positioned on ships.

The procedural measures described below primarily consist of having Lookouts during specific training and testing activities.

All personnel standing watch on the bridge, Commanding Officers, Executive Officers, maritime patrol aircraft aircrews, anti-submarine warfare helicopter crews, civilian equivalents, and Lookouts will successfully complete the United States Navy Marine Species Awareness Training prior to standing watch or serving as a Lookout. Additional details on the Navy's Marine Species Awareness Training can be found in the NWTT Draft EIS/OEIS.

The Navy proposes to use one or more Lookouts during the training and testing activities provided in Table 10. Additional details on Lookout procedures and implementation are provided in Chapter 11 of the LOA application (*http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm*).

TABLE 10—LOOKOUT MITIGATION MEASURES FOR TRAINING AND TESTING ACTIVITIES WITHIN THE NWTT STUDY AREA

Number of lookouts	Training and testing activities
1–2	Low-Frequency and Non-Hull Mounted Mid-Frequency Active Sonar.
1	High-Frequency and Hull Mounted Mid-Frequency Active Sonar.
1	Improved Extended Echo Ranging Sonobuoys (testing only).
1	Explosive Signal Underwater Sound Buoys Using >0.5–2.5 Pound Net Explosive Weight.
2	Mine Countermeasures and Neutralization Activities Using Positive Control Firing Devices (training only).
1–2	Gunnery Exercises Using Surface Target (training only).
1	Missile Exercises Using Surface Target (training only).
1 (minimum)	Bombing Exercises—Explosive (training only).
1	Torpedo—Explosive (testing only).[1]
1	Weapons Firing Noise During Gunnery Exercises (training only).
1 (minimum)	Vessel Movement.
1	Towed In-Water Strike.
1	Gunnery Exercises—Non-Explosive (training only).
1	Bombing Exercises—Non-Explosive (training only).

[1] For explosive torpedo tests from aircraft, the Navy will have one Lookout positioned in an aircraft; for explosive torpedoes tested from a surface ship, the Navy is proposing to use the Lookout procedures currently implemented for hull-mounted mid-frequency active sonar activities.

Mitigation Zones

The Navy proposes to use mitigation zones to reduce the potential impacts to marine mammals from training and testing activities. Mitigation zones are measured as the radius from a source and represent a distance that the Navy would monitor. Mitigation zones are applied to acoustic stressors (*i.e.*, non-impulsive and impulsive sound) and physical strike and disturbance (*e.g.*, vessel movement and bombing exercises). In each instance, visual detections of marine mammals would be communicated immediately to a watch station for information dissemination and appropriate action. Acoustic detections would be communicated to Lookouts posted in aircraft and on surface vessels.

Most of the current mitigation zones for activities that involve the use of impulsive and non-impulsive sources were originally designed to reduce the potential for onset of TTS. The Navy updated their acoustic propagation modeling to incorporate new hearing threshold metrics (*i.e.*, upper and lower frequency limits), new marine mammal density data, and factors such as an animal's likely presence at various depths. An explanation of the acoustic propagation modeling process can be found in previous authorizations for the Atlantic Fleet Training and Testing Study Area; the Hawaii-Southern California Training and Testing Study Area; and the Determination of Acoustic Effects on Marine Mammals and Sea Turtles for the Northwest Training and Testing EIS/OEIS technical report (Marine Species Modeling Team, 2013).

As a result of the updates to the acoustic propagation modeling, in some cases the ranges to onset of TTS effects are much larger than previous model outputs. Due to the ineffectiveness and unacceptable operational impacts associated with mitigating these large areas, the Navy is unable to mitigate for onset of TTS for every activity. For the NWTT analysis, the Navy developed each recommended mitigation zone to avoid or reduce the potential for onset of the lowest level of injury, PTS, out to the predicted maximum range. In some cases where the ranges to effects are smaller than previous models estimated, the mitigation zones were adjusted accordingly to provide consistency across the measures. Mitigating to the predicted maximum range to PTS consequently also mitigates to the predicted maximum range to onset mortality (1 percent mortality), onset slight lung injury, and onset slight gastrointestinal tract injury, since the maximum range to effects for these criteria are shorter than for PTS. Furthermore, in most cases, the predicted maximum range to PTS also consequently covers the predicted average range to TTS. Table 11 summarizes the predicted average range to TTS, average range to PTS, maximum range to PTS, and recommended mitigation zone for each activity category, based on the Navy's acoustic propagation modeling results. The predicted ranges are based on local environmental conditions and are unique to the NWTT Study Area.

The Navy's proposed mitigation zones are based on the longest range for all the

marine mammal and sea turtle functional hearing groups. Most mitigation zones were driven by the high-frequency cetacean or sea turtle functional hearing group. Therefore, the mitigation zones are more conservative for the remaining functional hearing groups (low-frequency and mid-frequency cetaceans, and pinnipeds), and likely cover a larger portion of the potential range to onset of TTS. Additional information on the estimated range to effects for each acoustic stressor is detailed in Chapter 11 of the LOA application (*http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm*).

TABLE 11—PREDICTED RANGES TO TTS, PTS, AND RECOMMENDED MITIGATION ZONES FOR EACH ACTIVITY CATEGORY

Activity category	Bin (representative source) [1]	Predicted average range to TTS	Predicted average range to PTS	Predicted maximum range to PTS	Recommended mitigation zone
Non-Impulsive Sound					
Low-Frequency and Hull-Mounted Mid-Frequency Active Sonar.[2]	SQS–53 ASW hull-mounted sonar (MF1).	4,251 yd. (3,887 m).	281 yd. (257 m)	<292 yd. (<267 m).	Training: 1,000 yd. (920 m) and 500 yd. (460 m) power downs and 200 yd. (180 m) shutdown for cetaceans, 100 yd. (90 m) mitigation zone for pinnipeds. Testing: 1,000 yd. (920 m) and 500 yd. (460 m) power downs for sources that can be powered down and 200 yd. (180 m) shutdown for cetaceans, 100 yd. (90 m) for pinnipeds (excludes haulouts).
High-Frequency and Non-Hull-Mounted Mid-Frequency Active Sonar.[2]	AQS–22 ASW dipping sonar (MF4).	226 yd. (207 m)	<55 yd. (<50 m)	<55 yd. (<50 m)	Training: 200 yd. (180 m). Testing: 200 yd. (180 m) for cetaceans, 100 yd. (90 m) for pinnipeds (excludes haulouts).
Explosive and Impulsive Sound					
Improved Extended Echo Ranging Sonobuoys.	Explosive sonobuoy (E4).	237 yd. (217 m)	133 yd. (122 m)	235 yd. (215 m)	Training: n/a Testing: 600 yd. (550 m) for marine mammals, sea turtles, and concentrations of floating vegetation.
Signal Underwater Sound (SUS) buoys using >0.5–2.5 lb. NEW.	Explosive sonobuoy (E3).	178 yd. (163 m)	92 yd. (84 m)	214 yd. (196 m)	Training: 350 yd. (320 m) for marine mammals, sea turtles, and concentrations of floating vegetation. Testing: 350 yd. (320 m) for marine mammals, sea turtles, and concentrations of floating vegetation.
Mine Countermeasure and Neutralization Activities (positive control).	>0.5 to 2.5 lb NEW (E3).	495 yd. (453 m)	145 yd. (133 m)	373 yd. (341 m)	Training: 400 yd. (336 m). Testing: n/a.
Gunnery Exercises—Small- and Medium-Caliber (Surface Target).	25 mm projectile (E1)	72 yd. (66 m)	48 yd. (44 m)	73 yd. (67 m)	Training: 200 yd. (180 m). Testing: n/a.
Gunnery Exercises—Large-Caliber (Surface Target).	5 in. projectiles (E5 at the surface).[3]	210 yd. (192 m)	110 yd. (101 m)	177 yd. (162 m)	Training: 600 yd. (550 m). Testing: 600 yd. (550 m).
Missile Exercises up to 500 lb. NEW (Surface Target).	Harpoon missile (E10).	1,164 yd. (1,065 m).	502 yd. (459 m)	955 yd. (873 m)	Training: 2,000 yd. (1.8 km). Testing: n/a.
Bombing Exercises	MK–84 2,000 lb. bomb (E12).	1,374 yd. (1,256 m).	591 yd. (540 m)	1,368 yd. (1,251 m).	Training: 2,500 yd. (2.3 km). Testing: n/a.
Lightweight Torpedo (Explosive) Testing.	MK–46 torpedo (E8)	497 yd. (454 m)	245 yd. (224 m)	465 yd. (425 m)	Training: n/a. Testing: 2,100 yd. (1.9 km).
Heavyweight Torpedo (Explosive) Testing.	MK–48 torpedo (E11)	1,012 yd. (926 m).	472 yd. (432 m)	885 yd. (809 m)	Training: n/a. Testing: 2,100 yd. (1.9 km).

[1] This table does not provide an inclusive list of source bins; bins presented here represent the source bin with the largest range to effects within the given activity category.

[2] High-frequency and non-hull-mounted mid-frequency active sonar category includes unmanned underwater vehicle and torpedo testing activities.

[3] The representative source Bin E5 has different range to effects depending on the depth of activity occurrence (at the surface or at various depths).

Notes: ASW = anti-submarine warfare, in. = inch, km = kilometer, m = meter, mm = millimeter, n/a = Not Applicable, NEW = net explosive weight, PTS = permanent threshold shift, TTS = temporary threshold shift, yd. = yard.

Low-Frequency and Hull-Mounted Mid-Frequency Active Sonar Training

There are no low-frequency active sonar training activities proposed in the Study Area. The Navy is proposing to (1) continue implementing the current measures for mid-frequency active sonar, (2) clarify the conditions needed to recommence an activity after a sighting, and (3) implement mitigation measures for pinnipeds and for pierside sonar testing in the vicinity of hauled out pinnipeds.

Activities that involve the use of hull-mounted mid-frequency active sonar (including pierside) will use Lookouts for visual observation from a ship immediately before and during the activity. Mitigation zones for these activities involve powering down the sonar by 6 dB when a marine mammal is sighted within 1,000 yd. (920 m) of the sonar dome, and by an additional 4 dB when sighted within 500 yd. (460 m) from the source, for a total reduction of 10 dB. Active transmissions will cease if a marine mammal is sighted within 200 yd. (180 m). Active transmission will recommence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, (3) the mitigation zone has been clear from any additional sightings for a period of 30 minutes, (4) the ship has transited more than 2,000 yd. (1.8 km) beyond the location of the last sighting, or (5) the Lookout concludes that dolphins are deliberately closing in on the ship to ride the ship's bow wave (and there are no other marine mammal sightings within the mitigation zone). Active transmission may resume when dolphins are bow riding because they are out of the main transmission axis of the active sonar while in the shallow-wave area of the ship bow.

For pinnipeds, the Navy proposes a 100 yd. (90 m) mitigation zone for activities that involve the use of hull-mounted mid-frequency active sonar. The pinniped mitigation zone does not apply for pierside testing in the vicinity of pinnipeds hauled out on man-made structures and vessels. Within Puget Sound there are several locations where pinnipeds use Navy structures (*e.g.,* submarines, security barriers) for haulouts in spite of the degree of activity surrounding these sites. Given that animals continue to choose these areas for their resting behavior, it would appear there are no long-term effects or consequences to those animals as a result of ongoing and routine Navy activities.

Testing

There are no current hull-mounted mid-frequency active sonar testing activities in the Study Area, and no mitigation procedures. However, the Navy's Proposed Action includes newly assessed hull-mounted mid-frequency active sonar testing activities. For testing activities, the recommended measures are provided below.

Activities that involve the use of low-frequency active sonar (including pierside) will use Lookouts for visual observation immediately before and during the event. If a marine mammal is sighted within 200 yd. (180 m) of the sound source, active transmissions will cease. Active transmission will recommence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, (3) the mitigation zone has been clear from any additional sightings for a period of 30 minutes, or (4) the sound source has transited more than 2,000 yd. (1.8 km) beyond the location of the last sighting.

Activities that involve the use of hull-mounted mid-frequency active sonar (including pierside and shore-based testing) will follow the mitigation measures described above for Low-Frequency and Hull-Mounted Mid-Frequency Active Sonar Training.

For pinnipeds, the Navy proposes a 100 yd. mitigation zone. The pinniped mitigation zone does not apply for pierside testing in the vicinity of pinnipeds hauled out on man-made structures and vessels.

High-Frequency and Non-Hull-Mounted Mid-Frequency Active Sonar Training

Non-hull-mounted mid-frequency active sonar training activities include the use of aircraft deployed sonobuoys and helicopter dipping sonar. The Navy is proposing to: (1) Continue implementing the current mitigation measures for activities currently being executed, such as dipping sonar activities; (2) extend the implementation of its current mitigation to all other activities in this category; and (3) clarify the conditions needed to recommence an activity after a sighting.

Mitigation will include visual observation from a vessel or aircraft (with the exception of platforms operating at high altitudes) immediately before and during active transmission within a mitigation zone of 200 yd. (180 m) from the active sonar source. For activities involving helicopter deployed dipping sonar, visual observation will commence 10 minutes before the first deployment of active dipping sonar. Helicopter dipping and sonobuoy deployment will not begin if concentrations of floating vegetation (kelp paddies), are observed in the mitigation zone. If the source can be turned off during the activity, active transmission will cease if a marine mammal is sighted within the mitigation zone. Active transmission will recommence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, (3) the mitigation zone has been clear from any additional sightings for a period of 10 minutes for an aircraft-deployed source, (4) the mitigation zone has been clear from any additional sightings for a period of 30 minutes for a vessel-deployed source, (5) the vessel or aircraft has repositioned itself more than 400 yd. (370 m) away from the location of the last sighting, or (6) the vessel concludes that dolphins are deliberately closing in to ride the vessel's bow wave (and there are no other marine mammal sightings within the mitigation zone).

Testing

Mitigation measures for high-frequency active sonar sources currently exist only for testing activities conducted in the Inland Waters of Puget Sound and in the Western Behm Canal, Alaska. These activities include the use of unmanned vehicles, non-explosive torpedoes, and similar systems. Currently, the mitigation measures for testing activities using high frequency and non-hull-mounted mid-frequency sources are the same as those currently in place for testing activities with low frequency sources.

For the proposed action, the Navy is proposing that testing activities with high frequency and non-hull-mounted mid-frequency sources employ the proposed mitigation measures described above for training.

For pinnipeds, the Navy proposes a 100 yd. (90 m) mitigation zone during testing. The pinniped mitigation zone does not apply for pierside or shore-based testing in the vicinity of pinnipeds hauled out on man-made structures and vessels. Within Puget Sound there are several locations where pinnipeds use Navy structures (*e.g.,* submarines, security barriers) for haulouts in spite of the degree of activity surrounding these sites. Given that animals continue to choose these areas for their resting behavior, it would appear there are no long-term effects or consequences to those animals as a

result of ongoing and routine Navy activities.

Improved Extended Echo Ranging Sonobuoys

Training

The Navy's proposed action does not include Improved Extended Echo Ranging sonobuoy training activities.

Testing

The Navy is proposing to (1) modify the mitigation measures currently implemented for this activity by reducing the marine mammal mitigation zone from 1,000 yd. (920 m) to 600 yd. (550 m), (2) clarify the conditions needed to recommence an activity after a sighting, and (3) adopt the marine mammal mitigation zone size for floating vegetation for ease of implementation. The recommended measures are provided below.

Mitigation will include pre-testing aerial observation and passive acoustic monitoring, which will begin 30 minutes before the first source/receiver pair detonation and continue throughout the duration of the test. The pre-testing aerial observation will include the time it takes to deploy the sonobuoy pattern (deployment is conducted by aircraft dropping sonobuoys in the water). Improved Extended Echo Ranging sonobuoys will not be deployed if concentrations of floating vegetation (kelp paddies) are observed in the mitigation zone around the intended deployment location. Explosive detonations will cease if a marine mammal or sea turtle is sighted within the mitigation zone. Detonations will recommence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, or (3) the mitigation zone has been clear from any additional sightings for a period of 30 minutes.

Passive acoustic monitoring would be conducted with Navy assets, such as sonobuoys, already participating in the activity. These assets would only detect vocalizing marine mammals within the frequency bands monitored by Navy personnel. Passive acoustic detections would provide only limited range and bearing to detected animals, and therefore cannot provide locations of these animals. Passive acoustic detections would be reported to Lookouts posted in aircraft and on vessels in order to increase vigilance of their visual surveillance.

Explosive Signal Underwater Sound Buoys Using >0.5–2.5 Pound Net Explosive Weight

Training

The Navy is proposing to add the following recommended measures. Mitigation will include pre-exercise aerial monitoring during deployment within a mitigation zone of 350 yd. (320 m) around an explosive SUS buoy. Explosive SUS buoys will not be deployed if concentrations of floating vegetation (kelp paddies) are observed in the mitigation zone (around the intended deployment location). SUS deployment will cease if a marine mammal or sea turtle is sighted within the mitigation zone. Deployment will recommence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, or (3) the mitigation zone has been clear from any additional sightings for a period of 10 minutes.

Passive acoustic monitoring will also be conducted with Navy assets, such as sonobuoys, already participating in the activity. These assets would only detect vocalizing marine mammals within the frequency bands monitored by Navy personnel. Passive acoustic detections would not provide range or bearing to detected animals, and therefore cannot provide locations of these animals. Passive acoustic detections would be reported to Lookouts posted in aircraft in order to increase vigilance of their visual surveillance.

Testing

The Navy's proposed mitigation measures for testing activities are consistent with Navy training mitigation measures described above.

Mine Countermeasures and Neutralization Activities Using Positive Control Firing Devices

Training

Mine countermeasure and neutralization activities in the Study Area involve the use of diver-placed charges that typically occur close to shore. When these activities are conducted using a positive control firing device, the detonation is controlled by the personnel conducting the activity and is not authorized until the area is clear at the time of detonation.

Currently, the Navy employs the following mitigation zone procedures during mine countermeasure and neutralization activities using positive control firing devices:

- Mitigation Zone—The exclusion zone for marine mammals shall extend in a 700 yd. (640 m) arc radius around the detonation site for charges >0.5–2.5 lb. NEW.
- Pre-Exercise Surveys—For Demolition and Mine Countermeasures Operations, pre-exercise surveys shall be conducted within 30 minutes prior to the commencement of the scheduled explosive event. The survey may be conducted from the surface, by divers, or from the air, and personnel shall be alert to the presence of any marine mammal. Should such an animal be present within the survey area, the explosive event shall not be started until the animal voluntarily leaves the area. The Navy will ensure the mitigation zone is clear of marine mammals for a full 30 minutes prior to initiating the explosive event. Personnel will record any marine mammal observations during the exercise as well as measures taken if species are detected within the exclusion zone.
- Post-Exercise Surveys—Surveys within the same radius shall also be conducted within 30 minutes after the completion of the explosive event.

For activities involving positive control diver-placed charges, the Navy is proposing to (1) modify the currently implemented mitigation measures for this activity involving >0.5–2.5 lb. NEW detonation by changing the mitigation zone from 700 yd. (640 m) to 400 yd. (366 m), (2) clarify the conditions needed to recommence an activity after a sighting, and (3) add a requirement to observe for floating vegetation. The recommended measures for activities involving positive control diver-placed activities are provided below.

The Navy is proposing to use the 400 yd. (366 m) mitigation zones for marine mammals described above during activities involving positive control diver-placed charges involving >0.5–2.5 lb. NEW. Visual observation will be conducted by two small boats, each with a minimum of one surveyor.

Explosive detonations will cease if a marine mammal is sighted in the water portion of the mitigation zone (*i.e.,* not on shore). Detonations will recommence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, or (3) the mitigation zone has been clear from any additional sightings for a period of 30 minutes.

Testing

The Navy's proposed action does not include mine countermeasure and neutralization testing activities.

Gunnery Exercises—Small and Medium-Caliber Using a Surface Target

Training

The Navy is proposing to (1) continue implementing the current mitigation measures for this activity, (2) clarify the conditions needed to recommence an activity after a sighting, and (3) add a requirement to visually observe for kelp paddies.

Mitigation will include visual observation from a vessel or aircraft immediately before and during the exercise within a mitigation zone of 200 yd. (180 m) around the intended impact location. Vessels will observe the mitigation zone from the firing position. When aircraft are firing, the aircrew will maintain visual watch of the mitigation zone during the activity. The exercise will not commence if concentrations of floating vegetation (kelp paddies) are observed in the mitigation zone. Firing will cease if a marine mammal is sighted within the mitigation zone. Firing will recommence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, (3) the mitigation zone has been clear from any additional sightings for a period of 10 minutes for a firing aircraft, (4) the mitigation zone has been clear from any additional sightings for a period of 30 minutes for a firing ship, or (5) the intended target location has been repositioned more than 400 yd. (370 m) away from the location of the last sighting.

Testing

The Navy's proposed action does not include gunnery testing activities.

Gunnery Exercises—Large-Caliber Explosive Rounds Using a Surface Target

Training

There are currently no existing mitigation measures unique to large-caliber explosive gunnery exercises in the Study Area. The Navy is proposing to adopt mitigation measures in place at other Navy training ranges outside of the Study Area.

For all explosive and non-explosive large-caliber gunnery exercises conducted from a ship, mitigation will include visual observation immediately before and during the exercise within a mitigation zone of 70 yd. (46 m) within 30 degrees on either side of the gun target line on the firing side. The exercise will not commence if concentrations of floating vegetation (kelp paddies) are observed in the mitigation zone. Firing will cease if a marine mammal is sighted within the mitigation zone. Firing will recommence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, (3) the mitigation zone has been clear from any additional sightings for a period of 30 minutes, or (4) the vessel has repositioned itself more than 140 yd. (128 m) away from the location of the last sighting.

Testing

The Navy is proposing to (1) implement new mitigation zone measures for this activity, (2) describe conditions needed to recommence an activity after a sighting, and (3) implement a requirement to visually observe for kelp paddies. The recommended measures are provided below.

Mitigation will include visual observation from a ship immediately before and during the exercise within a mitigation zone of 600 yd. (550 m) around the intended impact location. Ships will observe the mitigation zone from the firing position. The exercise will not commence if concentrations of floating vegetation (kelp paddies) are observed in the mitigation zone. Firing will cease if a marine mammal is sighted within the mitigation zone. Firing will recommence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, or (3) the mitigation zone has been clear from any additional sightings for a period of 30 minutes.

Missile Exercises up to 250 Pound Net Explosive Weight Using a Surface Target

Training

Currently, the Navy employs a mitigation zone of 1,800 yd. (1.6 km) for all missile exercises. Because the Navy is not proposing to use missiles with less than a 251 lb. NEW warhead in the Study Area, separate mitigation procedures for this exercise have not been developed. Should the need arise to conduct training using missiles in this category, the Navy proposes that mitigation procedures be followed as described below for the larger category of missiles (Missile Exercises 251–500 Pound Net Explosive Weight [Surface Target]).

Testing

The Navy's proposed action does not include missile testing activities.

Missile Exercises 251–500 Pound Net Explosive Weight (Surface Target)

Training

Current mitigation measures apply to all missile exercises, regardless of the warhead size. The Navy proposes to add a mitigation zone that applies only to missiles with a NEW of 251–500 lb. The recommended measures are provided below.

When aircraft are involved in the missile firing, mitigation will include visual observation by the aircrew prior to commencement of the activity within a mitigation zone of 2,000 yd. (1.8 km) around the intended impact location. The exercise will not commence if concentrations of floating vegetation (kelp paddies) are observed in the mitigation zone. Firing will cease if a marine mammal is sighted within the mitigation zone. Firing will recommence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, or (3) the mitigation zone has been clear from any additional sightings for a period of 10 minutes or 30 minutes (depending on aircraft type).

Testing

The Navy's proposed action does not include missile testing activities.

Bombing Exercises

Training

Currently, the Navy employs the following mitigation zone procedures during bombing exercises:

- Ordnance shall not be targeted to impact within 1,000 yd. (920 m) of known or observed floating kelp or marine mammals.
- A 1,000 yd. (920 m) radius mitigation zone shall be established around the intended target.
- The exercise will be conducted only if marine mammals are not visible within the mitigation zone.

The Navy is proposing to (1) maintain the existing mitigation zone to be used for non-explosive bombing activities, (2) revise the mitigation zone procedures to account for predicted ranges to impacts to marine species when high explosive bombs are used, (3) clarify the conditions needed to recommence an activity after a sighting, and (4) add a requirement to visually observe for kelp paddies.

Mitigation will include visual observation from the aircraft

immediately before the exercise and during target approach within a mitigation zone of 2,500 yd. (2.3 km) around the intended impact location for explosive bombs and 1,000 yd. (920 m) for non-explosive bombs. The exercise will not commence if concentrations of floating vegetation (kelp paddies) are observed in the mitigation zone. Bombing will cease if a marine mammal is sighted within the mitigation zone. Bombing will recommence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, or (3) the mitigation zone has been clear from any additional sightings for a period of 10 minutes.

Testing

The Navy's proposed action does not include bomb testing activities.

Torpedo (Explosive) Testing

Training

The Navy does not include training with explosive torpedoes in the proposed action.

Testing

The Navy is proposing to (1) establish mitigation measures for this activity that include a mitigation zone of 2,100 yd. (1.9 km), (2) establish the conditions needed to recommence an activity after a sighting, and (3) establish a requirement to visually observe for kelp paddies. The recommended measures are provided below.

Mitigation will include visual observation by aircraft (with the exception of platforms operating at high altitudes) immediately before, during, and after the event within a mitigation zone of 2,100 yd. (1.9 km) around the intended impact location. The event will not commence if concentrations of floating vegetation (kelp paddies) are observed in the mitigation zone. Firing will cease if a marine mammal or sea turtle is sighted within the mitigation zone. Firing will recommence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, or (3) the mitigation zone has been clear from any additional sightings for a period of 10 minutes or 30 minutes (depending on aircraft type).

In addition to visual observation, passive acoustic monitoring will be conducted with Navy assets, such as passive ships sonar systems or sonobuoys, already participating in the activity. Passive acoustic observation would be accomplished through the use of remote acoustic sensors or expendable sonobuoys, or via passive acoustic sensors on submarines when they participate in the proposed action. These assets would only detect vocalizing marine mammals within the frequency bands monitored by Navy personnel. Passive acoustic detections would not provide range or bearing to detected animals, and therefore cannot provide locations of these animals. Passive acoustic detections would be reported to the Lookout posted in the aircraft in order to increase vigilance of the visual surveillance; and to the person in control of the activity for their consideration in determining when the mitigation zone is determined free of visible marine mammals.

Weapons Firing Noise During Gunnery Exercises—Large-Caliber

Training

The Navy and U.S. Coast Guard are proposing to adopt measures currently used during Navy gunnery exercises in other ranges outside of the Study Area. For all explosive and non-explosive large-caliber gunnery exercises conducted from a ship, mitigation will include visual observation immediately before and during the exercise within a mitigation zone of 70 yd. (46 m) within 30 degrees on either side of the gun target line on the firing side. The exercise will not commence if concentrations of floating vegetation (kelp paddies) are observed in the mitigation zone. Firing will cease if a marine mammal is sighted within the mitigation zone. Firing will recommence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, (3) the mitigation zone has been clear from any additional sightings for a period of 30 minutes, or (4) the vessel has repositioned itself more than 140 yd. (128 m) away from the location of the last sighting.

Testing

The Navy's proposed action does not include gun testing activities.

Vessels

Training

The Navy's current measures to mitigate potential impacts to marine mammals from vessel and in-water device strikes during training activities are provided below:

- Naval vessels shall maneuver to keep at least 500 yd. (460 m) away from any observed whale in the vessel's path and avoid approaching whales head-on. These requirements do not apply if a vessel's safety is threatened, such as when change of course will create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in their ability to maneuver. Restricted maneuverability includes, but is not limited to, situations when vessels are engaged in dredging, submerged activities, launching and recovering aircraft or landing craft, minesweeping activities, replenishment while underway and towing activities that severely restrict a vessel's ability to deviate course.
- Vessels will take reasonable steps to alert other vessels in the vicinity of the whale. Given rapid swimming speeds and maneuverability of many dolphin species, naval vessels would maintain normal course and speed on sighting dolphins unless some condition indicated a need for the vessel to maneuver.

The Navy is proposing to continue to use the 500 yd. (460 m) mitigation zone currently established for whales, and to implement a 200 yd. (180 m) mitigation zone for all other marine mammals. Vessels will avoid approaching marine mammals head on and will maneuver to maintain a mitigation zone of 500 yd. (460 m) around observed whales and 200 yd. (180 m) around all other marine mammals (except bow-riding dolphins), providing it is safe to do so.

Testing

The Navy's current measures to mitigate potential impacts to marine mammals from vessel and in-water device strikes during testing activities are provided below:

- Range activities shall be conducted in such a way as to ensure marine mammals are not harassed or harmed by human-caused events.
- Visual surveillance shall be accomplished just prior to all in-water exercises. This surveillance shall ensure that no marine mammals are visible within the boundaries of the area within which the test unit is expected to be operating. Surveillance shall include, as a minimum, monitoring from all participating surface craft and, where available, adjacent shore sites.
- The Navy shall postpone activities until cetaceans (whales, dolphins, and porpoises) leave the activity area. When cetaceans have been sighted in an area, all range participants increase vigilance and take reasonable and practicable actions to avoid collisions and activities that may result in close interaction of naval assets and marine mammals. Actions may include changing speed or

direction and are dictated by environmental and other conditions (*e.g.,* safety, weather).

• Range craft shall not approach within 100 yd. (90 m) of marine mammals and shall be followed to the extent practicable considering human and vessel safety priorities. All Navy vessels and aircraft, including helicopters, are expected to comply with this directive. This includes marine mammals ''hauled-out'' on islands, rocks, and other areas such as buoys.

The Navy is proposing to incorporate the training mitigation measures described above during testing activities involving surface ships, and for all other testing activities to continue using the mitigation measures currently implemented, revised to exclude pinnipeds during test body retrieval and to include the exception for bow-riding dolphins as described above under Training. During test body retrieval, the activity cannot be relocated away from marine mammals active in the area, or significantly delayed without risking loss of the test body, so the activity must proceed even if pinnipeds are present in the immediate vicinity. However, the retrieval vessel is a range craft and risks to marine mammals are very low.

Towed In-Water Devices

Training

The Navy is proposing to adopt measures currently used in other ranges outside of the Study Area during activities involving towed in-water devices. The Navy will ensure that towed in-water devices being towed from manned platforms avoid coming within a mitigation zone of 250 yd. (230 m) around any observed marine mammal, providing it is safe to do so.

Testing

The Navy's proposed mitigation measures for testing activities from manned platforms are consistent with Navy training mitigation measures described above. During testing in which in-water devices are towed by unmanned platforms, a manned escort vessel will be included and one Lookout will be employed.

Non-Explosive Gunnery Exercises—Small, Medium, and Large-Caliber Using a Surface Target

Training

Currently, the Navy employs the same mitigation measures for non-explosive gunnery exercises as described above for explosive Gunnery Exercises—Small-, Medium-, and Large-Caliber Using a Surface Target.

The Navy is proposing to (1) continue using the mitigation measures currently implemented for this activity, and (2) clarify the conditions needed to recommence an activity after a sighting. The recommended measures are provided below.

Mitigation will include visual observation from a vessel or aircraft immediately before and during the exercise within a mitigation zone of 200 yd. (180 m) around the intended impact location. The exercise will not commence if concentrations of floating vegetation (kelp paddies) are observed in the mitigation zone. Firing will cease if a marine mammal is sighted within the mitigation zone. Firing will recommence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, (3) the mitigation zone has been clear from any additional sightings for a period of 10 minutes for a firing aircraft, (4) the mitigation zone has been clear from any additional sightings for a period of 30 minutes for a firing ship, or (5) the intended target location has been repositioned more than 400 yd. (370 m) away from the location of the last sighting.

Testing

The Navy's proposed action does not include gunnery testing activities.

Non-Explosive Bombing Exercises

Training

The Navy is proposing to continue using the mitigation measures currently implemented for this activity. The recommended measure includes clarification of a post-sighting activity recommencement criterion.

Mitigation will include visual observation from the aircraft immediately before the exercise and during target approach within a mitigation zone of 1,000 yd. (920 m) around the intended impact location. The exercise will not commence if concentrations of floating vegetation (kelp paddies) are observed in the mitigation zone. Bombing will cease if a marine mammal is sighted within the mitigation zone. Bombing will recommence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, or (3) the mitigation zone has been clear from any additional sightings for a period of 10 minutes.

Testing

The Navy's proposed action does not include bomb testing activities.

Consideration of Time/Area Limitations

Already incorporated into the Navy's and NMFS' analysis of affects to marine mammals, has been consideration of emergent science regarding locations where cetaceans are known to engage in specific activities (*e.g.,* feeding, breeding/calving, or migration) at certain times of the year that are important to individual animals as well as populations of marine mammals (see discussion in Van Parijs, 2015). As explained in that paper, each such location has been designated a Biologically Important Area (BIA). It is important to note that the BIAs were not meant to define exclusionary zones, nor were they meant to be locations that serve as sanctuaries from human activity, or areas analogous to marine protected areas (see Ferguson *et al.* (2015a) regarding the envisioned purpose for the BIA designations). The delineation of BIAs does not have direct or immediate regulatory consequences. The intention was that the BIAs would serve as resource management tools and their boundaries be dynamic and considered along with any new information as well as, ''existing density estimates, range-wide distribution data, information on population trends and life history parameters, known threats to the population, and other relevant information'' (Van Parijs, 2015).

The Navy and NMFS have supported and will continue to support the Cetacean and Sound Mapping project, including providing representation on the Cetacean Density and Distribution Mapping Working Group (CetMap) developing the BIAs. The final products, including U.S. West Coast BIAs, from this mapping effort were completed and published in March 2015 (Aquatic Mammals, 2015; Calambokidis *et al.,* 2015; Ferguson *et al.,* 2015a, 2015b; Van Parijs, 2015). 131 BIAs for 24 marine mammal species, stocks, or populations in seven regions within U.S. waters were identified (Ferguson *et al.,* 2015a). BIAs in the West Coast of the continental U.S. with the potential to overlap portions of the Study Area include the following feeding and migration areas: Northern Puget Sound Feeding Area for gray whales; Northbound Migration Phase A for gray whales; Northbound Migration Phase B for gray whales; Potential Presence Migration Area for gray whales; Northern Washington Feeding Area for humpback whales; Stonewall and Heceta Bank Feeding Area for

humpback whales; Cape Blanco and Orford Reef Feeding Area for gray whale; and Point St. George Feeding Area for gray whales (Calambokidis *et al.,* 2015).

NMFS Office of Protected Resources routinely considers available information about marine mammal habitat use to inform discussions with applicants regarding potential spatio-temporal limitations on their activities that might help effect the least practicable adverse impact on species or stocks and their habitat. BIAs are useful tools for planning and impact assessments and are being provided to the public via this Web site: *www.cetsound.noaa.gov.* While these BIAs are useful tools for analysts, any decisions regarding protective measures based on these areas must go through the normal MMPA evaluation process (or any other statutory process that the BIAs are used to inform)—the designation of a BIA does not pre-suppose any specific management decision associated with those areas, nor does it have direct or immediate regulatory consequences.

During the April 2014 annual adaptive management meeting in Washington, DC, NMFS and the Navy discussed the BIAs that might overlap with portions of the NWTT Study Area, what Navy activities take place in these areas (in the context of what their effects on marine mammals might be or whether additional mitigation is necessary), and what measures could be implemented to reduce impacts in these areas (in the context of their potential to reduce marine mammal impacts and their practicability). Upon request by NMFS the Navy preparing a draft assessment of these BIAs, including the degree of spatial overlap as well as an assessment of potential impacts or lack of impacts for each BIA. The Navy preliminarily determined that the degree of overlap between Navy activities within the Study Area and regional BIAs is relatively small (10 percent) geographically. Further, a review of the BIAs for humpback whales and gray whales against areas where most acoustic activities are conducted in the Study Area (especially those that involve ASW hull-mounted sonar, sonobuoys, and use of explosive munitions) identified that there is no spatial overlap. The Navy preliminarily concluded that any potential impacts from training and testing activities on a given area are infrequent, spatially and temporally variable, and biologically insignificant since the activities are unlikely to significantly affect the marine mammal activities for which the BIAs were designated. The Navy also concluded that additional mitigations other than those already described in the January 2014 NWTT DEIS/OEIS and LOA application would not be further protective nor offer addition protection to marine mammals beyond what is already proposed. NMFS is currently reviewing the Navy's draft assessment, the outcome of which will be discussed in the final rule.

As we learn more about marine mammal density, distribution, and habitat use (and the BIAs are updated), NMFS and the Navy will continue to reevaluate appropriate time-area measures through the Adaptive Management process outlined in these regulations.

Stranding Response Plan

NMFS and the Navy developed a Stranding Response Plan for the NWTRC in 2010 and the NUWC Keyport Range Complex in 2011 as part of the incidental take authorization process for those complexes. The Stranding Response Plan is specifically intended to outline the applicable requirements in the event that a marine mammal stranding is reported in the complexes during a major training exercise. NMFS considers all plausible causes within the course of a stranding investigation and this plan in no way presumes that any strandings in a Navy range complex are related to, or caused by, Navy training and testing activities, absent a determination made during investigation. The plan is designed to address mitigation, monitoring, and compliance. The Navy is currently working with NMFS to refine this plan for the NWTT Study Area. The current Stranding Response Plans for the NWTRC and NUWC Keyport Range Complex are available for review here: *http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm*.

Mitigation Conclusions

NMFS has carefully evaluated the Navy's proposed mitigation measures—many of which were developed with NMFS' input during the first phase of Navy Training and Testing authorizations—and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: The manner in which, and the degree to which, the successful implementation of the mitigation measures is expected to reduce the likelihood and/or magnitude of adverse impacts to marine mammal species and stocks and their habitat; the proven or likely efficacy of the measures; and the practicability of the suite of measures for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to accomplishing one or more of the general goals listed below:

a. Avoid or minimize injury or death of marine mammals wherever possible (goals b, c, and d may contribute to this goal).

b. Reduce the number of marine mammals (total number or number at biologically important time or location) exposed to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

c. Reduce the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

d. Reduce the intensity of exposures (either total number or number at biologically important time or location) to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

e. Avoid or minimize adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

f. For monitoring directly related to mitigation—increase the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation (shut-down zone, etc.).

Based on our evaluation of the Navy's proposed measures, as well as other measures considered by NMFS, NMFS has determined preliminarily that the Navy's proposed mitigation measures (especially when the adaptive management component is taken into

consideration (see Adaptive Management, below)) are adequate means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The proposed rule comment period provides the public an opportunity to submit recommendations, views, and/or concerns regarding this action and the proposed mitigation measures. While NMFS has determined preliminarily that the Navy's proposed mitigation measures would effect the least practicable adverse impact on the affected species or stocks and their habitat, NMFS will consider all public comments to help inform our final decision. Consequently, the proposed mitigation measures may be refined, modified, removed, or added to prior to the issuance of the final rule based on public comments received, and where appropriate, further analysis of any additional mitigation measures.

Monitoring

Section 101(a)(5)(A) of the MMPA states that in order to issue an ITA for an activity, 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 LOAs 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.

Integrated Comprehensive Monitoring Program (ICMP)

The Navy's ICMP is intended to coordinate monitoring efforts across all regions and to allocate the most appropriate level and type of effort for each range complex based on a set of standardized objectives, and in acknowledgement of regional expertise and resource availability. The ICMP is designed to be flexible, scalable, and adaptable through the adaptive management and strategic planning processes to periodically assess progress and reevaluate objectives. Although the ICMP does not specify actual monitoring field work or projects, it does establish top-level goals that have been developed in coordination with NMFS. As the ICMP is implemented, detailed and specific studies will be developed which support the Navy's top-level monitoring goals. In essence, the ICMP directs that monitoring activities relating to the effects of Navy training and testing activities on marine species should be designed to contribute towards one or more of the following top-level goals:

- An increase in our understanding of the likely occurrence of marine mammals and/or ESA-listed marine species in the vicinity of the action (*i.e.,* presence, abundance, distribution, and/or density of species);
- An increase in our understanding of the nature, scope, or context of the likely exposure of marine mammals and/or ESA-listed species to any of the potential stressor(s) associated with the action (*e.g.,* tonal and impulsive sound), through better understanding of one or more of the following: (1) The action and the environment in which it occurs (*e.g.,* sound source characterization, propagation, and ambient noise levels); (2) the affected species (*e.g.,* life history or dive patterns); (3) the likely co-occurrence of marine mammals and/or ESA-listed marine species with the action (in whole or part) associated with specific adverse effects, and/or; (4) the likely biological or behavioral context of exposure to the stressor for the marine mammal and/or ESA-listed marine species (*e.g.,* age class of exposed animals or known pupping, calving or feeding areas);
- An increase in our understanding of how individual marine mammals or ESA-listed marine species respond (behaviorally or physiologically) to the specific stressors associated with the action (in specific contexts, where possible, *e.g.,* at what distance or received level);
- An increase in our understanding of how anticipated individual responses to individual stressors or anticipated combinations of stressors may impact either: (1) The long-term fitness and survival of an individual; or (2) the population, species, or stock (*e.g.,* through effects on annual rates of recruitment or survival);
- An increase in our understanding of the effectiveness of mitigation and monitoring measures;
- A better understanding and record of the manner in which the authorized entity complies with the ITA and Incidental Take Statement;
- An increase in the probability of detecting marine mammals (through improved technology or methods), both specifically within the safety zone (thus allowing for more effective implementation of the mitigation) and in general, to better achieve the above goals; and
- A reduction in the adverse impact of activities to the least practicable level, as defined in the MMPA.

Monitoring would address the ICMP top-level goals through a collection of specific regional and ocean basin studies based on scientific objectives. Quantitative metrics of monitoring effort (*e.g.,* 20 days of aerial surveys) would not be a specific requirement. The adaptive management process and reporting requirements would serve as the basis for evaluating performance and compliance, primarily considering the quality of the work and results produced, as well as peer review and publications, and public dissemination of information, reports, and data. Details of the ICMP are available online (*http://www.navymarinespeciesmonitoring.us/*).

Strategic Planning Process for Marine Species Monitoring

The Navy also developed the Strategic Planning Process for Marine Species Monitoring, which establishes the guidelines and processes necessary to develop, evaluate, and fund individual projects based on objective scientific study questions. The process uses an underlying framework designed around top-level goals, a conceptual framework incorporating a progression of knowledge, and in consultation with a Scientific Advisory Group and other regional experts. The Strategic Planning Process for Marine Species Monitoring would be used to set intermediate scientific objectives, identify potential species of interest at a regional scale, and evaluate and select specific monitoring projects to fund or continue supporting for a given fiscal year. This process would also address relative investments to different range complexes based on goals across all range complexes, and monitoring would leverage multiple techniques for data acquisition and analysis whenever possible. The Strategic Planning Process for Marine Species Monitoring is also available online (*http://www.navymarinespeciesmonitoring.us/*).

Past Monitoring in the NWTT Study Area

NMFS has received multiple years' worth of annual exercise and monitoring reports addressing active sonar use and explosive detonations within the NWTT and other Navy range complexes. The data and information contained in these reports have been considered in developing mitigation and

monitoring measures for the proposed training and testing activities within the NWTT Study Area. The Navy's annual exercise and monitoring reports may be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm* and *http://www.navymarinespeciesmonitoring.us.* NMFS has reviewed these reports and summarized the results, as related to marine mammal monitoring, below.

1. The Navy has shown significant initiative in developing its marine species monitoring program and made considerable progress toward reaching goals and objectives of the ICMP.

2. Observation data from watchstanders aboard navy vessels is generally useful to indicate the presence or absence of marine mammals within the mitigation zones (and sometimes beyond) and to document the implementation of mitigation measures, but does not provide useful species-specific information or behavioral data.

3. Data gathered by experienced marine mammal observers can provide very valuable information at a level of detail not possible with watchstanders.

4. Though it is by no means conclusive, it is worth noting that no instances of obvious behavioral disturbance have been observed by Navy watchstanders or experienced marine mammal observers conducting visual monitoring.

5. Visual surveys generally provide suitable data for addressing questions of distribution and abundance of marine mammals, but are much less effective at providing information on movements and behavior, with a few notable exceptions where sightings are most frequent.

6. Passive acoustics and animal tagging have significant potential for applications addressing animal movements and behavioral response to Navy training activities, but require a longer time horizon and heavy investment in analysis to produce relevant results.

This following section includes a summary of Navy-funded compliance monitoring in the NWTRC since 2010 and in the NUWC Keyport Range Complex since 2011. Additional Navy-funded monitoring outside of and in addition to the Navy's commitments to NMFS is provided later in the section. The monitoring years are shown in Table 12.

TABLE 12—NAVY MONITORING YEARS IN THE STUDY AREA

Navy monitoring years in the study area range complex	Year 1	Year 2	Year 3
Northwest Training Range Complex.	12 November 2010–01 May 2011	02 May 2011–01 May 2012	02 May 2012–01 May 2013.
Keyport Range Complex	12 April 2011–08 November 2011	09 November 2011–08 November 2012.	09 November 2012–08 November 2013.

Northwest Training Range Complex

Passive Acoustic Monitoring

As part of previous monitoring within the Pacific Northwest, the Navy funded deployment of two passive acoustic devices along the central coast of Washington State from 2011 to 2013. Results from this effort are summarized in the Navy's annual NWTRC monitoring reports for 2011, 2012, and 2013 (U.S. Department of the Navy, 2011; Širović *et al.,* 2012a and 2012b in U.S. Department of the Navy, 2012a; Kerosky *et al.,* 2013 in U.S. Department of the Navy, 2013). Total passive acoustic data recorded over the 3 years totals over 17,417 hours and includes signals from four baleen whale species (blue whale, fin whale, gray whale, and humpback whale) and seven odontocetes (Risso's dolphin, Pacific white-sided dolphin, killer whale, sperm whale, Stejneger's beaked whale, Baird's beaked whale, and Cuvier's beaked whale) (Kerosky *et al.* 2013 in U.S. Department of the Navy, 2013). Kerosky *et al.* (2013) found that seasonal patterns of all four baleen whale species were similar within the monitoring sites in NWTRC, with most calls detected between winter and early spring. Of the odontocetes recorded, sperm whales were generally detected most consistently while other non-beaked odontocetes occurred more sporadically. Stejneger's beaked whales were the most consistently recorded beaked whale, with all their detections occurring between December and June. Previous research-funded results from these same locations from 2004 to 2010 is available in Oleson *et al.* (2009) and Oleson and Hildebrand (2012).

Satellite Tagging

The Navy purchased 10 satellite tracking tags in Year 1, suitable for deployment by a suite of marine species within the offshore waters of the NWTRC. The tags used were the Andrews-style LIMPET (Low Impact Minimally Percutaneous External Transmitter), in either the location-only Spot5 configuration or the location/dive data Mk10–A configuration (Wildlife Computers, Redmond, Washington) (Schorr *et al.,* 2012). Tags were programmed to species-specific, transmission schedule-based surfacing behavior and transmission data from previous deployments. Tags transmit animal movement data via the Argos satellite system. The commercial Argos system consists of data acquisition and relay equipment attached to NOAA low-orbiting weather satellites and ground-based receivers and data processing systems.

The Navy purchased these satellite tracking tags as part of the NWTRC monitoring from 2010 to 2013. The tags were deployed opportunistically during field efforts associated with a 3-year collaborative field project addressing marine mammal distribution and habitat use off Oregon and Washington (Schorr *et al.,* 2012). The species of interest were endangered cetaceans such as blue whales, fin whales, humpback whales, and sperm whales, but also included high-priority cetaceans such as beaked whales, in the event they were encountered in favorable tagging conditions. Other species of interest for tagging included seasonal resident gray whales and transient or offshore killer whales.

Annual results from this effort are summarized in the Navy's NWTRC Monitoring Reports for 2011, 2012, and 2013 (U.S. Department of the Navy, 2011a, 2012a, and 2013d) and collectively in Schorr *et al.* (2012). During this reporting period (2010–2013), a collective total of 21 tags were deployed on four different species off the Washington coast (3 gray whales, 5 humpback whales, 11 fin whales, and 2 offshore killer whales). A total of approximately 348 days of animal movement data was obtained (Schorr *et al.,* 2013; U.S. Department of the Navy, 2013d). Transmissions confirmed that gray whales were not migrating; rather, they stayed very close to shore and in a very localized area consistent with feeding. Movement data for the tagged

humpback whales suggest individuals spent time both on and off the shelf edge, including some of the underwater canyons off northern Washington. Movements obtained from tagged fin whales suggest these whales are most commonly using waters associated with the outer shelf edge. Overall, 75 percent of the fin whale locations received were within the NWTRC. Three fin whales with transmission durations greater than 21 days remained in the NWTRC for the entire duration of tag transmission. According to Schorr *et al.* (2013), localized movements for periods of this duration suggest that at least some fin whales are not simply migrating through the area, but are utilizing habitat within the NWTRC for extended periods of time, even during seasons generally associated with migration and use of lower latitude breeding areas for other baleen whales. While in the NWTRC, tagged killer whales primarily spent their time on the continental shelf, or well offshore of the shelf edge.

In 2012, the Navy funded a multi-year satellite tracking study of Pacific Coast Feeding Group gray whales (U.S. Department of the Navy, 2013d). Tags were attached to 11 gray whales near Crescent City, California, in fall 2012 (Mate, 2013). Good track histories were received from nine of the 11 tags which confirmed an exclusive near shore (< 15 km) distribution and movement along the California, Oregon, and Washington coast. Additional tag deployments on gray whales have occurred since the Mate (2013) report. These will be described in the NWTRC Year 4 Annual Monitoring Report in 2014.

Satellite tagging efforts are also funded for 2014–2018 along the U.S. west coast and include fin and blue whales. Longer term tags (up to 1 year) will allow for an assessment of animal occurrence, movement patterns, and residence time at areas within and outside of Navy at-sea ranges, including the NWTRC.

Explosive Ordnance/Underwater Detonation Monitoring

The Navy has conducted two annual underwater detonation training events in the NWTRC at the Floral Point site in Hood Canal. In 2012, the event was monitored by marine mammal and seabird observers, and acoustic measurements were also recorded. The observers were positioned aboard small Navy craft that followed a closely spaced transect pattern in nearshore waters. In 2013, a similar monitoring effort occurred, but two beach observers were added to the monitoring team in order to provide a training opportunity. The beach observers are not required under the permits. The entire area to be monitored can be seen via the small craft vessels and as a result of the tightly spaced transect observation pattern. Pre-event and post-event surveys were also conducted. Harbor seals were the only marine mammal species seen either before or after the training event, and no marine mammals were in the exclusion zone during the detonations.

Keyport Range Complex

Annual monitoring surveys were undertaken in 2011, 2012, and 2013 in the DBRC portion of the Keyport Range Complex. These surveys included both visual and passive acoustic monitoring during concurrent mid-frequency active sonar and high-frequency active sonar tests. In addition to Navy Lookouts, Navy marine mammal observers were positioned aboard range vessels and at a high elevation observation point on land to monitor the events. A pre-event and post-event survey was also conducted. Species seen included harbor seals, California sea lions, and harbor porpoise. In total over all years, there were 262 sightings representing 420 individuals seen during the visual surveys, which may include repeat sightings of the same individuals. No marine mammals were detected using the bottom-moored passive acoustic monitoring array in any year. Discussion and results from these efforts are summarized in the Navy's Keyport Range Complex Annual Monitoring Reports for 2011, 2012, and 2013 (U.S. Department of the Navy, 2012c, 2012d, and 2013e).

Other Regional Navy-Funded Monitoring Efforts

Additional marine mammal studies are being funded or conducted by the Navy outside of and in addition to the Navy's commitments to NMFS for the NWTRC and the NUWC Keyport Range Complex. A variety of field survey methodologies are being utilized in order to better determine marine mammal presence, seasonality, abundance, distribution, habitat use, and density in these areas. The following studies either have been conducted or are underway during the 2010–2014 period:

• Naval Base Pinniped Haulout Surveys (2010–2014): Biologists located at NAVBASE Kitsap, Bangor, Bremerton, the Manchester Fuel Depot, and Naval Station Everett have been conducting year-round counts of sea lions hauled out on site-specific structures such as the floating security fences, submarines, or other opportunistic haulouts such as the large floating dock near Manchester. These counts are typically conducted weekly and involve identifying the sea lions to species and documenting branded animals. This information has shown seasonal use of the haulouts at each site, as well as trends in the number of animals by species using the haulouts at each site. In the case of Bangor, there are no haulout areas used by adult harbor seals, despite the adults being seen daily in the water, year-round. The only exception to this would be during pupping season when one wave screen (floating dock) is used temporarily by adult females to give birth. In late fall 2013, there were sightings of individual harbor seal pups using opportunistic manmade structures as temporary haulouts. These sightings include one harbor seal pup using a partially submerged ladder rung as a haulout and place to nurse; another pup resting on a floating oil boom; a third pup resting on a large piece of chain hanging in the water; a fourth pup managing to get aboard a submarine and haul out next to the California sea lions; and a fifth, older juvenile resting on the outer pontoon of the floating security fence. Harbor seals have not been seen hauled out at Bremerton or at the floating dock near Manchester. Harbor seals do haul out on the log rafts near Naval Station Everett.

• Marine Mammal Surveys in Hood Canal and Dabob Bay (2011–2012): The Navy conducted an opportunistic marine mammal vessel-based line transect density survey in Hood Canal and Dabob Bay during September and October 2011 and again in October 2012. In Hood Canal, the surveys followed a double saw-tooth pattern to achieve uniform coverage of the entire NAVBASE Kitsap, Bangor waterfront. Transects generally covered the area from Hazel Point on the south end of the Toandos Peninsula to Thorndyke Bay. Surveys in the adjacent Dabob Bay followed a slightly different pattern and generally followed more closely to the shoreline while completing a circular route through the Bay. These surveys had a dual purpose of collecting marine mammal and marbled murrelet (bird species) data, and near-shore surveys tended to yield more marbled murrelet sightings. During surveys, the survey vessels traveled at a speed of approximately five knots when transiting along the transect lines. Two observers recorded sightings of marine mammals both in the water and hauled out. Marine mammal sightings data included species identification, Global Positioning System animal locations relative to vessel position, and detailed behavioral notes. Data from the line

transect surveys can be used to improve estimates of marine mammal density in Hood Canal and Dabob Bay.

• Aerial Surveys of Pinniped Haulout Sites in Pacific Northwest Inland Waters (2013–2014): Navy-funded aerial surveys of pinniped haulout sites in the inland waters of Washington State were initiated in March 2013 (Jeffries, 2013b) and continued until March 2014 (1-year study design). The objectives of this effort were to provide estimates of seasonal abundance, identify seasonal distribution patterns, and collect data to determine seal and sea lion densities. Aerial surveys being conducted under this effort represent the first pinniped assessments to be done in the region over all four seasons, and will therefore provide much-needed information about seasonal variation of harbor seal, northern elephant seal, California sea lion, and Steller sea lion distribution and abundance in the inland waters of Washington. In addition, this effort will update the Atlas of Seal and Seal Lion Haulout Sites in Washington (inland waters region) (Jeffries *et al.,* 2000). Finally, in a collaborative effort, the NMFS Northwest Region provided additional funding to support summer-only aerial surveys of the U.S. waters of the Strait of Juan de Fuca (Cape Flattery to Port Angeles), as well as the San Juan Islands. This collaborative approach between the Navy and NMFS will allow NMFS to update the SAR for the Pacific harbor seal (Washington Inland Waters stock). The current SAR is derived from population estimates from 1999, and abundance information from current surveys will provide NMFS with required data to revise this outdated stock assessment.

• Aerial Surveys of Marine Mammals in Pacific Northwest Inland Waters (2013–2014): Navy-funded aerial line-transect density surveys in the inland waters of Washington State were initiated in August 2013 (Smultea and Bacon, 2013). Surveys are planned to continue quarterly (every season) through 2014. These surveys were designed in cooperation with NMFS in order to estimate density and abundance of species with sufficient sightings, document distribution and habitat use, and describe behaviors seen. Smultea and Bacon (2013) reported a total of 779 sightings composed of an estimated 1,716 individual marine mammals representing four species: Harbor seal, harbor porpoise, California sea lion, and Risso's dolphins. Eighty-seven percent of sightings were of harbor seals, while harbor porpoise were the second-most frequent sighting (9 percent), followed by California sea lions; a pair of Risso's dolphins were seen twice.

• Tagging and Behavioral Monitoring of Sea Lions in the Pacific Northwest in Proximity to Navy Facilities (2013–2015): In an Interagency Agreement between the Navy and the NMFS Alaska Fisheries Science Center, the Navy has funded a sea lion satellite tagging study beginning in 2013 through 2015. Tagging is anticipated to occur in early 2014 with monitoring and data analysis extending into 2015. There are significant scientific data gaps in identifying the location of local foraging areas and percentage of time hauled out for pinniped species near Puget Sound Navy facilities. Data collected from this project will directly tie into Navy's future Phase III marine mammal density modeling for training and testing activities at-sea, and within Puget Sound. In particular, integration of improved haulout percentages will lower over-predictive modeled takes which currently, due to lack of regional data, assume all pinniped species are always in-water for purposes of model assessment of takes. Numbers of animals observed hauled out can be corrected into a population estimate by applying an estimate of the proportion of satellite-tagged-animals that are hauled out at the time of the census. Satellite-linked dive recorders can be used to assess location of foraging activity and describe the diving behavior, as well as record when the animal is hauled out.

Proposed Monitoring for the NWTT Study Area

Based on NMFS-Navy meetings in June and October 2011, future Navy compliance monitoring, including pending NWTT monitoring, will address ICMP top-level goals through a series of regional and ocean basin study questions with a prioritization and funding focus on species of interest as identified for each range complex. The ICMP will also address relative investments to different range complexes based on goals across all range complexes, and monitoring will leverage multiple techniques for data acquisition and analysis whenever possible.

Within the NWTT area, the Navy's initial recommendation for species of interest includes blue whale, fin whale, humpback whale, Southern Resident killer whale (offshore portion of their annual movements), and beaked whales. Navy monitoring for NWTT under this LOA authorization and concurrently in other areas of the Pacific Ocean will therefore be structured to address region-specific species-specific study questions that will be outlined in the final NWTT Monitoring Project Table in consultation with NMFS.

As an early start to NWTT monitoring, in July 2014 the Navy provided funding ($209,000) to NMFS' Northwest Fisheries Science Center to jointly participate in a new NWTT-specific study: Modeling the distribution of southern resident killer whales in the Pacific Northwest. The goal of this new study is to provide a more scientific understanding of endangered southern resident killer whale winter distribution off the Pacific Northwest coast. While the end project will work to develop a Bayesian space-state model for predicting the offshore winter occurrence, the project will actually consist of analysis of existing NMFS data (passive acoustic detections, satellite tag tracks) as well as new data collection from fall 2014 through spring 2015. Details of the study can be found at: *http://www.navymarinespeciesmonitoring.us/regions/pacific/current-projects/.* The eight main tasks the study supports include:

• Identification and classification of marine mammal detections from acoustic recorders.

• Acquisition and field deployment of satellite-linked transmitters (n=4) to track and determine southern resident killer whales movements.

• Deployment of autonomous underwater acoustic recorders in and adjacent to the coastal and shelf/slope waters of Washington State. Navy funding will allow 10 additional recorders to be purchased and deployed along with four NMFS recorders for a total of 14 deployed recorders.

• Estimation of the probability of Southern Resident killer whale detection on acoustic recorders.

• Development of the state-space occurrence models.

• Development of predicative maps of the seasonal annual occurrence of southern resident killer whales.

• Development a cost efficient strategy for the deployment of acoustic recorders in and adjacent to Pacific Northwest Navy ranges.

• Reporting.

Ongoing Navy Research

The U.S. Navy is one of the world's leading organizations in assessing the effects of human activities the marine environment, including marine mammals. From 2004 through 2013, the Navy has funded over $240M specifically for marine mammal research. Navy scientists work cooperatively with other government researchers and scientists, universities, industry, and non-governmental conservation organizations in collecting, evaluating, and modeling information

on marine resources. They also develop approaches to ensure that these resources are minimally impacted by existing and future Navy operations. It is imperative that the Navy's Research and Development efforts related to marine mammals are conducted in an open, transparent manner with validated study needs and requirements. The goal of the Navy's R&D program is to enable collection and publication of scientifically valid research as well as development of techniques and tools for Navy, academic, and commercial use. Historically, R&D programs are funded and developed by the Navy's Chief of Naval Operations Energy and Environmental Readiness and Office of Naval Research (ONR), Code 322 Marine Mammals and Biological Oceanography Program. Primary focus of these programs since the 1990s is on understanding the effects of sound on marine mammals, including physiological, behavioral and ecological effects.

ONR's current Marine Mammals and Biology Program thrusts include, but are not limited to: (1) Monitoring and detection research; (2) integrated ecosystem research including sensor and tag development; (3) effects of sound on marine life (such as hearing, behavioral response studies, physiology [diving and stress], and PCAD); and (4) models and databases for environmental compliance.

To manage some of the Navy's marine mammal research programmatic elements, OPNAV N45 developed in 2011 a new Living Marine Resources (LMR) Research and Development Program (*http://www.lmr.navy.mil/*). The goal of the LMR Research and Development Program is to identify and fill knowledge gaps and to demonstrate, validate, and integrate new processes and technologies to minimize potential effects to marine mammals and other marine resources. Key elements of the LMR program include:

- Providing science-based information to support Navy environmental effects assessments for research, development, acquisition, testing, and evaluation as well as Fleet at-sea training, exercises, maintenance, and support activities.
- Improving knowledge of the status and trends of marine species of concern and the ecosystems of which they are a part.
- Developing the scientific basis for the criteria and thresholds to measure the effects of Navy-generated sound.
- Improving understanding of underwater sound and sound field characterization unique to assessing the biological consequences resulting from underwater sound (as opposed to tactical applications of underwater sound or propagation loss modeling for military communications or tactical applications).
- Developing technologies and methods to monitor and, where possible, mitigate biologically significant consequences to living marine resources resulting from naval activities, emphasizing those consequences that are most likely to be biologically significant.

Navy Research and Development

Navy Funded—Both the LMR and ONR Research and Development (R&D) programs periodically fund projects within the NWTT Study Area. Some data and results from these R&D projects are summarized in the Navy's annual range complex monitoring reports, and available on NMFS' Web site (*http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm*) and the Fleet's new marine species monitoring Web site (*http://www.navymarinespeciesmonitoring.us/regions/pacific/current-projects/*). In addition, the Navy's Range Complex monitoring during training and testing activities is coordinated with the Research and Development monitoring in a given region to leverage research objectives, assets, and studies where possible under the ICMP.

The integration between the Navy's new LMR research and development program and related range complex monitoring will continue and improve during the applicable period of the rulemaking with results presented in NWTT annual monitoring reports.

Other National Department of Defense Funded Initiatives—Strategic Environmental Research and Development Program (SERDP) and Environmental Security Technology Certification Program (ESTCP) are the DoD's environmental research programs, harnessing the latest science and technology to improve environmental performance, reduce costs, and enhance and sustain mission capabilities. The Programs respond to environmental technology requirements that are common to all of the military Services, complementing the Services' research programs. SERDP and ESTCP promote partnerships and collaboration among academia, industry, the military Services, and other Federal agencies. They are independent programs managed from a joint office to coordinate the full spectrum of efforts, from basic and applied research to field demonstration and validation.

Adaptive Management

The final regulations governing the take of marine mammals incidental to Navy training and testing activities in the NWTT Study Area would contain an adaptive management component carried over from previous authorizations. Although better than 5 years ago, our understanding of the effects of Navy training and testing activities (*e.g.,* MFAS/HFAS, underwater detonations) on marine mammals is still relatively limited, and yet the science in this field is evolving fairly quickly. These circumstances make the inclusion of an adaptive management component both valuable and necessary within the context of 5-year regulations for activities that have been associated with marine mammal mortality in certain circumstances and locations.

The reporting requirements associated with this proposed rule are designed to provide NMFS with monitoring data from the previous year to allow NMFS to consider whether any changes are appropriate. NMFS and the Navy would meet to discuss the monitoring reports, Navy R&D developments, and current science and whether mitigation or monitoring modifications are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from the Navy regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring and exercises reports, as required by MMPA authorizations; (2) compiled results of Navy funded R&D studies; (3) results from specific stranding investigations; (4) results from general marine mammal and sound research; and (5) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

Proposed Reporting

In order to issue an ITA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such

taking.'' Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring. Some of the reporting requirements are still in development and the final rulemaking may contain additional details not contained here. Additionally, proposed reporting requirements may be modified, removed, or added based on information or comments received during the public comment period. Reports from individual monitoring events, results of analyses, publications, and periodic progress reports for specific monitoring projects would be posted to the Navy's Marine Species Monitoring web portal: *http://www.navymarinespeciesmonitoring.us.* Currently, there are several different reporting requirements pursuant to these proposed regulations:

General Notification of Injured or Dead Marine Mammals

Navy personnel would ensure that NMFS (the appropriate Regional Stranding Coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing MFAS, HFAS, or underwater explosive detonations. The Navy would provide NMFS with species identification or a 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 photographs or video (if available).

In the event that an injured, stranded, or dead marine mammal is found by the Navy that is not in the vicinity of, or during or shortly after MFAS, HFAS, or underwater explosive detonations, the Navy will report the same information as listed above as soon as operationally feasible and clearance procedures allow.

Annual Monitoring Plan Reports

The Navy shall submit an annual report of the NWTT Monitoring Plan describing the implementation and results of the NWTT Monitoring Plan from the previous calendar year. Data collection methods will be standardized across range complexes and study areas to allow for comparison in different geographic locations. Although additional information will be gathered, the protected species observers collecting marine mammal data pursuant to the NWTT Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in § 218.145. The report shall be submitted either 90 days after the calendar year, or 90 days after the conclusion of the monitoring year to be determined by the Adaptive Management process.

The NWTT Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan reports from multiple range complexes and study areas (the multi-Range Complex Annual Monitoring Report). Such a report would describe progress of knowledge made with respect to monitoring plan study questions across all Navy ranges associated with the ICMP. Similar study questions shall be treated together so that progress on each topic shall be summarized across all Navy ranges. The report need not include analyses and content that does not provide direct assessment of cumulative progress on the monitoring plan study questions.

Annual Exercise and Testing Reports

The Navy shall submit preliminary reports detailing the status of authorized sound sources within 21 days after the anniversary of the date of issuance of the LOA. The Navy shall submit detailed reports 3 months after the anniversary of the date of issuance of the LOA. The detailed annual reports shall describe the level of training and testing conducted during the reporting period, and a summary of sound sources used (total annual hours or quantity [per the LOA] of each bin of sonar or other non-impulsive source; total annual number of each type of explosive exercises; total annual expended/detonated rounds [missiles, bombs, etc.] for each explosive bin; and improved Extended Echo-Ranging System (IEER)/sonobuoy summary, including total number of IEER events conducted in the Study Area, total expended/detonated rounds (buoys), and total number of self-scuttled IEER rounds. The analysis in the detailed reports will be based on the accumulation of data from the current year's report and data collected from previous reports.

5-Year Close-Out Exercise and Testing Report

This report will be included as part of the 2020 annual exercise or testing report. This report will provide the annual totals for each sound source bin with a comparison to the annual allowance and the 5-year total for each sound source bin with a comparison to the 5-year allowance. Additionally, if there were any changes to the sound source allowance, this report will include a discussion of why the change was made and include the analysis to support how the change did or did not result in a change in the SEIS and final rule determinations. The report will be submitted 3 months after the expiration of the rule. NMFS will submit comments on the draft close-out report, if any, within 3 months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or 3 months after the submittal of the draft if NMFS does not provide comments.

Estimated Take of Marine Mammals

In the potential effects section, NMFS' analysis identified the lethal responses, physical trauma, sensory impairment (PTS, TTS, and acoustic masking), physiological responses (particular stress responses), and behavioral responses that could potentially result from exposure to MFAS/HFAS or underwater explosive detonations. In this section, the potential effects to marine mammals from MFAS/HFAS and underwater detonation of explosives will be related to the MMPA regulatory definitions of Level A and Level B harassment and attempt to quantify the effects that might occur from the proposed training and testing activities in the Study Area.

As mentioned previously, behavioral responses are context-dependent, complex, and influenced to varying degrees by a number of factors other than just received level. For example, an animal may respond differently to a sound emanating from a ship that is moving towards the animal than it would to an identical received level coming from a vessel that is moving away, or to a ship traveling at a different speed or at a different distance from the animal. At greater distances, though, the nature of vessel movements could also potentially not have any effect on the animal's response to the sound. In any case, a full description of the suite of factors that elicited a behavioral response would require a mention of the vicinity, speed and movement of the vessel, or other factors. So, while sound sources and the received levels are the primary focus of the analysis and those that are laid out quantitatively in the regulatory text, it is with the understanding that other factors related to the training are sometimes contributing to the behavioral responses of marine mammals, although they cannot be quantified.

Definition of Harassment

As mentioned previously, with respect to military readiness activities, section 3(18)(B) of the MMPA defines ''harassment'' as: ''(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A

Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].'' It is important to note that, as Level B harassment is interpreted here and quantified by the behavioral thresholds described below, the fact that a single behavioral pattern (of unspecified duration) is abandoned or significantly altered and classified as a Level B take does not mean, necessarily, that the fitness of the harassed individual is affected either at all or significantly, or that, for example, a preferred habitat area is abandoned. Further analysis of context and duration of likely exposures and effects is necessary to determine the impacts of the estimated effects on individuals and how those may translate to population level impacts, and is included in the Analysis and Negligible Impact Determination.

Level B Harassment

Of the potential effects that were described earlier in this document, the following are the types of effects that fall into the Level B harassment category:

Behavioral Harassment—Behavioral disturbance that rises to the level described in the definition above, when resulting from exposures to non-impulsive or impulsive sound, is considered Level B harassment. Some of the lower level physiological stress responses discussed earlier would also likely co-occur with the predicted harassments, although these responses are more difficult to detect and fewer data exist relating these responses to specific received levels of sound. When Level B harassment is predicted based on estimated behavioral responses, those takes may have a stress-related physiological component as well.

As the statutory definition is currently applied, a wide range of behavioral reactions may qualify as Level B harassment under the MMPA, including but not limited to avoidance of the sound source, temporary changes in vocalizations or dive patters, temporary avoidance of an area, or temporary disruption of feeding, migrating, or reproductive behaviors. The estimates calculated by the Navy using the acoustic thresholds do not differentiate between the different types of potential behavioral reactions. Nor do the estimates provide information regarding the potential fitness or other biological consequences of the reactions on the affected individuals. We therefore consider the available scientific evidence to determine the likely nature of the modeled behavioral responses and the potential fitness consequences for affected individuals

Temporary Threshold Shift (TTS)—As discussed previously, TTS can affect how an animal behaves in response to the environment, including conspecifics, predators, and prey. The following physiological mechanisms are thought to play a role in inducing auditory fatigue: Effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells; residual muscular activity in the middle ear, displacement of certain inner ear membranes; increased blood flow; and post-stimulatory reduction in both efferent and sensory neural output. Ward (1997) suggested that when these effects result in TTS rather than PTS, they are within the normal bounds of physiological variability and tolerance and do not represent a physical injury. Additionally, Southall *et al.* (2007) indicate that although PTS is a tissue injury, TTS is not because the reduced hearing sensitivity following exposure to intense sound results primarily from fatigue, not loss, of cochlear hair cells and supporting structures and is reversible. Accordingly, NMFS classifies TTS (when resulting from exposure to sonar and other active acoustic sources and explosives and other impulsive sources) as Level B harassment, not Level A harassment (injury).

Level A Harassment

Of the potential effects that were described earlier, following are the types of effects that can fall into the Level A harassment category (unless they further rise to the level of serious injury or mortality):

Permanent Threshold Shift (PTS)—PTS (resulting either from exposure to MFAS/HFAS or explosive detonations) is irreversible and considered an injury. PTS results from exposure to intense sounds that cause a permanent loss of inner or outer cochlear hair cells or exceed the elastic limits of certain tissues and membranes in the middle and inner ears and result in changes in the chemical composition of the inner ear fluids.

Tissue Damage due to Acoustically Mediated Bubble Growth—A few theories suggest ways in which gas bubbles become enlarged through exposure to intense sounds (MFAS/HFAS) to the point where tissue damage results. In rectified diffusion, exposure to a sound field would cause bubbles to increase in size. A short duration of sonar pings (such as that which an animal exposed to MFAS would be most likely to encounter) would not likely be long enough to drive bubble growth to any substantial size. Alternately, bubbles could be destabilized by high-level sound exposures such that bubble growth then occurs through static diffusion of gas out of the tissues. The degree of supersaturation and exposure levels observed to cause microbubble destabilization are unlikely to occur, either alone or in concert because of how close an animal would need to be to the sound source to be exposed to high enough levels, especially considering the likely avoidance of the sound source and the required mitigation. Still, possible tissue damage from either of these processes would be considered an injury.

Tissue Damage due to Behaviorally Mediated Bubble Growth—Several authors suggest mechanisms in which marine mammals could behaviorally respond to exposure to MFAS/HFAS by altering their dive patterns (unusually rapid ascent, unusually long series of surface dives, etc.) in a manner that might result in unusual bubble formation or growth ultimately resulting in tissue damage. In this scenario, the rate of ascent would need to be sufficiently rapid to compromise behavioral or physiological protections against nitrogen bubble formation.

There is considerable disagreement among scientists as to the likelihood of this phenomenon (Piantadosi and Thalmann, 2004; Evans and Miller, 2003). Although it has been argued that traumas from recent beaked whale strandings are consistent with gas emboli and bubble-induced tissue separations (Jepson *et al.,* 2003; Fernandez *et al.,* 2005; Fernández *et al.,* 2012), nitrogen bubble formation as the cause of the traumas has not been verified. If tissue damage does occur by this phenomenon, it would be considered an injury. Recent modeling by Kvadsheim *et al.* (2012) determined that while behavioral and physiological responses to sonar have the potential to result in bubble formation, the actual observed behavioral responses of cetaceans to sonar did not imply any significantly increased risk over what may otherwise occur normally in individual marine mammals.

Physical Disruption of Tissues Resulting from Explosive Shock Wave—Physical damage of tissues resulting from a shock wave (from an explosive detonation) is classified as an injury. Blast effects are greatest at the gas-liquid interface (Landsberg, 2000) and gas-containing organs, particularly the lungs

and gastrointestinal tract, are especially susceptible (Goertner, 1982; Hill, 1978; Yelverton *et al.,* 1973). Nasal sacs, larynx, pharynx, trachea, and lungs may be damaged by compression/expansion caused by the oscillations of the blast gas bubble (Reidenberg and Laitman, 2003). Severe damage (from the shock wave) to the ears can include tympanic membrane rupture, fracture of the ossicles, damage to the cochlea, hemorrhage, and cerebrospinal fluid leakage into the middle ear.

Vessel or Ordnance Strike—Vessel strike or ordnance strike associated with the specified activities would be considered Level A harassment, serious injury, or mortality. Vessel or ordnance strike is not anticipated with the Navy activities in the Study Area.

Take Thresholds

For the purposes of an MMPA authorization, three types of take are identified: Level B harassment; Level A harassment; and mortality (or serious injury leading to mortality). The categories of marine mammal responses (physiological and behavioral) that fall into the two harassment categories were described in the previous section.

Because the physiological and behavioral responses of the majority of the marine mammals exposed to non-impulse and impulse sounds cannot be easily detected or measured, and because NMFS must authorize take prior to the impacts to marine mammals, a method is needed to estimate the number of individuals that will be taken, pursuant to the MMPA, based on the proposed action. To this end, NMFS developed acoustic thresholds that estimate at what received level (when exposed to non-impulse or impulse sounds) Level B harassment and Level A harassment of marine mammals would occur. The acoustic thresholds for non-impulse and impulse sounds are discussed below.

Level B Harassment Threshold (TTS)—Behavioral disturbance, acoustic masking, and TTS are all considered Level B harassment. Marine mammals would usually be behaviorally disturbed at lower received levels than those at which they would likely sustain TTS, so the levels at which behavioral disturbance are likely to occur is considered the onset of Level B harassment. The behavioral responses of marine mammals to sound are variable, context specific, and, therefore, difficult to quantify (see Risk Function section, below).

TTS is a physiological effect that has been studied and quantified in laboratory conditions. Because data exist to support an estimate of the received levels at which marine mammals will incur TTS, NMFS uses an acoustic criteria to estimate the number of marine mammals that might sustain TTS. TTS is a subset of Level B harassment (along with sub-TTS behavioral harassment) and the Navy is not specifically required to estimate those numbers; however, the more specifically the affected marine mammal responses can be estimated, the better the analysis.

Level A Harassment Threshold (PTS)—For acoustic effects, because the tissues of the ear appear to be the most susceptible to the physiological effects of sound, and because threshold shifts tend to occur at lower exposures than other more serious auditory effects, NMFS has determined that PTS is the best indicator for the smallest degree of injury that can be measured. Therefore, the acoustic exposure associated with onset-PTS is used to define the lower limit of Level A harassment.

PTS data do not currently exist for marine mammals and are unlikely to be obtained due to ethical concerns. However, PTS levels for these animals may be estimated using TTS data from marine mammals and relationships between TTS and PTS that have been determined through study of terrestrial mammals.

We note here that behaviorally mediated injuries (such as those that have been hypothesized as the cause of some beaked whale strandings) could potentially occur in response to received levels lower than those believed to directly result in tissue damage. As mentioned previously, data to support a quantitative estimate of these potential effects (for which the exact mechanism is not known and in which factors other than received level may play a significant role) do not exist. However, based on the number of years (more than 60) and number of hours of MFAS per year that the U.S. (and other countries) has operated compared to the reported (and verified) cases of associated marine mammal strandings, NMFS believes that the probability of these types of injuries is very low. Tables 13 and 14 provide a summary of non-impulsive and impulsive thresholds to TTS and PTS for marine mammals. A detailed explanation of how these thresholds were derived is provided in the NWTT DEIS/OEIS Criteria and Thresholds Technical Report (Finneran and Jenkins, 2012) and summarized in Chapter 6 of the LOA application (*http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm*).

TABLE 13—ONSET TTS AND PTS THRESHOLDS FOR NON-IMPULSE SOUND

Group	Species	Onset TTS	Onset PTS
Low-Frequency Cetaceans	All mysticetes	178 dB re 1μPa2-sec(LF_{II}).	198 dB re 1μPa2-sec(LF_{II})
Mid-Frequency Cetaceans	Most delphinids, beaked whales, medium and large toothed whales.	178 dB re 1μPa2-sec(MF_{II}).	198 dB re 1μPa2-sec(MF_{II})
High-Frequency Cetaceans	Porpoises, Kogia spp.	152 dB re 1μPa2-sec(HF_{II}).	172 dB re 1μPa2-secSEL (HF_{II})
Phocidae In-water	Harbor, Hawaiian monk, elephant seals	183 dB re 1μPa2-sec(P_{WI}).	197 dB re 1μPa2-sec(P_{WI})
Otariidae & Obodenidae In-water Mustelidae In-water	Sea lions and fur seals Sea otters.	206 dB re 1μPa2-sec(O_{WI}).	220 dB re 1μPa2-sec(O_{WI})

LF_{II}, MF_{II}, HF_{II}: New compound Type II weighting functions; P_{WI}, O_{WI}: Original Type I (Southall *et al.,* 2007) for pinniped and mustelid in water.

Table 14. Impulsive sound and explosive criteria and thresholds for predicting injury and mortality.

Group	Species	Onset TTS	Onset PTS	Onset Slight GI Tract Injury	Onset Slight Lung Injury	Onset Mortality
Low Frequency Cetaceans	All mysticetes	172 dB re 1 µPa^2-s SEL (Type II weighting) or 224 dB re 1 µPa Peak SPL (unweighted)	187 dB re 1 µPa^2-s SEL (Type II weighting) or 230 dB re 1 µPa Peak SPL (unweighted)	237 dB re 1 µPa (unweighted)	Note 1	Note 2
Mid-Frequency Cetaceans	Most delphinids, medium and large toothed whales	172 dB re 1 µPa^2-s SEL (Type II weighting) or 224 dB re 1 µPa Peak SPL (unweighted)	187 dB re 1 µPa^2-s SEL (Type II weighting) or 230 dB re 1 µPa Peak SPL (unweighted)			
High Frequency Cetaceans	Porpoises and *Kogia* spp.	146 dB re 1 µPa^2-s SEL (Type II weighting) or 195 dB re 1 µPa Peak SPL (unweighted)	161 dB re 1 µPa^2-s SEL (Type II weighting) or 201 dB re 1 µPa Peak SPL (unweighted)			
Phocidae	Northern elephant seal and harbor seal	177 dB re 1 µPa^2-s (Type I weighting) or 212 dB re 1 µPa Peak SPL (unweighted)	192 dB re 1 µPa^2-s (Type I weighting) or 218 dB re 1 µPa Peak SPL (unweighted)			
Otariidae	Steller and California Sea Lion, Guadalupe and Northern fur seal	200 dB re 1 µPa^2-s (Type I weighting) or 212 dB re 1 µPa Peak SPL (unweighted)	215 dB re 1 µPa^2-s (Type I weighting) or 218 dB re 1 µPa Peak SPL (unweighted)			
Mustelidae	Sea Otter					
Note 1 $= 39.1M^{1/3}\left(1+\frac{D_{Rm}}{10.081}\right)^{1/2} Pa-\text{sec}$			Note 2 $= 91.4M^{1/3}\left(1+\frac{D_{Rm}}{10.081}\right)^{1/2} Pa-\text{sec}$			

[1] Impulse calculated over a delivery time that is the lesser of the initial positive pressure duration or 20 percent of the natural period of the assumed-spherical lung adjusted for animal size and depth.
<E T='04'>Notes:</E> GI = gastrointestinal, M = mass of animals in kilograms, D_{Rm} = depth of receiver (animal) in meters, SEL = Sound Exposure Level, SPL = Sound Pressure Level (re 1 µPa), dB = decibels, re 1 µPa = referenced to one micropascal, dB re 1 µPa^2-s = decibels referenced to one micropascal squared second

Level B Harassment Risk Function (Behavioral Harassment)

As the statutory definition is currently applied, a wide range of behavioral reactions may qualify as Level B harassment under the MMPA, including but not limited to avoidance of the sound source, temporary changes in vocalizations or dive patters, temporary avoidance of an area, or temporary disruption of feeding, migrating, or reproductive behaviors. The estimates calculated by the Navy using the acoustic thresholds do not differentiate between the different types of potential behavioral reactions. Nor do the estimates provide information regarding the potential fitness or other biological consequences of the reactions on the affected individuals. We therefore consider the available scientific evidence to determine the likely nature of the modeled behavioral responses and the potential fitness consequences for affected individuals.

Behavioral Response Criteria for Non-Impulsive Sound from Sonar and other

Active Sources—In 2006, NMFS issued the first MMPA authorization to allow the take of marine mammals incidental to MFAS (to the Navy for RIMPAC). For that authorization, NMFS used 173 dB SEL as the criterion for the onset of behavioral harassment (Level B harassment). This type of single number criterion is referred to as a step function, in which (in this example) all animals estimated to be exposed to received levels above 173 db SEL would be predicted to be taken by Level B harassment and all animals exposed to less than 173 dB SEL would not be taken by Level B harassment. As mentioned previously, marine mammal behavioral responses to sound are highly variable and context specific (affected by differences in acoustic conditions; differences between species and populations; differences in gender, age, reproductive status, or social behavior; or the prior experience of the individuals), which means that there is support for alternate approaches for estimating behavioral harassment.

Unlike step functions, acoustic risk continuum functions (which are also called ''exposure-response functions'' or ''dose-response functions'' in other risk assessment contexts) allow for probability of a response that NMFS would classify as harassment to occur over a range of possible received levels (instead of one number) and assume that the probability of a response depends first on the ''dose'' (in this case, the received level of sound) and that the probability of a response increases as the ''dose'' increases. In January 2009, NMFS issued three final rules governing the incidental take of marine mammals (within Navy's Hawaii Range, Southern California Training and Testing Range, and Atlantic Fleet Active Sonar Training complexes) that used a risk continuum to estimate the percent of marine mammals exposed to various levels of MFAS that would respond in a manner NMFS considers harassment.

The Navy and NMFS have previously used acoustic risk functions to estimate the probable responses of marine mammals to acoustic exposures for other training and research programs. Examples of previous application include the Navy EISs on the Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar (U.S. Department of the Navy, 2001c); the North Pacific Acoustic Laboratory experiments conducted off the Island of Kauai (Office of Naval Research, 2001), and the Supplemental EIS for SURTASS LFA sonar (U.S. Department of the Navy, 2007d). As discussed earlier, factors other than received level (such as distance from or bearing to the sound source, context of animal at time of exposure) can affect the way that marine mammals respond; however, data to support a quantitative analysis of those (and other factors) do not currently exist. It is also worth specifically noting that while context is very important in marine mammal response, given otherwise equivalent context, the severity of a marine mammal behavioral response is also expected to increase with received level (Houser and Moore, 2014). NMFS will continue to modify these criteria as new data become available and can be appropriately and effectively incorporated.

The particular acoustic risk functions developed by NMFS and the Navy (see Figures 1 and 2 of the LOA application) estimate the probability of behavioral responses to MFAS/HFAS (interpreted as the percentage of the exposed population) that NMFS would classify as harassment for the purposes of the MMPA given exposure to specific received levels of MFAS/HFAS. The mathematical function (below) underlying this curve is a cumulative probability distribution adapted from a solution in Feller (1968) and was also used in predicting risk for the Navy's SURTASS LFA MMPA authorization as well.

$$R = \frac{1 - \left(\frac{L - B}{K}\right)^{-A}}{1 - \left(\frac{L - B}{K}\right)^{-2A}}$$

Where: R = Risk (0 − 1.0)

L = Received level (dB re: 1 μPa)

B = Basement received level = 120 dB re: 1 μPa

K = Received level increment above B where 50-percent risk = 45 dB re: 1 μPa

A = Risk transition sharpness parameter = 10 (odontocetes and pinnipeds) or 8 (mysticetes)

Detailed information on the above equation and its parameters is available in the January 2014 NWTT DEIS/OEIS and previous Navy documents listed above.

The harbor porpoise and beaked whales have unique criteria based on specific data that show these animals to be especially sensitive to sound. Harbor porpoise and beaked whale non-impulsive behavioral criteria are used unweighted—without weighting the received level before comparing it to the threshold (see Finneran and Jenkins, 2012).

It has been speculated for some time that beaked whales might have unusual sensitivities to sonar sound due to their likelihood of stranding in conjunction with mid-frequency sonar use, even in areas where other species were more abundant (D'Amico *et al.,* 2009), but there were not sufficient data to support a separate treatment for beaked whales until recently. With the recent publication of results from Blainville's beaked whale monitoring and experimental exposure studies on the instrumented AUTEC range in the Bahamas (McCarthy *et al.* 2011; Tyack *et al.* 2011), there are now statistically strong data suggesting that beaked whales tend to avoid actual naval mid-frequency sonar in real anti-submarine training scenarios as well as playbacks of killer whale vocalizations, and other anthropogenic sounds. Tyack *et al.* (2011) report that, in reaction to sonar playbacks, most beaked whales stopped echolocating, made long slow ascent, and moved away from the sound. During an exercise using mid-frequency sonar, beaked whales avoided the sonar acoustic footprint at a distance where the received level was ''around 140 dB'' (SPL) and once the exercise ended, beaked whales re-inhabited the center of exercise area within 2–3 days (Tyack *et al.,* 2011). The Navy has therefore adopted an unweighted 140 dB re 1 μPa SPL threshold for significant behavioral effects for all beaked whales (family: Ziphiidae).

Since the development of the criterion, analysis of the data the 2010 and 2011 field seasons of the southern California Behavioral Responses Study have been published. The study, DeRuiter *et al.* (2013b), provides similar evidence of Cuvier's beaked whale sensitivities to sound based on two controlled exposures. Two whales, one in each season, were tagged and exposed to simulated mid-frequency active sonar at distances of 3.4–9.5 km. The 2011 whale was also incidentally exposed to mid-frequency active sonar from a distant naval exercise (approximately 118 km away). Received levels from the mid-frequency active sonar signals during the controlled and incidental exposures were calculated as 84–144 and 78–106 dB re 1 μPa rms, respectively. Both whales showed responses to the controlled exposures, ranging from initial orientation changes to avoidance responses characterized by energetic fluking and swimming away from the source. However, the authors did not detect similar responses to incidental exposure to distant naval sonar exercises at comparable received levels, indicating that context of the exposures (*e.g.,* source proximity, controlled source ramp-up) may have been a significant factor. Because the

sample size was limited (controlled exposures during a single dive in both 2010 and 2011) and baseline behavioral data was obtained from different stocks and geographic areas (*i.e.,* Hawaii and Mediterranean Sea), and the responses exhibited to controlled exposures were not exhibited by an animal exposed to some of the same received levels of real sonar exercises, the Navy relied on the studies at the AUTEC that analyzed beaked whale responses to actual naval exercises using mid-frequency active sonar to evaluate potential behavioral responses by beaked whales to proposed training and testing activities using sonar and other active acoustic sources.

The information currently available regarding harbor porpoises suggests a very low threshold level of response for both captive and wild animals. Threshold levels at which both captive (Kastelein *et al.,* 2000; Kastelein *et al.,* 2005; Kastelein *et al.,* 2006; Kastelein *et al.,* 2008) and wild harbor porpoises (Johnston, 2002) responded to sound (*e.g.,* acoustic harassment devices, acoustic deterrent devices, or other non-impulsive sound sources) are very low (*e.g.,* approximately 120 dB re 1 μPa). Therefore, a SPL of 120 dB re 1 μPa is used in this analysis as a threshold for predicting behavioral responses in harbor porpoises instead of the risk functions used for other species (*i.e.,* we assume for the purpose of estimating take that all harbor porpoises exposed to 120 dB or higher MFAS/HFAS will be taken by Level B behavioral harassment).

Behavioral Response Criteria for Impulsive Sound from Explosions—If more than one explosive event occurs within any given 24-hour period within a training or testing event, behavioral criteria are applied to predict the number of animals that may be taken by Level B harassment. For multiple explosive events the behavioral threshold used in this analysis is 5 dB less than the TTS onset threshold (in sound exposure level). This value is derived from observed onsets of behavioral response by test subjects (bottlenose dolphins) during non-impulse TTS testing (Schlundt *et al.* 2000). Some multiple explosive events, such as certain naval gunnery exercises, may be treated as a single impulsive event because a few explosions occur closely spaced within a very short period of time (a few seconds). For single impulses at received sound levels below hearing loss thresholds, the most likely behavioral response is a brief alerting or orienting response. Since no further sounds follow the initial brief impulses, Level B take in the form of behavioral harassment beyond that associated with potential TTS would not be expected to occur. This reasoning was applied to previous shock trials (63 FR 230; 66 FR 87; 73 FR 143) and is extended to these Phase II criteria. Behavioral thresholds for impulsive sources are summarized in Table 15 and further detailed in the LOA application.

Since impulse events can be quite short, it may be possible to accumulate multiple received impulses at sound pressure levels considerably above the energy-based criterion and still not be considered a behavioral take. The Navy treats all individual received impulses as if they were one second long for the purposes of calculating cumulative sound exposure level for multiple impulse events. For example, five air gun impulses, each 0.1 second long, received at a Type II weighted sound pressure level of 167 dB SPL would equal a 164 dB sound exposure level, and would not be predicted as leading to a significant behavioral response (take) in MF or HF cetaceans. However, if the five 0.1 second pulses are treated as a 5 second exposure, it would yield an adjusted SEL of approximately 169 dB, exceeding the behavioral threshold of 167 dB SEL. For impulses associated with explosions that have durations of a few microseconds, this assumption greatly overestimates effects based on sound exposure level metrics such as TTS and PTS and behavioral responses. Appropriate weighting values will be applied to the received impulse in one-third octave bands and the energy summed to produce a total weighted sound exposure level value. For impulsive behavioral criteria, the Navy's weighting functions (detailed in Chapter 6 of the LOA application) are applied to the received sound level before being compared to the threshold.

TABLE 15—BEHAVIORAL THRESHOLDS FOR IMPULSIVE SOUND

Hearing group	Impulsive behavioral threshold for > 2 pulses/24 hours	Onset TTS
Low-Frequency Cetaceans	167 dB SEL (LF_{II})	172 dB SEL (MF_{II}) or 224 dB Peak SPL.
Mid-Frequency Cetaceans	167 dB SEL (MF_{II})	
High-Frequency Cetaceans	141 dB SEL (HF_{II})	146 dB SEL (HF_{II}) or 195 dB Peak SPL.
Phocid Seals (in water)	172 dB SEL (P_{WI})	177 dB SEL (P_{WI}) or 212 dB Peak SPL.
Otariidae & Mustelidae (in water)	195 dB SEL (O_{WI})	200 dB SEL (O_{WI}) or 212 dB Peak SPL.

Notes: (1) LF_{II}, MF_{II}, HF_{II} are New compound Type II weighting functions; P_{WI}, O_{WI} = Original Type I (Southall *et al.* 2007) for pinniped and mustelid in water (see Finneran and Jenkins 2012). (2) SEL = re 1 μPa^2-s; SPL = re 1 μPa, SEL = Sound Exposure Level, dB = decibel, SPL = Sound Pressure Level.

Marine Mammal Density Estimates

A quantitative analysis of impacts on a species requires data on the abundance and distribution of the species population in the potentially impacted area. The most appropriate unit of metric for this type of analysis is density, which is described as the number of animals present per unit area.

There is no single source of density data for every area, species, and season because of the fiscal costs, resources, and effort involved in NMFS providing enough survey coverage to sufficiently estimate density. Therefore, to characterize the marine species density for large areas such as the Study Area, the Navy needed to compile data from multiple sources. Each data source may use different methods to estimate density, of which, uncertainty in the estimate can be directly related to the method applied. To develop a database of marine species density estimates, the Navy, in consultation with NMFS experts, adopted a protocol to select the best available data sources (including habitat-based density models, line-transect analyses, and peer-reviewed published studies) based on species, area, and season (see the Navy's Pacific Marine Species Density Database Technical Report; U.S. Department of the Navy, 2014b). The resulting Geographic Information System (GIS) database includes one single spatial and seasonal density value for every marine mammal present within the Study Area.

The Navy Marine Species Density Database includes a compilation of the best available density data from several primary sources and published works

including survey data from NMFS within the U.S. EEZ. NMFS is the primary agency responsible for estimating marine mammal and sea turtle density within the U.S. EEZ. NMFS publishes annual SARs for various regions of U.S. waters and covers all stocks of marine mammals within those waters. The majority of species that occur in the Study Area are covered by the Pacific Region Stock Assessment Report (Carretta *et al.,* 2014), with a few species (*e.g.,* Steller sea lions) covered by the Alaska Region Stock Assessment Report (Allen and Angliss, 2014). Other independent researchers often publish density data or research covering a particular marine mammal species, which is integrated into the NMFS SARs.

For most cetacean species, abundance is estimated using line-transect methods that employ a standard equation to derive densities based on sighting data collected from systematic ship or aerial surveys. More recently, habitat-based density models have been used effectively to model cetacean density as a function of environmental variables (*e.g.,* Redfern *et al.,* 2006; Barlow *et al.,* 2009; Becker *et al.,* 2010; Becker *et al.,* 2012a; Becker *et al.,* 2012b; Becker, 2012c; Forney *et al.,* 2012). Where the data supports habitat based density modeling, the Navy's database uses those density predictions. Habitat-based density models allow predictions of cetacean densities on a finer spatial scale than traditional line-transect analyses because cetacean densities are estimated as a continuous function of habitat variables (*e.g.,* sea surface temperature, water depth). Within most of the world's oceans, however there have not been enough systematic surveys to allow for line-transect density estimation or the development of habitat models. To get an approximation of the cetacean species distribution and abundance for unsurveyed areas, in some cases it is appropriate to extrapolate data from areas with similar oceanic conditions where extensive survey data exist. Habitat Suitability Indexes or Relative Environmental Suitability have also been used in data-limited areas to estimate occurrence based on existing observations about a given species' presence and relationships between basic environmental conditions (Kaschner *et al.,* 2006).

Methods used to estimate pinniped at-sea density are generally quite different than those described above for cetaceans. Pinniped abundance is generally estimated via shore counts of animals at known rookeries and haulout sites. For example, for species such as the California sea lion, population estimates are based on counts of pups at the breeding sites (Carretta *et al.,* 2014). However, this method is not appropriate for other species such as harbor seals, whose pups enter the water shortly after birth. Population estimates for these species are typically made by counting the number of seals ashore and applying correction factors based on the proportion of animals estimated to be in the water (Carretta *et al.,* 2014). Population estimates for pinniped species that occur in the Study Area are provided in the Pacific Region Stock Assessment Report (Carretta *et al.,* 2014). Translating these population estimates to in-water densities presents challenges because the percentage of seals or sea lions at sea compared to those on shore is species-specific and depends on gender, age class, time of year (molt and breeding/pupping seasons), foraging range, and for species such as harbor seal, time of day and tide level. These parameters were identified from the literature and used to establish correction factors which were then applied to estimate the proportion of pinnipeds that would be at sea within the Study Area for a given season.

Density estimates for each species in the Study Area, and the sources for these estimates, are provided in Chapter 6 of the LOA application and in the Navy's Pacific Marine Species Density Database Technical Report (U.S. Department of the Navy, 2014b).

Quantitative Modeling To Estimate Take for Impulsive and Non-Impulsive Sound

The Navy performed a quantitative analysis to estimate the number of marine mammals that could be affected by acoustic sources or explosives used during Navy training and testing activities. Inputs to the quantitative analysis include marine mammal density estimates; marine mammal depth occurrence distributions; oceanographic and environmental data; marine mammal hearing data; and criteria and thresholds for levels of potential effects. The quantitative analysis consists of computer modeled estimates and a post-model analysis to determine the number of potential harassments. The model calculates sound energy propagation from sonar, other active acoustic sources, and explosives during naval activities; the sound or impulse received by animat (virtual representation of an animal) dosimeters representing marine mammals distributed in the area around the modeled activity; and whether the sound or impulse received by a marine mammal exceeds the thresholds for effects. The model estimates are then further analyzed and adjusted to consider animal avoidance (*i.e.,* swimming away from sonar or other active sources and away from multiple explosions to avoid repeated high level sound exposures) and implementation of mitigation measures, resulting in final estimates of potential effects due to Navy training and testing.

Various computer models and mathematical equations can be used to predict how energy spreads from a sound source (*e.g.,* sonar or underwater detonation) to a receiver (*e.g.,* dolphin or sea turtle). Basic underwater sound models calculate the overlap of energy and marine life using assumptions that account for the many, variable, and often unknown factors that can influence the result. Assumptions in previous and current Navy models have intentionally erred on the side of overestimation when there are unknowns or when the addition of other variables was not likely to substantively change the final analysis. For example, because the ocean environment is extremely dynamic and information is often limited to a synthesis of data gathered over wide areas and requiring many years of research, known information tends to be an average of a seasonal or annual variation. El Niño Southern Oscillation events of the ocean-atmosphere system are an example of dynamic change where unusually warm or cold ocean temperatures are likely to redistribute marine life and alter the propagation of underwater sound energy. Previous Navy modeling therefore made some assumptions indicative of a maximum theoretical propagation for sound energy (such as a perfectly reflective ocean surface and a flat seafloor).

More complex computer models build upon basic modeling by factoring in additional variables in an effort to be more accurate by accounting for such things as variable bathymetry and an animal's likely presence at various depths.

The Navy has developed new software tools, up to date marine mammal density data, and other oceanographic data for the quantification of estimated acoustic impacts to marine mammal impacts from Navy activities. This new approach is the resulting evolution of the basic model previously used by the Navy and reflects a more complex modeling approach as described below. The new model, NAEMO, is the standard model now used by the Navy to estimate the potential acoustic effects of Navy training and testing activities on marine mammals. Although this more complex computer modeling approach accounts

for various environmental factors affecting acoustic propagation, the current software tools do not consider the likelihood that a marine mammal would attempt to avoid repeated exposures to a sound or avoid an area of intense activity where a training or testing event may be focused. Additionally, the software tools do not consider the implementation of mitigation (*e.g.,* stopping sonar transmissions when a marine mammal is within a certain distance of a ship or mitigation zone clearance prior to detonations). In both of these situations, naval activities are modeled as though an activity would occur regardless of proximity to marine mammals and without any horizontal movement by the animal away from the sound source or human activities. Therefore, the final step of the quantitative analysis of acoustic effects is to consider the implementation of mitigation and the possibility that marine mammals would avoid continued or repeated sound exposures. This final, post-analysis step in the modeling process is meant to better quantify the predicted effects by accounting for likely animal avoidance behavior and implementation of standard Navy mitigations.

The incorporation of mitigation factors for the reduction of predicted effects used a conservative approach (erring on the side of overestimating the number of effects) since reductions as a result of implemented mitigation were only applied to those events having a very high likelihood of detecting marine mammals. It is important to note that there are additional protections offered by mitigation procedures which will further reduce effects to marine mammals, but these are not considered in the quantitative adjustment of the model predicted effects.

The steps of the quantitative analysis of acoustic effects, the values and assumptions that went into the Navy's model, and the resulting ranges to effects are detailed in Chapter 6 (Section 6.5) of the LOA application (*http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm*). Details of the model's processes and the description and derivation of the inputs are presented in the Navy's Determination of Acoustic Effects technical Report (Marine Species Modeling Team, 2013). The post-model analysis, which considers the potential for avoidance and highly effective mitigation during the use of sonar and other active acoustic sources and explosives, is described in Section 6.5 of the LOA application. A detailed explanation of the post-model acoustic effect analysis quantification process is also provided in the technical report Post-Model Quantitative Analysis of Animal Avoidance Behavior and Mitigation Effectiveness for the Northwest Training and Testing (U.S. Department of the Navy, 2014c).

Analysis of Guadalupe Fur Seal Exposures

While there are past and current reports of Guadalupe fur seal strandings in the Pacific Northwest, NMFS does not have at-sea Guadalupe fur seal sightings from which to derive a density estimate. For the NWTT DEIS/OEIS, the Navy elected to take a subset of Northern fur seal modeled exposures as a surrogate for Guadalupe fur seals. Essentially, a fraction of the northern fur seal modeled exposures from the Navy's acoustic effects analysis were used for Guadalupe fur seals exposures based on a comparative ratio of expected occurrence offshore in the NWTT Study Area for northern fur seals and Guadalupe fur seals (based on NMFS stranding records). Northern fur seal at-sea densities described in the Navy's Pacific Marine Species Density Database Technical Report (U.S. Department of the Navy, 2014b) were derived as a single NWTT Study Area wide layer (0.106 animals/km^2 winter and spring, and 0.082 animals/km^2 summer and fall). The estimated (not modeled) results for Guadalupe fur seals were incorporated directly into the NWTT DEIS/OEIS (and original December 2013 NWTT LOA application).

This initial analysis, however, was done without consideration of the likely differences in biological at-sea distributions of both northern fur seals and Guadalupe fur seals. Northern fur seals have a documented highly pelagic distribution through the offshore waters of the Study Area where the majority of Navy training would occur (Davis *et al.,* 2008, NMFS 2007, Lee *et al.,* 2014, Pelland *et al.,* 2014, Sterling *et al.,* 2014). This was the justification for the NWTT Study Area wide single density values by season (U.S. Department of the Navy, 2014b). Within the Pacific Northwest, Guadalupe fur seals are more likely to be coastally distributed given their extralimital at-sea occurrence and associated stranding records (Lambourn *et al.,* 2012).

The Navy, therefore, has proposed to modify the Guadalupe fur seal take number in the NWTT Final EIS/OEIS and has revised the LOA application to account for species-specific biological differences in at-sea distributions within the NWTT Study Area. This would limit Guadalupe fur seal exposures as compared to the process described above, as well as more realistically reflect impacts from offshore Navy training and testing events. The first step in this reanalysis was an examination of the exact Navy events modeled in NAEMO that generated exposures for Northern fur seals. The Navy then analyzed the potential for co-occurrence of the activities resulting in exposures with the Guadalupe fur seal's distribution to determine if the currently predicted exposures should be modified. For training, the Navy asserted that TRACKEX events typically conducted >50 nm from shore in the NWTT Study Area would have limited to no co-occurrence with Guadalupe fur seals, and would not result in training related MMPA exposures. TRACKEX events account for 82 percent of exposures under the NWTT DEIS/OEIS preferred alternative (Table 16). The remaining 18 percent of exposures were from offshore submarine sonar maintenance and offshore surface ship sonar maintenance. While these events would also likely be further offshore, the Navy cannot totally exclude such events from at-sea co-occurring with the Guadalupe fur seal. For testing, the Navy asserts that countermeasure testing and littoral combat ship (LCS) mission package testing-ASW typically conducted >50 nm from shore in the NWTT Study Area would have limited to no co-occurrence with Guadalupe fur seals and would not result in testing MMPA exposures. Countermeasure testing and LCS mission package testing-ASW events account for 92 percent of exposures under the NWTT EIS/OEIS preferred alternative (Table 16). The remaining 8 percent of exposures were from various testing activities with the majority (5.6 percent) from ASW-guided missile destroyer (DDG)-attack submarine (SSN) testing which the Navy cannot totally exclude from at-sea co-occurrence with the Guadalupe fur seal.

Based on the results of this analysis, the Navy is modifying current NWTT EIS/OEIS take tables and has revised the LOA application to account for a percentage decrease in Guadalupe fur seal take requests. For this proposed rulemaking, the Guadalupe fur seal Level B behavioral take request for training has changed from ''37'' to ''7'' (Table 18) and for testing has changed from ''27'' to ''3'' (Table 21).

TABLE 16—PHASE II NAEMO MODELED EXPOSURES TO NORTHERN FUR SEAL IN RELATIONSHIP TO NAVY TRAINING EVENTS SIMILAR TO NWTRC PHASE I EVENTS AND FOR NWTT

NWTT events applicable to the NWTT LOA application	Dec 2013 Percentage of Northern fur seal modeled exposures	Dec 2013 Guadalupe fur seal take request	Proposed Aug 2014 Modification amount	Revised Navy recommended Guadalupe fur seal take request	Rational
Training Activities Deemed *to Not Have* High Probability Of Overlap With Guadalupe Fur Seals					
TRACKEX (Maritime patrol aircraft, submarine, surface ship).	82	37	−30	7	82% of exposures from TRACKEX, therefore 30 exposures (82% of 37) can be reduced.
Training Activities *That Could Have* Overlap With Guadalupe Fur Seals					
Submarine sonar maintenance	11				
Surface ship sonar maintenance	7				
Testing Activities Deemed *to Not Have* High Probability Of Overlap With Guadalupe Fur Seals					
NAVSEA countermeasure testing	81	27	−24	3	92% of exposures from countermeasure testing and LCS package testing-ASW, therefore 24 exposures (92% of 27) can be reduced.
NAVSEA LCS mission package testing—ASW.	11.				
Testing Activities *That Could Have* Overlap With Guadalupe Fur Seals					
NAVSEA ASW–DDG–SSN	6				
Various others	< 1				

Analysis of Harbor Seal Exposures

For harbor seals in the inland waters portion of the Study Area, there was a change to the Washington Inland Waters stock in 2014 subsequent to the presentation of the January 2014 NWTT DEIS/OEIS to the public. Based on DNA evidence, the single Inland Waters stock was broken up into three new stocks, designated the Hood Canal, the Washington Northern Inland Waters, and the Southern Puget Sound stocks (Carretta *et al.,* 2014). Evidence from tagging data (London *et al.,* 2012) suggests the Hood Canal stock generally does not forage beyond Hood Canal. The Navy has assumed that acoustic effects modeling for locations in Hood Canal and Dabob Bay can therefore be accurately assigned to the Hood Canal stock. For the Washington Northern Inland Waters stock and the Southern Puget Sound stock and because it is possible that these stocks overlap while foraging, modeled acoustic effects to harbor seals in the inland waters portion of the Study Area (excluding Hood Canal and Dabob Bay) were therefore assigned to the appropriate stock using a derived ratio based on the abundance estimates for the two stocks as reported in the 2013 Pacific Stock Assessment Report (Carretta *et al.* (2014); Washington Northern Inland Waters stock: n = 11,036; Southern Puget Sound stock: n = 1,568). The ratio of the Washington Northern Inland Waters stock (0.88) to that of the Southern Puget Sound stock (0.12) was then used to prorate the total modeled exposures in order to estimate acoustic exposures for each of these stocks in the inland waters portion of the Study Area.

As a result of the changes to the harbor seal abundance and haulout assumptions for the Hood Canal stock, for this proposed rulemaking the harbor seal Level B behavioral take request has increased by an additional 417 takes for training (Table 18) and an additional 52,970 takes (Table 21) for testing. The Level A take request has increased an additional 4 takes for training (Table 18) and an additional 61 takes for testing (Table 21).

Take Request

The January 2014 NWTT DEIS/OEIS considered all training and testing activities proposed to occur in the Study Area that have the potential to result in the MMPA defined take of marine mammals. The potential stressors associated with these activities included the following:

- Acoustic (sonar and other active non-impulse sources, explosives, swimmer defense airguns, weapons firing, launch and impact noise, vessel noise, aircraft noise);
- Energy (electromagnetic devices);
- Physical disturbance or strikes (vessels, in-water devices, military expended materials, seafloor devices);
- Entanglement (fiber optic cables, guidance wires, parachutes);
- Ingestion (munitions, military expended materials other than munitions); and
- Secondary stressors (sediments and water quality).

NMFS has determined that two stressors could potentially result in the incidental taking of marine mammals from training and testing activities within the Study Area: (1) Non-impulsive stressors (sonar and other active acoustic sources) and (2) impulsive stressors (explosives). Non-impulsive and impulsive stressors have the potential to result in incidental takes of marine mammals by harassment, injury, or mortality. NMFS also considered the potential for vessel strikes to impact marine mammals, and that assessment is presented below.

Training Activities

A detailed analysis of effects due to marine mammal exposures to impulsive and non-impulsive sources in the Study Area is presented in Chapter 6 of the LOA application. Based on the model and post-model analysis described in Chapter 6 of the LOA application, Table 17 summarizes the Navy's final take request for training activities for a year (a 12-month period) and the summation over a 5-year period (annual events occurring five times and the non-annual event occurring three times). The Civilian Port Defense exercise is a non-

annual event and is analyzed as occurring every other year, or three times during the 5-year period considered in this analysis. Annual totals presented in the tables are the summation of all annual events plus all the proposed non-annual events occurring in a 12-month period as a maximum year.

TABLE 17—SUMMARY OF ANNUAL AND 5-YEAR TAKE REQUESTS FOR NWTT TRAINING ACTIVITIES

MMPA category	Source	Training activities	
		Annual authorization sought	5-Year authorization sought
Level A	Impulsive and Non-Impulsive	11—Species specific data shown in Tables 16 and 17.	55—Species specific data shown in Tables 16 and 17.
Level B	Impulsive and Non-Impulsive	107,459—Species specific data shown in Tables 16 and 17.	533,543—Species specific data shown in Tables 16 and 17.

Impulsive and Non-Impulsive Sources

Table 18 provides the Navy's take request for training activities by species from the acoustic effects modeling estimates. The numbers provided in the annual columns are the totals for a maximum year (*i.e.,* a year in which a Civilian Port Defense Occurs). Table 19 provides the contribution to the maximum year total (1,876 Level B exposures) resulting from the biennial Civilian Port Defense exercise. The 5-year totals presented assume the biennial event would occur three times over the 5-year period (in the first, third, and fifth years). Derivations of the numbers presented in Tables 18 and 19 are described in more detail within Chapter 6 of the LOA application. There are no mortalities predicted for any training activities resulting from the use of impulsive or non-impulsive sources. Values shown in Table 18 also include Level B values from non-annual Civilian Port Defense training events.

TABLE 18—SPECIES-SPECIFIC TAKE REQUESTS FROM MODELING AND POST-MODEL ESTIMATES OF IMPULSIVE AND NON-IMPULSIVE SOURCE EFFECTS FOR ALL TRAINING ACTIVITIES

Species	Stock	Annual		5-Year	
		Level B	Level A	Level B	Level A
North Pacific right whale	Eastern North Pacific	0	0	0	0
Humpback whale	Central North Pacific	0	0	0	0
	California, Oregon, & Washington	12	0	60	0
Blue whale	Eastern North Pacific	5	0	25	0
Fin whale	Northeast Pacific	0	0	0	0
	California, Oregon, & Washington	25	0	125	0
Sei whale	Eastern North Pacific	0	0	0	0
Minke whale	Alaska	0	0	0	0
	California, Oregon, & Washington	18	0	90	0
Gray whale	Eastern North Pacific	6	0	30	0
	Western North Pacific	0	0	0	0
Sperm whale	North Pacific	0	0	0	0
	California, Oregon, & Washington	81	0	405	0
Kogia (spp.)	California, Oregon, & Washington	73	0	365	0
Killer whale	Alaska Resident	0	0	0	0
	Northern Resident	0	0	0	0
	West Coast Transient	9	0	39	0
	East N. Pacific Offshore	13	0	65	0
	East N. Pacific Southern Resident	2	0	6	0
Short-finned pilot whale	California, Oregon, & Washington	0	0	0	0
Short-beaked common dolphin	California, Oregon, & Washington	734	0	3,670	0
Bottlenose dolphin	California, Oregon, & Washington	0	0	0	0
Striped dolphin	California, Oregon, & Washington	22	0	110	0
Pacific white-sided dolphin	North Pacific	0	0	0	0
	California, Oregon, & Washington	3,482	0	17,408	0
Northern right whale dolphin	California, Oregon, & Washington	1,332	0	6,660	0
Risso's dolphin	California, Oregon, & Washington	657	0	3,285	0
Harbor porpoise	Southeast Alaska	0	0	0	0
	Northern OR/WA Coast	35,006	0	175,030	0
	Northern CA/Southern OR	52,509	0	262,545	0
	WA Inland Waters	1,417	1	4,409	5
Dall's porpoise	Alaska	0	0	0	0
	California, Oregon, & Washington	3,732	4	18,188	20
Cuvier's beaked whale	Alaska	0	0	0	0
	California, Oregon, & Washington	353	0	1,765	0
Baird's beaked whale	Alaska	0	0	0	0
	California, Oregon, & Washington	591	0	2,955	0
Mesoplodon beaked whales	California, Oregon, & Washington	1,417	0	7,085	0
Steller sea lion	Eastern U.S.	404	0	1,986	0
Guadalupe fur seal	San Miguel Island	7	0	35	0
California sea lion	U.S. Stock	814	0	4,038	0
Northern fur seal	Eastern Pacific	2,495	0	12,475	0

TABLE 18—SPECIES-SPECIFIC TAKE REQUESTS FROM MODELING AND POST-MODEL ESTIMATES OF IMPULSIVE AND NON-IMPULSIVE SOURCE EFFECTS FOR ALL TRAINING ACTIVITIES—Continued

Species	Stock	Annual		5-Year	
		Level B	Level A	Level B	Level A
	California	37	0	185	0
Northern elephant seal	California Breeding	1,271	0	6,353	0
Harbor seal	Southeast Alaska (Clarence Strait)	0	0	0	0
	OR/WA Coast	0	0	0	0
	California	0	0	0	0
	WA Northern Inland Waters	427	4	1,855	20
	Southern Puget Sound	58	0	252	0
	Hood Canal	452	2	2,054	10

TABLE 19—TRAINING EXPOSURES SPECIFIC TO THE BIENNIAL CIVILIAN PORT DEFENSE EXERCISE

[Values provided for informational purposes and are included in Table 18 species-specific totals]

Species	Stock	Biennial	
		Level B	Level A
North Pacific right whale	Eastern North Pacific	0	0
Humpback whale	Central North Pacific	0	0
	California, Oregon, & Washington	0	0
Blue whale	Eastern North Pacific	0	0
Fin whale	Northeast Pacific	0	0
	California, Oregon, & Washington	0	0
Sei whale	Eastern North Pacific	0	0
Minke whale	Alaska	0	0
	California, Oregon, & Washington	0	0
Gray whale	Eastern North Pacific	0	0
	Western North Pacific	0	0
Sperm whale	North Pacific	0	0
	California, Oregon, & Washington	0	0
Kogia (spp.)	California, Oregon, & Washington	0	0
Killer whale	Alaska Resident	0	0
	Northern Resident	0	0
	West Coast Transient	3	0
	East N. Pacific Offshore	0	0
	East N. Pacific Southern Resident	2	0
Short-finned pilot whale	California, Oregon, & Washington	0	0
Short-beaked common dolphin	California, Oregon, & Washington	0	0
Bottlenose dolphin	California, Oregon, & Washington	0	0
Striped dolphin	California, Oregon, & Washington	0	0
Pacific white-sided dolphin	North Pacific	0	0
	California, Oregon, & Washington	1	0
Northern right whale dolphin	California, Oregon, & Washington	0	0
Risso's dolphin	California, Oregon, & Washington	0	0
Harbor porpoise	Southeast Alaska	0	0
	Northern OR/WA Coast	0	0
	Northern CA/Southern OR	0	0
	WA Inland Waters	1,338	0
Dall's porpoise	Alaska	0	0
	California, Oregon, & Washington	236	0
Cuvier's beaked whale	Alaska	0	0
	California, Oregon, & Washington	0	0
Baird's beaked whale	Alaska	0	0
	California, Oregon, & Washington	0	0
Mesoplodon beaked whales	California, Oregon, & Washington	0	0
Steller sea lion	Eastern U.S.	17	0
Guadalupe fur seal	San Miguel Island	0	0
California sea lion	U.S. Stock	16	0
Northern fur seal	Eastern Pacific	0	0
	California	0	0
Northern elephant seal	California Breeding	1	0
Harbor seal	Southeast Alaska (Clarence Strait)	0	0
	OR/WA Coast	0	0
	California	0	0
	WA Northern Inland Waters	140	0
	Southern Puget Sound	19	0
	Hood Canal	103	0

Vessel Strike

There has never been a vessel strike to marine mammals during any training activities in the Study Area. A detailed analysis of strike data is contained in Section 6.7 (Estimated Take of Large Whales by Navy Vessel Strike) of the LOA application. The Navy does not anticipate vessel strikes to marine mammals within the Study Area, nor were takes by injury or mortality resulting from vessel strike predicted in the Navy's analysis. Therefore, takes by injury or mortality resulting from vessel strikes are not authorized by NMFS in this proposed rule. However, the Navy has proposed measures (see Proposed Mitigation) to mitigate potential impacts to marine mammals from vessel strikes during training activities in the Study Area.

Testing Activities

A detailed analysis of effects due to marine mammal exposures to impulsive and non-impulsive sources in the Study Area is presented in Chapter 6 of the LOA application. Based on the model and post-model analysis described in Chapter 6 of the LOA application, Table 20 summarizes the Navy's final take request for testing activities for an annual (12-month) period and the summation over a 5-year period. There are no non-annual testing events.

TABLE 20—SUMMARY OF ANNUAL AND 5-YEAR TAKE REQUESTS FOR NWTT TESTING ACTIVITIES

MMPA category	Source	Testing activities	
		Annual authorization sought	5-Year authorization sought
Level A	Impulsive and Non-Impulsive.	176—Species specific data shown in Tables 18 and 19.	880—Species specific data shown in Tables 18 and 19.
Level B	Impulsive and Non-Impulsive.	139,815—Species specific data shown in Tables 18 and 19.	699,075—Species specific data shown in Tables 18 and 19.

Impulsive and Non-Impulsive Sources

Table 21 summarizes the Navy's take request for testing activities by species. There are no non-annual testing events. Derivation of these values is described in more detail within Chapter 6 of the LOA application. There are no mortalities predicted for any testing activities based on the analysis of impulsive and non-impulsive sources.

TABLE 21—SPECIES-SPECIFIC TAKE REQUESTS FROM MODELING AND POST-MODEL ESTIMATES OF IMPULSIVE AND NON-IMPULSIVE SOURCE EFFECTS FOR ALL TESTING ACTIVITIES

Species	Stock	Annual		5-Year	
		Level B	Level A	Level B	Level A
North Pacific right whale	Eastern North Pacific	0	0	0	0
Humpback whale	Central North Pacific	1	0	5	0
	California, Oregon, & Washington	44	0	220	0
Blue whale	Eastern North Pacific	6	0	30	0
Fin whale	Northeast Pacific	2	0	10	0
	California, Oregon, & Washington	34	0	170	0
Sei whale	Eastern North Pacific	2	0	10	0
Minke whale	Alaska	0	0	0	0
	California, Oregon, & Washington	18	0	90	0
Gray whale	Eastern North Pacific	11	0	55	0
	Western North Pacific	0	0	0	0
Sperm whale	North Pacific	0	0	0	0
	California, Oregon, & Washington	78	0	390	0
Kogia (spp.)	California, Oregon, & Washington	106	1	530	5
Killer Whale	Alaska Resident	2	0	10	0
	Northern Resident	0	0	0	0
	West Coast Transient	202	0	1,010	0
	East N. Pacific Offshore	22	0	110	0
	East N. Pacific Southern Resident	0	0	0	0
Short-finned pilot whale	California, Oregon, & Washington	0	0	0	0
Short-beaked common dolphin	California, Oregon, & Washington	1,628	0	8,140	0
Bottlenose dolphin	California, Oregon, & Washington	0	0	0	0
Striped dolphin	California, Oregon, & Washington	14	0	70	0
Pacific white-sided dolphin	North Pacific	3	0	15	0
	California, Oregon, & Washington	4,869	0	24,345	0
Northern right whale dolphin	California, Oregon, & Washington	2,038	0	10,190	0
Risso's dolphin	California, Oregon, & Washington	1,154	0	5,770	0
Harbor porpoise	Southeast Alaska	926	0	4,630	0
	Northern OR/WA Coast	17,212	15	86,060	75
	Northern CA/Southern OR	25,819	23	129,095	115
	WA Inland Waters	5,336	6	26,680	30
Dall's porpoise	Alaska	1,200	0	6,000	0
	California, Oregon, & Washington	10,139	43	50,695	215
Cuvier's beaked whale	Alaska	15	0	75	0
	California, Oregon, & Washington	91	0	455	0
Baird's beaked whale	Alaska	25	0	125	0

TABLE 21—SPECIES-SPECIFIC TAKE REQUESTS FROM MODELING AND POST-MODEL ESTIMATES OF IMPULSIVE AND NON-IMPULSIVE SOURCE EFFECTS FOR ALL TESTING ACTIVITIES—Continued

Species	Stock	Annual		5-Year	
		Level B	Level A	Level B	Level A
	California, Oregon, & Washington	149	0	745	0
Mesoplodon beaked whales	California, Oregon, & Washington	369	0	1,845	0
Steller sea lion	Eastern U.S.	504	0	2,520	0
Guadalupe fur seal	San Miguel Island	3	0	15	0
California sea lion	U.S. Stock	2,073	0	10,365	0
Northern fur seal	Eastern Pacific	1,830	0	9,150	0
	California	27	0	135	0
Northern elephant seal	California Breeding	1,325	2	6625	10
Harbor seal	Southeast Alaska (Clarence Strait)	22	0	110	0
	OR/WA Coast	1,655	4	8,275	20
	California	0	0	0	0
	WA Northern Inland Waters	1,448	14	7,240	70
	Southern Puget Sound	196	1	980	5
	Hood Canal	59,217	67	296,085	335

Vessel Strike

There has never been a vessel strike to marine mammals during any testing activities in the Study Area. A detailed analysis of strike data is contained in Section 6.7 (Estimated Take of Large Whales by Navy Vessel Strike) of the LOA application. Testing activities involving vessel movement could mainly occur in the Inland Waters and in Western Behm Canal with some additional testing activities in the offshore region. The majority of vessels used in the Inland Waters and Western Behm Canal are smaller vessels, which are less likely to be involved in a whale strike. The Navy's proposed actions would not result in any appreciable changes in locations or frequency of vessel activity, and there have been no whale strikes during any previous testing activities in the Study Area. The manner in which the Navy has tested would remain consistent with the range of variability observed over the last decade so the Navy does not anticipate vessel strikes would occur within the Study Area during testing events. Further, takes by injury or mortality resulting from vessel strike were not predicted in the Navy's analysis. As such, NMFS is not authorizing take by injury or mortality resulting from vessel strike this proposed rule. However, the Navy has proposed measures (see Proposed Mitigation) to mitigate potential impacts to marine mammals from vessel strikes during testing activities in the Study Area.

Analysis and Negligible Impact Determination

Negligible impact is ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes, alone, is not enough information on which to base an impact determination, as the severity of harassment may vary greatly depending on the context and duration of the behavioral response, many of which would not be expected to have deleterious impacts on the fitness of any individuals. In determining whether the expected takes will have a negligible impact, in addition to considering estimates of the number of marine mammals that might be ''taken'', NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature (*e.g.,* severity) of estimated Level A harassment takes, the number of estimated mortalities, and the status of the species.

The Navy's specified activities have been described based on best estimates of the maximum amount of sonar and other acoustic source use or detonations that the Navy would conduct. There may be some flexibility in that the exact number of hours, items, or detonations may vary from year to year, but take totals are not authorized to exceed the 5-year totals indicated in Tables 17–21. However, it is also worth noting here that while models that incorporate realistic environmental, operational, and biological parameters are the best way to satisfy our need to quantify takes, and are very useful in our analysis (especially where subsets of takes can be pared with factors associated with differential expected levels of severity or duration), due to the inherent variability and uncertainty in model inputs, modeled take estimates are never expected to represent the exact number of animals that will actually be taken, but rather can provide (depending on nature of model) a decent relative understanding of the portion of a population that might be affected and/or the number of repeat takes of individuals on subsequent days that might occur.

The Navy's take request is based on their model and post-model analysis. Generally speaking, and especially with other factors being equal, the Navy and NMFS anticipate more severe effects from takes resulting from exposure to higher received levels (though this is in no way a strictly linear relationship throughout species, individuals, or circumstances) and less severe effects from takes resulting from exposure to lower received levels. The requested number of Level B takes does not equate to the number of individual animals the Navy expects to harass (which is lower), but rather to the instances of take (*i.e.,* exposures above the Level B harassment threshold) that would occur. Additionally, these instances may represent either a very brief exposure (seconds) or, in some cases, longer durations of exposure within a day. Depending on the location, duration, and frequency of activities, along with the distribution and movement of marine mammals, individual animals may be exposed to impulse or non-impulse sounds at or above the Level B harassment threshold on multiple days. However, the Navy is currently unable to estimate the number of individuals that may be taken during training and testing activities. The model results estimate the total number of takes that may occur to a smaller number of

individuals. While the model shows that an increased number of exposures may take place due to an increase in events/activities and ordnance, the types and severity of individual responses to training and testing activities are not expected to change.

It is important to note that, while NMFS does not expect that all of the requested and authorized takes (as shown in Tables 17–21 and based on the acoustic analysis) will actually occur, we nevertheless base our analysis and NID on the maximum number of takes requested and authorized (*i.e.,* not on a lower number of takes anticipated).

Behavioral Harassment

As discussed previously in this document, marine mammals can respond to MFAS/HFAS in many different ways, a subset of which qualifies as harassment (see Behavioral Harassment Section). One thing that the Level B harassment take estimates do not take into account is the fact that most marine mammals will likely avoid strong sound sources to one extent or another. Although an animal that avoids the sound source will likely still be taken in some instances (such as if the avoidance results in a missed opportunity to feed, interruption of reproductive behaviors, etc.), in other cases avoidance may result in fewer instances of take than were estimated or in the takes resulting from exposure to a lower received level than was estimated, which could result in a less severe response. For MFAS/HFAS, the Navy provided information (Table 22) estimating the percentage of behavioral harassment that would occur within the 6-dB bins (without considering mitigation or avoidance). As mentioned above, an animal's exposure to a higher received level is more likely to result in a behavioral response that is more likely to adversely affect the health of the animal. As illustrated below, the majority (about 73 percent, at least for hull-mounted sonar, which is responsible for most of the sonar takes) of calculated takes from MFAS result from exposures between 156 dB and 162 dB. Less than 0.5 percent of the takes are expected to result from exposures above 174 dB.

Specifically, given a range of behavioral responses that may be classified as Level B harassment, to the degree that higher received levels are expected to result in more severe behavioral responses, only a small percentage of the anticipated Level B harassment from Navy activities might necessarily be expected to potentially result in more severe responses, especially when the distance from the source at which the levels below are received is considered (see Table 22). Marine mammals are able to discern the distance of a given sound source, and given other equal factors (including received level), they have been reported to respond more to sounds that are closer (DeRuiter *et al.,* 2013). Further, the estimated number of responses do not reflect either the duration or context of those anticipated responses, some of which will be of very short duration, and other factors should be considered when predicting how the estimated takes may affect individual fitness.

TABLE 22—NON-IMPULSIVE RANGES IN 6-DB BINS AND PERCENTAGE OF BEHAVIORAL HARASSMENTS

Received Level	Sonar Bin MF1 (e.g., SQS–53; ASW Hull Mounted Sonar)		Sonar Bin MF4 (e.g., AQS–22; ASW Dipping Sonar)		Sonar Bin MF5 (e.g., SSQ–62; ASW Sonobuoy)	
	Distance at which levels occur within radius of source (m)	Percentage of behavioral harassments occurring at given levels	Distance at which levels occur within radius of source (m)	Percentage of behavioral harassments occurring at given levels	Distance at which levels occur within radius of source (m)	Percentage of behavioral harassments occurring at given levels
Low Frequency Cetaceans						
120 ≤SPL <126	178,750–156,450	0.00	100,000–92,200	0.00	22,800–15,650	0.00
126 ≤SPL <132	156,450–147,500	0.00	92,200–55,050	0.11	15,650–11,850	0.05
132 ≤SPL <138	147,500–103,700	0.21	55,050–46,550	1.08	11,850–6,950	2.84
138 ≤SPL <144	103,700–97,950	0.33	46,550–15,150	35.69	6,950–3,600	16.04
144 ≤SPL <150	97,950–55,050	13.73	15,150–5,900	26.40	3,600–1,700	33.63
150 ≤SPL <156	55,050–49,900	5.28	5,900–2,700	17.43	1,700–250	44.12
156 ≤SPL <162	49,900–10,700	72.62	2,700–1,500	9.99	250–100	2.56
162 ≤SPL <168	10,700–4,200	6.13	1,500–200	9.07	100–<50	0.76
168 ≤SPL <174	4,200–1,850	1.32	200–100	0.18	<50	0.00
174 ≤SPL <180	1,850–850	0.30	100–<50	0.05	<50	0.00
180 ≤SPL <186	850–400	0.07	<50	0.00	<50	0.00
186 ≤SPL <192	400–200	0.01	<50	0.00	<50	0.00
192 ≤SPL <198	200–100	0.00	<50	0.00	<50	0.00
Mid Frequency Cetaceans						
120 ≤SPL <126	179,400–156,450	0.00	100,000–92,200	0.00	23,413–16,125	0.00
126 ≤SPL <132	156,450–147,500	0.00	92,200–55,050	0.11	16,125–11,500	0.06
132 ≤SPL <138	147,500–103,750	0.21	55,050–46,550	1.08	11,500–6,738	2.56
138 ≤SPL <144	103,750–97,950	0.33	46,550–15,150	35.69	6,738–3,825	13.35
144 ≤SPL <150	97,950–55,900	13.36	15,150–5,900	26.40	3,825–1,713	37.37
150 ≤SPL <156	55,900–49,900	6.12	5,900–2,700	17.43	1,713–250	42.85
156 ≤SPL <162	49,900–11,450	71.18	2,700–1,500	9.99	250–150	1.87
162 ≤SPL <168	11,450–4,350	7.01	1,500–200	9.07	150–<50	1.93
168 ≤SPL <174	4,350–1,850	1.42	200–100	0.18	<50	0.00
174 ≤SPL <180	1,850–850	0.29	100–<50	0.05	<50	0.00
180 ≤SPL <186	850–400	0.07	<50	0.00	<50	0.00
186 ≤SPL <192	400–200	0.01	<50	0.00	<50	0.00
192 ≤SPL <198	200–100	0.00	<50	0.00	<50	0.00

Notes: (1) ASW = anti-submarine warfare, m = meters, SPL = sound pressure level; (2) Odontocete behavioral response function is also used for high-frequency cetaceans, phocid seals, otariid seals and sea lions, and sea otters.

Although the Navy has been monitoring the effects of MFAS/HFAS on marine mammals since 2006, and research on the effects of MFAS is advancing, our understanding of exactly how marine mammals in the Study Area will respond to MFAS/HFAS is still growing. The Navy has submitted reports from more than 60 major exercises across Navy range complexes that indicate no behavioral disturbance was observed. One cannot conclude from these results that marine mammals were not harassed from MFAS/HFAS, as a portion of animals within the area of concern were not seen (especially those more cryptic, deep-diving species, such as beaked whales or *Kogia* spp.), the full series of behaviors that would more accurately show an important change is not typically seen (*i.e.,* only the surface behaviors are observed), and some of the non-biologist watchstanders might not be well-qualified to characterize behaviors. However, one can say that the animals that were observed did not respond in any of the obviously more severe ways, such as panic, aggression, or anti-predator response.

Diel Cycle

As noted previously, many animals perform vital functions, such as feeding, resting, traveling, and socializing on a diel cycle (24-hour cycle). Behavioral reactions to noise exposure (when taking place in a biologically important context, such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multiple-day substantive behavioral reactions and multiple-day anthropogenic activities. For example, just because at-sea exercises last for multiple days does not necessarily mean that individual animals are either exposed to those exercises for multiple days or, further, exposed in a manner resulting in a sustained multiple day substantive behavioral response. Large multi-day Navy exercises typically include assets that travel at high speeds (typically 10–15 knots, or higher) and likely cover large areas that are relatively far from shore, in addition to the fact that marine mammals are moving as well, which would make it unlikely that the same animal could remain in the immediate vicinity of the ship for the entire duration of the exercise. Additionally, the Navy does not necessarily operate active sonar the entire time during an exercise. While it is certainly possible that these sorts of exercises could overlap with individual marine mammals multiple days in a row at levels above those anticipated to result in a take, because of the factors mentioned above, it is considered not to be likely for the majority of takes, does not mean that a behavioral response is necessarily sustained for multiple days, and still necessitates the consideration of likely duration and context to assess any effects on the individual's fitness.

Durations for non-impulsive activities utilizing tactical sonar sources vary and are fully described in Appendix A of the January 2014 DEIS/OEIS. ASW training and testing exercises using MFAS/HFAS generally last for 2–16 hours, and may have intervals of non-activity in between. Because of the need to train in a large variety of situations, the Navy does not typically conduct successive MTEs or other ASW exercises in the same locations. Given the average length of ASW exercises (times of continuous sonar use) and typical vessel speed, combined with the fact that the majority of the cetaceans in the Study Area would not likely remain in an area for successive days, it is unlikely that an animal would be exposed to MFAS/HFAS at levels likely to result in a substantive response that would then be carried on for more than one day or on successive days. There are no MTEs proposed for NWTT activities.

Most planned explosive exercises are of a short duration (1–6 hours). Although explosive exercises may sometimes be conducted in the same general areas repeatedly, because of their short duration and the fact that they are in the open ocean and animals can easily move away, it is similarly unlikely that animals would be exposed for long, continuous amounts of time.

TTS

As mentioned previously, TTS can last from a few minutes to days, be of varying degree, and occur across various frequency bandwidths, all of which determine the severity of the impacts on the affected individual, which can range from minor to more severe. The TTS sustained by an animal is primarily classified by three characteristics:

1. Frequency—Available data (of mid-frequency hearing specialists exposed to mid- or high-frequency sounds; Southall *et al.,* 2007) suggest that most TTS occurs in the frequency range of the source up to one octave higher than the source (with the maximum TTS at ½ octave above). The more powerful MF sources used have center frequencies between 3.5 and 8 kHz and the other unidentified MF sources are, by definition, less than 10 kHz, which suggests that TTS induced by any of these MF sources would be in a frequency band somewhere between approximately 2 and 20 kHz. There are fewer hours of HF source use and the sounds would attenuate more quickly, plus they have lower source levels, but if an animal were to incur TTS from these sources, it would cover a higher frequency range (sources are between 20 and 100 kHz, which means that TTS could range up to 200 kHz; however, HF systems are typically used less frequently and for shorter time periods than surface ship and aircraft MF systems, so TTS from these sources is even less likely). TTS from explosives would be broadband. Vocalization data for each species, which would inform how TTS might specifically interfere with communications with conspecifics, was provided in the LOA application.

2. Degree of the shift (*i.e.,* by how many dB the sensitivity of the hearing is reduced)—Generally, both the degree of TTS and the duration of TTS will be greater if the marine mammal is exposed to a higher level of energy (which would occur when the peak dB level is higher or the duration is longer). The threshold for the onset of TTS was discussed previously in this document. An animal would have to approach closer to the source or remain in the vicinity of the sound source appreciably longer to increase the received SEL, which would be difficult considering the Lookouts and the nominal speed of an active sonar vessel (10–15 knots). In the TTS studies, some using exposures of almost an hour in duration or up to 217 SEL, most of the TTS induced was 15 dB or less, though Finneran *et al.* (2007) induced 43 dB of TTS with a 64-second exposure to a 20 kHz source. However, MFAS emits a nominal ping every 50 seconds, and incurring those levels of TTS is highly unlikely.

3. Duration of TTS (recovery time)—In the TTS laboratory studies, some using exposures of almost an hour in duration or up to 217 SEL, almost all individuals recovered within 1 day (or less, often in minutes), although in one study (Finneran *et al.,* 2007), recovery took 4 days.

Based on the range of degree and duration of TTS reportedly induced by exposures to non-pulse sounds of energy higher than that to which free-swimming marine mammals in the field are likely to be exposed during MFAS/HFAS training exercises in the Study Area, it is unlikely that marine mammals would ever sustain a TTS

from MFAS that alters their sensitivity by more than 20 dB for more than a few days (and any incident of TTS would likely be far less severe due to the short duration of the majority of the exercises and the speed of a typical vessel). Also, for the same reasons discussed in the Diel Cycle section, and because of the short distance within which animals would need to approach the sound source, it is unlikely that animals would be exposed to the levels necessary to induce TTS in subsequent time periods such that their recovery is impeded. Additionally, though the frequency range of TTS that marine mammals might sustain would overlap with some of the frequency ranges of their vocalization types, the frequency range of TTS from MFAS (the source from which TTS would most likely be sustained because the higher source level and slower attenuation make it more likely that an animal would be exposed to a higher received level) would not usually span the entire frequency range of one vocalization type, much less span all types of vocalizations or other critical auditory cues. If impaired, marine mammals would typically be aware of their impairment and are sometimes able to implement behaviors to compensate (see Acoustic Masking or Communication Impairment section), though these compensations may incur energetic costs.

Acoustic Masking or Communication Impairment

Masking only occurs during the time of the signal (and potential secondary arrivals of indirect rays), versus TTS, which continues beyond the duration of the signal. Standard MFAS nominally pings every 50 seconds for hull-mounted sources. For the sources for which we know the pulse length, most are significantly shorter than hull-mounted active sonar, on the order of several microseconds to tens of microseconds. For hull-mounted active sonar, though some of the vocalizations that marine mammals make are less than one second long, there is only a 1 in 50 chance that they would occur exactly when the ping was received, and when vocalizations are longer than one second, only parts of them are masked. Alternately, when the pulses are only several microseconds long, the majority of most animals' vocalizations would not be masked. Masking effects from MFAS/HFAS are expected to be minimal. If masking or communication impairment were to occur briefly, it would be in the frequency range of MFAS, which overlaps with some marine mammal vocalizations; however, it would likely not mask the entirety of any particular vocalization, communication series, or other critical auditory cue, because the signal length, frequency, and duty cycle of the MFAS/HFAS signal does not perfectly mimic the characteristics of any marine mammal's vocalizations.

PTS, Injury, or Mortality

NMFS believes that many marine mammals would deliberately avoid exposing themselves to the received levels of active sonar necessary to induce injury by moving away from or at least modifying their path to avoid a close approach. Additionally, in the unlikely event that an animal approaches the sonar vessel at a close distance, NMFS believes that the mitigation measures (*i.e.,* shutdown/powerdown zones for MFAS/HFAS) would typically ensure that animals would not be exposed to injurious levels of sound. As discussed previously, the Navy utilizes both aerial (when available) and passive acoustic monitoring (during all ASW exercises) in addition to watchstanders on vessels to detect marine mammals for mitigation implementation.

If a marine mammal is able to approach a surface vessel within the distance necessary to incur PTS, the likely speed of the vessel (nominal 10–15 knots) would make it very difficult for the animal to remain in range long enough to accumulate enough energy to result in more than a mild case of PTS. As mentioned previously and in relation to TTS, the likely consequences to the health of an individual that incurs PTS can range from mild to more serious, depending upon the degree of PTS and the frequency band it is in, and many animals are able to compensate for the shift, although it may include energetic costs.

As discussed previously, marine mammals (especially beaked whales) could potentially respond to MFAS at a received level lower than the injury threshold in a manner that indirectly results in the animals stranding. The exact mechanism of this potential response, behavioral or physiological, is not known. When naval exercises have been associated with strandings in the past, it has typically been when three or more vessels are operating simultaneously, in the presence of a strong surface duct, and in areas of constricted channels, semi-enclosed areas, and/or steep bathymetry. A combination of these environmental and operational parameters is not present in the NWTT action. When this is combined with consideration of the number of hours of active sonar training that will be conducted and the nature of the exercises—which do not typically include the use of multiple hull-mounted sonar sources—we believe that the probability is small that this will occur. Furthermore, given that there has never been a stranding in the Study Area associated with sonar use and based on the number of occurrences where strandings have been definitively associated with military sonar versus the number of hours of active sonar training that have been conducted, we believe that the probability is small that this will occur as a result of the Navy's proposed training and testing activities. Lastly, an active sonar shutdown protocol for strandings involving live animals milling in the water minimizes the chances that these types of events turn into mortalities.

As stated previously, there have been no recorded Navy vessel strikes of any marine mammals during training or testing in the NWTT Study Area to date, nor were takes by injury or mortality resulting from vessel strike predicted in the Navy's acoustic effects analysis.

Species/Group Specific Analysis

In the discussions below, the ''acoustic analysis'' refers to the Navy's model results and post-model analysis. The Navy performed a quantitative analysis to estimate the number of marine mammals that could be harassed by acoustic sources or explosives used during Navy training and testing activities. Inputs to the quantitative analysis included marine mammal density estimates; marine mammal depth occurrence distributions; oceanographic and environmental data; marine mammal hearing data; and criteria and thresholds for levels of potential effects. Marine mammal densities used in the model may overestimate actual densities when species data is limited and for species with seasonal migrations (*e.g.,* humpbacks, blue whales, sei whales, gray whales). The quantitative analysis consists of computer modeled estimates and a post-model analysis (which considers the potential for avoidance and highly effective mitigation to prevent Level A harassments) to determine the number of potential harassments. The model calculates sound energy propagation from sonars, other active acoustic sources, and explosives during naval activities; the sound or impulse received by animat dosimeters representing marine mammals distributed in the area around the modeled activity; and whether the sound or impulse received by a marine mammal exceeds the thresholds for effects. The model estimates are then

further analyzed and adjusted to consider animal avoidance and implementation of mitigation measures, resulting in final estimates of effects due to Navy training and testing.

Although this more complex computer modeling approach accounts for various environmental factors affecting acoustic propagation, the current software tools do not consider the likelihood that a marine mammal would attempt to avoid repeated exposures to a sound or avoid an area of intense activity where a training or testing event may be focused. Additionally, the software tools do not consider the implementation of mitigation (*e.g.,* stopping sonar transmissions when a marine mammal is within a certain distance of a ship or range clearance prior to detonations). In both of these situations, naval activities are modeled as though an activity would occur regardless of proximity to marine mammals and without any horizontal movement by the animal away from the sound source or human activities (*e.g.,* without accounting for likely animal avoidance). The initial model results overestimate the number of takes (as described previously). The final step of the quantitative analysis of acoustic effects is to consider the implementation of mitigation and the possibility that marine mammals would avoid continued or repeated injurious sound exposures, thus, reducing Level A takes. All adjusted effects resulting from likely avoidance behaviors and implementation of highly effective mitigation are quantified (added) as Level B harassment (TTS) and are part of the requested annual effects to marine mammals.

It is important to note that adjustments to take estimates as a result of implemented mitigation were only applied to those events having a very high likelihood of detecting marine mammals. It is also important to note that the Navy's take estimates represent the total number of takes and not the number of individuals taken, as a single individual may be taken multiple times over the course of a year. NMFS provided input to the Navy on this process and the Navy's qualitative analysis is described in detail in Chapter 6 of their LOA application. (*http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm*).

Predicted harassment of marine mammals from sonar and other active acoustic sources and explosions during annual training and testing activities are shown in Tables 18–21. The acoustic analysis predicts the majority of marine mammal species in the Study Area would not be exposed to explosive (impulse) sources associated with training and testing activities, which would exceed the current impact thresholds (Table 4). Only harbor porpoise, Dall's porpoise, and Northern elephant seal are predicted to have exposures that would exceed the current impact thresholds for explosives, as presented in the following subsections.

The analysis below may in some cases (*e.g.,* mysticetes, porpoises, pinnipeds) address species collectively if they occupy the same functional hearing group (*i.e.,* low, mid, and high-frequency cetaceans and pinnipeds in water), have similar hearing capabilities, and/or are known to generally behaviorally respond similarly to acoustic stressors. Where there are meaningful differences between species in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they will either be described within the section or the species will be included as a separate sub-section. See the Brief Background on Sound section earlier in this proposed rule for a description of marine mammal functional hearing groups as originally designated by Southall *et al.* (2007).

Mysticetes—The Navy's acoustic analysis predicts that 184 instances of Level B harassment of mysticete whales may occur in the Study Area each year from sonar and other active acoustic stressors during training and testing activities. Species-specific Level B take estimates are as follows: 57 humpback whales (Central North Pacific and California/Oregon/Washington stocks); 11 blue whales (Eastern North Pacific stock); 61 fin whales (Northeast Pacific and California/Oregon/Washington stocks); 2 sei whales (Eastern North Pacific stock); 36 minke whales (Alaska and California/Oregon/Washington stocks); and 17 gray whales (Eastern North Pacific and Western North Pacific stocks). Based on the distribution information presented in the LOA application, it is highly unlikely that North Pacific right whales would be encountered in the Study Area during events involving use of sonar and other active acoustic sources. The acoustic analysis did not predict any takes of North Pacific right whales, and NMFS is not authorizing any takes of this species. Of these species, humpback (This species is being considered by NMFS for removal or down-listing from the U.S. Endangered Species List [NMFS, 2009, 2013a; Bettridge *et al.* 2015; NOAA, 2015b]), blue, fin, and sei whales are listed as endangered under the ESA and depleted under the MMPA.

These exposure estimates represent a limited number of takes relative to population estimates for all mysticete stocks in the Study Area (Table 9). When the numbers of behavioral takes are compared to the estimated stock abundance and if one assumes that each take happens to a separate animal, less than 20 percent of each of these stocks would be behaviorally harassed during the course of a year. More likely, fewer individuals would be taken, but a subset would be taken more than one time per year.

Level B harassment takes are anticipated to be in the form of TTS and behavioral reactions and no injurious takes of humpback, blue, fin, or sei whales from sonar and other active acoustic stressors or explosives are expected. The majority of acoustic effects to mysticetes from sonar and other active sound sources during training activities would be primarily from anti-submarine warfare events involving surface ships and hull mounted sonar. Most Level B harassments to mysticetes from sonar would result from received levels less than 158 dB SPL. Recovery from a threshold shift (TTS) can take a few minutes to a few days (*i.e.,* there is recovery), depending on the severity of the initial shift; however, NMFS does not anticipate TTS of a long duration or severe degree to occur as a result of exposure to MFAS/HFAS in the Study Area. Threshold shifts do not necessarily affect all hearing frequencies equally, so some threshold shifts may not interfere with an animal's of biologically relevant sounds. Most low-frequency (mysticetes) cetaceans observed in studies usually avoided sound sources at levels of less than or equal to 160 dB re 1µPa. Mysticetes that are exposed to sonar and other active acoustic sources may react by alerting, ignoring the stimulus, changing their behaviors or vocalizations, or avoiding the area by swimming away or diving (Richardson, 1995; Nowacek, 2007; Southall *et al.,* 2007).

Specific to U.S. Navy systems using low frequency sound, studies were undertaken in 1997–98 pursuant to the Navy's Low Frequency Sound Scientific Research Program. These studies found only short-term responses to low frequency sound by mysticetes (fin, blue, and humpback), including changes in vocal activity and avoidance of the source vessel (Clark, 2001; Miller *et al.,* 2000; Croll *et al.,* 2001; Fristrup *et al.,* 2003; Nowacek *et al.,* 2007). Baleen whales exposed to moderate low-frequency signals demonstrated no variation in foraging activity (Croll *et al.,* 2001). Low-frequency signals of the

Acoustic Thermometry of Ocean Climate sound source were not found to affect dive times of humpback whales in Hawaiian waters (Frankel and Clark, 2000).

Specific to mid-frequency sounds, studies by Melcón *et al.* (2012) in the Southern California Bight found that the likelihood of blue whale low-frequency calling (usually associated with feeding behavior) decreased with an increased level of mid-frequency sonar, beginning at a SPL of approximately 110–120 dB re 1 µPa. However, it is not known whether the lower rates of calling actually indicated a reduction in feeding behavior or social contact since the study used data from remotely deployed, passive acoustic monitoring buoys. Preliminary results from the 2010–2011 field season of an ongoing behavioral response study in Southern California waters indicated that in some cases and at low received levels, tagged blue whales responded to mid-frequency sonar but that those responses were mild and there was a quick return to their baseline activity (Southall *et al.,* 2012b). Blue whales responded to a mid-frequency sound source, with a source level between 160 and 210 dB re 1 µPa at 1 m and a received sound level up to 160 dB re 1 µPa, by exhibiting generalized avoidance responses and changes to dive behavior during controlled exposure experiments (CEE) (Goldbogen *et al.,* 2013). However, reactions were not consistent across individuals based on received sound levels alone, and likely were the result of a complex interaction between sound exposure factors such as proximity to sound source and sound type (mid-frequency sonar simulation vs. pseudo-random noise), environmental conditions, and behavioral state. Surface feeding whales did not show a change in behavior during CEEs, but deep feeding and non-feeding whales showed temporary reactions that quickly abated after sound exposure. Distances of the sound source from the whales during CEEs were sometimes less than a mile. Furthermore, the more dramatic reactions reported by Goldbogen *et al.* (2013) were from non-sonar like signals, a pseudorandom noise that could likely have been a novel signal to blue whales. The preliminary findings from Goldbogen *et al.* (2013) and Melcón *et al.* (2012) are consistent with the Navy's criteria and thresholds for predicting behavioral effects to mysticetes from sonar and other active acoustic sources used in the quantitative acoustic effects analysis for NWTT. The behavioral response function predicts a probability of a substantive behavioral reaction for individuals exposed to a received SPL of 120 dB re 1 µPa or greater, with an increasing probability of reaction with increased received level as demonstrated in Melcón *et al.* (2012).

High-frequency systems are not within mysticetes' ideal hearing range and it is unlikely that they would cause a significant behavioral reaction resulting in takes.

Overall, the number of predicted behavioral reactions is low and occasional behavioral reactions are unlikely to cause long-term consequences for individual animals or populations. The implementation of mitigation and the sightability of mysticetes (due to their large size) reduces the potential for a significant behavioral reaction or a threshold shift to occur. Furthermore, there is no designated critical habitat for mysticetes in the NWTT Study Area. There are also no known specific breeding or calving areas for mysticete species within the Study Area. Some biologically-important mysticete feeding and migration areas (Northern Puget Sound Feeding Area for gray whales; Northbound Migration Phase A for gray whales; Northbound Migration Phase B for gray whales; Potential Presence Migration Area for gray whales; Northern Washington Feeding Area for humpback whales; Stonewall and Heceta Bank Feeding Area for humpback whales; Cape Blanco and Orford Reef Feeding Area for gray whale; and Point St. George Feeding Area for gray whales) may overlap slightly with the Study Area. However, a review of the BIAs for humpback whales and gray whales against areas where most acoustic activities are conducted in the Study Area (especially those that involve ASW hull-mounted sonar, sonobuoys, and use of explosive munitions) identified that there is no spatial overlap. The overall risk to species in these areas has been preliminarily determined to be low or biologically insignificant, in part due to the generally infrequent, temporally and spatially variable, and extreme offshore nature of sonar-related activities and sound propagation relative to the more coastally distributed biologically important areas; the probability that propagated receive levels within these areas would be relatively low in terms of behavioral criteria (Debich *et al.,* 2014; U.S. Department of the Navy, 2013d); the likelihood of TTS or PTS sound levels being extremely low; and the overall application of Navy mitigation procedures for marine mammals sighted within prescribed mitigation zones if such activities were to occur in or near these areas. If additional biologically important areas are identified by NMFS after finalization of this rule and the Navy's NWTT EIS/OEIS, the Navy and NMFS will use the Adaptive Management process to assess whether any additional mitigation should be considered in those areas. Consequently, the NWTT activities are not expected to adversely impact annual rates of recruitment or survival of mysticete whales.

There has never been a vessel strike to a whale during any active training or testing activities in the Study Area. A detailed analysis of strike data is contained in Chapter 6 (Section 6.7, Estimated Take of Large Whales by Navy Vessel Strike) of the LOA application. The Navy and NMFS do not anticipate vessel strikes to any marine mammals during training or testing activities within the Study Area, nor were takes by injury or mortality resulting from vessel strike predicted in the Navy's analysis. Therefore, NMFS is not authorizing mysticete takes (by injury or mortality) from vessel strikes during the 5-year period of the NWTT regulations.

Sperm Whales—The Navy's acoustic analysis predicts that 159 instances of Level B harassment of sperm whales (California/Oregon/Washington stock) may occur in the Study Area each year from sonar or other active acoustic stressors during training and testing activities. These Level B takes are anticipated to be in the form of TTS and behavioral reactions and no injurious takes of sperm whales from sonar and other active acoustic stressors or explosives are requested or proposed for authorization. Sperm whales have shown resilience to acoustic and human disturbance, although they may react to sound sources and activities within a few kilometers. Sperm whales that are exposed to activities that involve the use of sonar and other active acoustic sources may alert, ignore the stimulus, avoid the area by swimming away or diving, or display aggressive behavior (Richardson, 1995; Nowacek, 2007; Southall *et al.,* 2007). Some (but not all) sperm whale vocalizations might overlap with the MFAS/HFAS TTS frequency range, which could temporarily decrease an animal's sensitivity to the calls of conspecifics or returning echolocation signals. However, as noted previously, NMFS does not anticipate TTS of a long duration or severe degree to occur as a result of exposure to MFAS/HFAS. Recovery from a threshold shift (TTS) can take a few minutes to a few days, depending on the exposure duration, sound exposure level, and the magnitude of the initial shift, with

larger threshold shifts and longer exposure durations requiring longer recovery times (Finneran *et al.,* 2005; Mooney *et al.,* 2009a; Mooney *et al.,* 2009b; Finneran and Schlundt, 2010). Large threshold shifts are not anticipated for these activities because of the unlikelihood that animals will remain within the ensonified area (due to the short duration of the majority of exercises, the speed of the vessels, and the short distance within which the animal would need to approach the sound source) at high levels for the duration necessary to induce larger threshold shifts. Threshold shifts do not necessarily affect all hearing frequencies equally, so some threshold shifts may not interfere with an animal's hearing of biologically relevant sounds. No sperm whales are predicted to be exposed to MFAS/HFAS sound levels associated with PTS or injury.

The majority of Level B takes are expected to be in the form of mild responses. Relative to the population size (stock abundance estimates are shown in Table 9), this activity is anticipated to result only in a limited number of Level B harassment takes. When the number of behavioral takes is compared to the estimated stock abundance and if one assumes that each take happens to a separate animal, less than 17 percent of the California/Oregon/Washington stock would be behaviorally harassed during the course of a year. More likely, fewer individuals would be taken, but a subset would be taken more than one time per year. Overall, the number of predicted behavioral reactions are unlikely to cause long-term consequences for individual animals or populations. The NWTT activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors for sperm whales. Consequently, the activities are not expected to adversely impact annual rates of recruitment or survival of sperm whales. Sperm whales are listed as depleted under the MMPA and endangered under the ESA; however, there is no designated critical habitat in the Study Area.

There has never been a vessel strike to a sperm whale during any active training or testing activities in the Study Area. A detailed analysis of strike data is contained in Chapter 6 (Section 6.7, Estimated Take of Large Whales by Navy Vessel Strike) of the LOA application. The Navy and NMFS do not anticipate vessel strikes to any marine mammals during training or testing activities within the Study Area, nor were takes by injury or mortality resulting from vessel strikes predicted in the Navy's analysis. Therefore, NMFS is not authorizing sperm whale takes (by injury or mortality) from vessel strikes during the 5-year period of the NWTT regulations.

Porpoises—The Navy's acoustic analysis predicts that 15,071 instances of Level B harassment of Dall's porpoises (Alaska and California/Oregon/Washington stocks) and 138,225 instances of Level B harassment of harbor porpoises (Southeast Alaska, Northern Oregon/Washington Coast, Northern California/Southern Oregon, and Washington Inland Waters stocks) (mainly behavioral reaction) may occur each year from sonar and other active acoustic stressors and explosives associated with training and testing activities in the Study Area. These estimates represent the total number of exposures and not necessarily the number of individuals exposed, as a single individual may be exposed multiple times over the course of a year. Behavioral responses can range from a mild orienting response, or a shifting of attention, to flight and panic (Richardson, 1995; Nowacek, 2007; Southall *et al.,* 2007).

Acoustic analysis (factoring in the post-model correction for avoidance and mitigation) also predicted that 47 Dall's porpoises and 45 harbor porpoises might be exposed to sound levels likely to result in PTS or injury (Level A harassment) from mainly sonar and other active acoustic stressors, and explosives. In the case of all explosive exercises, it is worth noting that the amount of explosive and acoustic energy entering the water, and therefore the effects on marine mammals, may be overestimated, as many explosions actually occur upon impact with above-water targets. However, sources such as these were modeled as exploding at 1-meter depth. Furthermore, in the case of all explosive exercises, the exclusion zones are considerably larger than the estimated distance at which an animal would be exposed to injurious sounds or pressure waves.

Animals that do experience hearing loss (TTS or PTS) may have reduced ability to detect relevant sounds such as predators, prey, or social vocalizations. Some porpoise vocalizations might overlap with the MFAS/HFAS TTS frequency range (2–20 kHz). It is worth noting that TTS in the range induced by MFAS/HFAS would reduce sensitivity in the band that killer whales (a potential predator) click and echolocate in. Recovery from a threshold shift (TTS; partial hearing loss) can take a few minutes to a few days, depending on the exposure duration, sound exposure level, and the magnitude of the initial shift, with larger threshold shifts and longer exposure durations requiring longer recovery times (Finneran *et al.,* 2005; Mooney *et al.,* 2009a; Mooney *et al.,* 2009b; Finneran and Schlundt, 2010). More severe shifts may not fully recover and thus would be considered PTS. However, large degrees of PTS are not anticipated for these activities because of the unlikelihood that animals will remain within the ensonified area (due to the short duration of the majority of exercises, the speed of the vessels, and the short distance within which the animal would need to approach the sound source) at high levels for the duration necessary to induce larger threshold shifts. Threshold shifts do not necessarily affect all hearing frequencies equally, so some threshold shifts may not interfere with an animal hearing biologically relevant sounds. The likely consequences to the health of an individual that incurs PTS can range from mild to more serious, depending upon the degree of PTS and the frequency band it is in, and many animals are able to compensate for the shift, although it may include energetic costs. Furthermore, likely avoidance of intense activity and sound coupled with mitigation measures would further reduce the potential for severe PTS exposures to occur. If a marine mammal is able to approach a surface vessel within the distance necessary to incur PTS, the likely speed of the vessel (nominal 10–15 knots) would make it very difficult for the animal to remain in range long enough to accumulate enough energy to result in more than a mild case of PTS.

Harbor porpoises have been observed to be especially sensitive to human activity (Tyack *et al.,* 2011; Pirotta *et al.,* 2012). The information currently available regarding harbor porpoises suggests a very low threshold level of response for both captive (Kastelein *et al.,* 2000; Kastelein *et al.,* 2005) and wild (Johnston, 2002) animals. Southall *et al.* (2007) concluded that harbor porpoises are likely sensitive to a wide range of anthropogenic sounds at low received levels (~90 to 120 dB). Research and observations of harbor porpoises for other locations show that this small species is wary of human activity and will display profound avoidance behavior for anthropogenic sound sources in many situations at levels down to 120 dB re 1 μPa (Southall, 2007). Harbor porpoises routinely avoid and swim away from large motorized vessels (Barlow *et al.,* 1988; Evans *et al.,* 1994; Palka and Hammond, 2001; Polacheck and

Thorpe, 1990). The vaquita, which is closely related to the harbor porpoise in the Study Area, appears to avoid large vessels at about 2,995 ft. (913 m) (Jaramillo-Legorreta *et al.,* 1999). The assumption is that the harbor porpoise would respond similarly to large Navy vessels, possibly prior to commencement of sonar or explosive activity (*i.e.,* pre-activity avoidance). Harbor porpoises may startle and temporarily leave the immediate area of the training or testing until after the event ends. Since a large proportion of training and testing activities occur within harbor porpoise habitat in the Study Area and given their very low behavioral threshold, predicted effects are more likely than with most other odontocetes, especially at closer ranges (within a few kilometers). Since this species is typically found in nearshore and inshore habitats, resident animals that are present throughout the Study Area could receive multiple exposures over a short period of time year round. As mentioned earlier in the Analysis and Negligible Impact Determination section, we anticipate more severe effects from takes when animals are exposed to higher received levels. Animals that do not exhibit a significant behavioral reaction would likely recover from any incurred costs, which reduces the likelihood of long-term consequences, such as reduced fitness, for the individual or population.

Stock abundance estimates for Dall's and harbor porpoises are shown in Table 9. When the numbers of takes for Dall's porpoise are compared to the estimated stock abundances and if one assumes that each take happens to a separate animal, approximately 30 percent of the Alaska stock and less than 2 percent of the California/Oregon/Washington stock would be harassed (behaviorally) during the course of a year. More likely, fewer individuals are harassed, but a subset are harassed more than one time during the course of the year. The number of harbor porpoises—in particular, Northern Oregon/Washington Coast and Northern California/Southern Oregon stocks—behaviorally harassed by exposure to MFAS/HFAS in the Study Area is higher than the other species (and, in fact, suggests that every member of the stock could potentially be taken by Level B harassment multiple times, although it is more likely that fewer individuals are harassed but a subset are harassed more than one time during the course of the year) because of the low Level B harassment threshold (we assume for the purpose of estimating take that all harbor porpoises exposed to 120 dB or higher MFAS/HFAS will be taken by Level B behavioral harassment), which essentially makes the ensonified area of effects significantly larger than for the other species. However, the fact that the threshold is a step function and not a curve (and assuming uniform density) means that the vast majority of the takes occur in the very lowest levels that exceed the threshold (it is estimated that approximately 80 percent of the takes are from exposures to 120 dB to 126 dB), which means that anticipated behavioral effects are not expected to be severe (*e.g.,* temporary avoidance). As mentioned above, an animal's exposure to a higher received level is more likely to result in a behavioral response that is more likely to adversely affect the health of an animal. ASW training and testing exercises using MFAS/HFAS generally last for 2–16 hours, and may have intervals of non-activity in between. In addition, the Navy does not typically conduct successive MTEs (no MTEs are proposed for NWTT) or other ASW exercises in the same locations. Given the average length of ASW exercises (times of continuous sonar use) and typical vessel speed, combined with the fact that the majority of the harbor porpoises in the Study Area would not likely remain in an area for successive days, it is unlikely that an animal would be exposed to MFAS/HFAS at levels likely to result in a substantive response (*e.g.,* interruption of feeding) that would then be carried on for more than one day or on successive days. Thompson *et al.* (2013) showed that seismic surveys conducted over a 10-day period in the North Sea did not result in the broad-scale displacement of harbor porpoises away from preferred habitat. The harbor porpoises were observed to leave the area at the onset of survey, but returned within a few hours, and the overall response of the porpoises decreased over the 10-day period.

The harbor porpoise is a common species in the nearshore coastal waters of the Study Area year-round (Barlow, 1988; Green *et al.,* 1992; Osmek *et al.,* 1996, 1998; Forney and Barlow, 1998; Carretta *et al.,* 2009). Since 1999, Puget Sound Ambient Monitoring Program data and stranding data documented increasing numbers of harbor porpoise in Puget Sound, indicating that the species may be returning to the area (Nysewander, 2008; Washington Department of Fish and Wildlife, 2008; Jeffries, 2013a). Sightings in northern Hood Canal (north of the Hood Canal Bridge) have increased in recent years (Calambokidis, 2010). Harbor porpoise continue to inhabit the waters of Hood Canal (including Dabob Bay), which has for decades served as the location for training and testing events using sonar and other active acoustic sources.

Considering the information above, the predicted effects to Dall's and harbor porpoises are unlikely to cause long-term consequences for individual animals or the population. The NWTT activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors for Dall's and harbor porpoises. Pacific stocks of Dall's and harbor porpoises are not listed as depleted under the MMPA. Consequently, the activities are not expected to adversely impact annual rates of recruitment or survival of porpoises.

Pygmy and Dwarf Sperm Whales (Kogia spp.)—Due to the difficulty in differentiating these two species at sea, an estimate of the effects on the two species have been combined. The Navy's acoustic analysis predicts that 179 instances of Level B harassment (TTS and behavioral reaction) of the California/Oregon/Washington stock of *Kogia* spp. may occur each year from sonar and other active acoustic stressors associated with training and testing activities in the Study Area. The Navy's acoustics analysis (factoring in the post-model correction for avoidance and mitigation) also indicates that 1 exposure of *Kogia* to sound levels from non-impulsive acoustic sources likely to result in level A harassment (PTS) may occur during testing activities in the Study Area. Stock abundance estimates for California/Oregon/Washington stocks of *Kogia* spp. are shown in Table 9. Relative to population size these represent only a limited number of takes if one assumes that each take happens to a separate animal. More likely, fewer individuals would be taken, but a subset would be taken more than one time per year.

Recovery from a threshold shift (TTS; partial hearing loss) can take a few minutes to a few days, depending on the exposure duration, sound exposure level, and the magnitude of the initial shift, with larger threshold shifts and longer exposure durations requiring longer recovery times (Finneran *et al.,* 2005; Mooney *et al.,* 2009a; Mooney *et al.,* 2009b; Finneran and Schlundt, 2010). PTS would not fully recover. However, large degrees of PTS are not anticipated for these activities because of the unlikelihood that animals will remain within the ensonified area (due to the short duration of the majority of exercises, the speed of the vessels, and the short distance within which the

animal would need to approach the sound source) at high levels for the duration necessary to induce larger threshold shifts. Threshold shifts do not necessarily affect all hearing frequencies equally, so some threshold shifts may not interfere with an animal hearing biologically relevant sounds. The likely consequences to the health of an individual that incurs PTS can range from mild to more serious, depending upon the degree of PTS and the frequency band it is in, and many animals are able to compensate for the shift, although it may include energetic costs. Furthermore, likely avoidance of intense activity and sound coupled with mitigation measures would further reduce the potential for severe PTS exposures to occur. If a marine mammal is able to approach a surface vessel within the distance necessary to incur PTS, the likely speed of the vessel (nominal 10–15 knots) would make it very difficult for the animal to remain in range long enough to accumulate enough energy to result in more than a mild case of PTS.

Some *Kogia* spp. vocalizations might overlap with the MFAS/HFAS TTS frequency range (2–20 kHz), but the limited information for *Kogia* spp. indicates that their clicks are at a much higher frequency and that their maximum hearing sensitivity is between 90 and 150 kHz. It is worth noting that TTS in the range induced by MFAS would reduce sensitivity in the band that killer whales (a potential predator) click and echolocate in. However, as noted previously, NMFS does not anticipate TTS of a long duration or severe degree to occur as a result of exposure to MFA/HFAS.

Research and observations on *Kogia* spp. are limited. These species tend to avoid human activity and presumably anthropogenic sounds. Pygmy and dwarf sperm whales may startle and leave the immediate area of activity, reducing potential impacts. Pygmy and dwarf sperm whales have been observed to react negatively to survey vessels or low altitude aircraft by quick diving and other avoidance maneuvers, and none were observed to approach vessels (Wursig *et al.,* 1998). Based on their tendency to avoid acoustic stressors (*e.g.,* quick diving and other vertical avoidance maneuvers) coupled with the short duration and intermittent nature (*e.g.,* sonar pings during ASW activities occur about every 50 seconds) of the majority of training and testing exercises and the speed of the Navy vessels involved, it is unlikely that animals would receive multiple exposures over a short period of time, allowing animals to recover lost resources (*e.g.,* food) or opportunities (*e.g.,* mating).

The predicted effects to *Kogia* spp. are expected to be temporary and unlikely to cause long-term consequences for individual animals or populations. The NWTT activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors. Pacific stocks of *Kogia* are not depleted under the MMPA. Consequently, the activities are not expected to adversely impact annual rates of recruitment or survival of pygmy and dwarf sperm whales.

Beaked Whales—The Navy's acoustic analysis predicts that the following numbers of Level B harassment of beaked whales may occur annually from sonar and other active acoustic stressors associated with training and testing activities in the Study Area: 665 Baird's beaked whales (California/Oregon/Washington and Alaska stocks), 459 Cuvier's beaked whales (California/Oregon/Washington and Alaska stocks), and 1,616 *Mesoplodon* beaked whales (California/Oregon/Washington stock). These estimates represent the total number of exposures and not necessarily the number of individuals exposed, as a single individual may be exposed multiple times over the course of a year. These takes are anticipated to be in the form of behavioral harassment (TTS and behavioral reaction) and no injurious takes of beaked whales from active acoustic stressors or explosives are requested or proposed. Stock abundance estimates for beaked whales in the Study Area are shown in Table 9. When the numbers of behavioral takes are compared to the estimated stock abundances and if one assumes that each take happens to a separate animal, less than 7 percent of the California/Oregon/Washington stock of Cuvier's beaked whale would be behaviorally harassed during the course of a year. Virtually all of the Baird's and *Mesoplodon* beaked whale stocks (California/Oregon/Washington) would potentially be behaviorally harassed each year, although it is more likely that fewer individuals would be harassed but a subset would be harassed more than one time during the course of the year. As is the case with harbor porpoises, beaked whales have been shown to be particularly sensitive to sound and therefore have been assigned a lower harassment threshold based on observations of wild animals by McCarthy *et al.* (2011) and Tyack *et al.* (2011). The fact that the Level B harassment threshold is a step function (The Navy has adopted an unweighted 140 dB re 1 µPa SPL threshold for significant behavioral effects for all beaked whales) and not a curve (and assuming uniform density) means that the vast majority of the takes occur in the very lowest levels that exceed the threshold (it is estimated that approximately 80 percent of the takes are from exposures to 140 dB to 146 dB), which means that the anticipated effects for the majority of exposures are not expected to be severe (As mentioned above, an animal's exposure to a higher received level is more likely to result in a behavioral response that is more likely to adversely affect the health of an animal). Further, Moretti *et al.* (2014) recently derived an empirical risk function for Blainville's beaked whale that predicts there is a 0.5 probability of disturbance at a received level of 150 dB (CI: 144–155), suggesting that in some cases the current Navy step function may over-estimate the effects of an activity using sonar on beaked whales. Irrespective of the Moretti *et al.* (2014) risk function, NMFS' analysis assumes that all of the beaked whale Level B takes that are proposed for authorization will occur, and we base our negligible impact determination, in part, on the fact that these exposures would mainly occur at the very lowest end of the 140-dB behavioral harassment threshold where behavioral effects are expected to be much less severe and generally temporary in nature.

Behavioral responses can range from a mild orienting response, or a shifting of attention, to flight and panic (Richardson, 1995; Nowacek, 2007; Southall *et al.,* 2007). Research has also shown that beaked whales are especially sensitive to the presence of human activity (Tyack *et al.,* 2011; Pirotta *et al.,* 2012). Beaked whales have been documented to exhibit avoidance of human activity or respond to vessel presence (Pirotta *et al.,* 2012). Beaked whales were observed to react negatively to survey vessels or low altitude aircraft by quick diving and other avoidance maneuvers, and none were observed to approach vessels (Wursig *et al.,* 1998). Some beaked whale vocalizations may overlap with the MFAS/HFAS TTS frequency range (2–20 kHz); however, as noted above, NMFS does not anticipate TTS of a serious degree or extended duration to occur as a result of exposure to MFA/HFAS. Recovery from a threshold shift (TTS) can take a few minutes to a few days, depending on the exposure duration, sound exposure level, and the magnitude of the initial shift, with larger threshold shifts and longer exposure durations requiring longer recovery times (Finneran *et al.,* 2005; Mooney *et al.,* 2009a; Mooney *et al.,*

2009b; Finneran and Schlundt, 2010). Large threshold shifts are not anticipated for these activities because of the unlikelihood that animals will remain within the ensonified area (due to the short duration of the majority of exercises, the speed of the vessels, and the short distance within which the animal would need to approach the sound source) at high levels for the duration necessary to induce larger threshold shifts. Threshold shifts do not necessarily affect all hearing frequencies equally, so some threshold shifts may not interfere with an animal's hearing of biologically relevant sounds.

It has been speculated for some time that beaked whales might have unusual sensitivities to sonar sound due to their likelihood of stranding in conjunction with mid-frequency sonar use. Research and observations show that if beaked whales are exposed to sonar or other active acoustic sources they may startle, break off feeding dives, and avoid the area of the sound source to levels of 157 dB re 1 µPa, or below (McCarthy *et al.,* 2011). Acoustic monitoring during actual sonar exercises revealed some beaked whales continuing to forage at levels up to 157 dB re 1 µPa (Tyack *et al.* 2011). Stimpert *et al.* (2014) tagged a Baird's beaked whale, which was subsequently exposed to simulated mid-frequency sonar. Changes in the animal's dive behavior and locomotion were observed when received level reached 127 dB re 1 µPa. Manzano-Roth *et al.* (2013) found that for beaked whale dives that continued to occur during MFAS activity, differences from normal dive profiles and click rates were not detected with estimated received levels up to 137 dB re 1 µPa while the animals were at depth during their dives. In research done at the Navy's fixed tracking range in the Bahamas, animals were observed to leave the immediate area of the anti-submarine warfare training exercise (avoiding the sonar acoustic footprint at a distance where the received level was ''around 140 dB'' SPL, according to Tyack *et al.* [2011]) but return within a few days after the event ended (Claridge and Durban, 2009; Moretti *et al.,* 2009, 2010; Tyack *et al.,* 2010, 2011; McCarthy *et al.,* 2011). Tyack *et al.* (2011) report that, in reaction to sonar playbacks, most beaked whales stopped echolocating, made long slow ascent to the surface, and moved away from the sound. A similar behavioral response study conducted in Southern California waters during the 2010–2011 field season found that Cuvier's beaked whales exposed to MFAS displayed behavior ranging from initial orientation changes to avoidance responses characterized by energetic fluking and swimming away from the source (DeRuiter *et al.,* 2013b). However, the authors did not detect similar responses to incidental exposure to distant naval sonar exercises at comparable received levels, indicating that context of the exposures (*e.g.,* source proximity, controlled source ramp-up) may have been a significant factor. The study itself found the results inconclusive and meriting further investigation. Cuvier's beaked whale responses suggested particular sensitivity to sound exposure as consistent with results for Blainville's beaked whale. Populations of beaked whales and other odontocetes on the Bahamas and other Navy fixed ranges that have been operating for decades, appear to be stable. Behavioral reactions (avoidance of the area of Navy activity) seem likely in most cases if beaked whales are exposed to anti-submarine sonar within a few tens of kilometers, especially for prolonged periods (a few hours or more) since this is one of the most sensitive marine mammal groups to anthropogenic sound of any species or group studied to date and research indicates beaked whales will leave an area where anthropogenic sound is present (Tyack *et al.,* 2011; De Ruiter *et al.,* 2013; Manzano-Roth *et al.,* 2013; Moretti *et al.,* 2014). Research involving tagged Cuvier's beaked whales in the SOCAL Range Complex reported on by Falcone and Schorr (2012, 2014) indicates year-round prolonged use of the Navy's training and testing area by these beaked whales and has documented movements in excess of hundreds of kilometers by some of those animals. Given that some of these animals may routinely move hundreds of kilometers as part of their normal pattern, leaving an area where sonar or other anthropogenic sound is present may have little, if any, cost to such an animal. Photo identification studies in the SOCAL Range Complex, a Navy range that is utilized for training and testing more frequently than the NWTT Study Area, have identified approximately 100 individual Cuvier's beaked whale individuals with 40 percent having been seen in one or more prior years, with re-sightings up to 7 years apart (Falcone and Schorr, 2014). These results indicate long-term residency by individuals in an intensively used Navy training and testing area, which may also suggest a lack of long-term consequences as a result of exposure to Navy training and testing activities. Finally, results from passive acoustic monitoring estimated regional Cuvier's beaked whale densities were higher than indicated by the NMFS's broad scale visual surveys for the U.S. west coast (Hildebrand and McDonald, 2009).

Based on the findings above, it is clear that the Navy's long-term ongoing use of sonar and other active acoustic sources has not precluded beaked whales from also continuing to inhabit those areas. In summary, based on the best available science, the Navy and NMFS believe that beaked whales that exhibit a significant TTS or behavioral reaction due to sonar and other active acoustic testing activities would generally not have long-term consequences for individuals or populations. Claridge (2013) speculates that sonar use in a Bahamas range could have ''a possible population-level effect'' on beaked whales based on lower abundance in comparison to control sites. However, the study suffers from several shortcomings and incorrectly assumes that the Navy range and control sites were identical. The author also acknowledged that ''information currently available cannot provide a quantitative answer to whether frequent sonar use at [the Bahamas range] is causing stress to resident beaked whales,'' and cautioned that the outcome of ongoing studies ''is a critical component to understanding if there are population-level effects.'' Moore and Barlow (2013) have noted a decline in beaked whale populations in a broad area of the Pacific Ocean area out to 300 nm from the coast and extending from the Canadian-U.S. border to the tip of Baja Mexico. There are scientific caveats and limitations to the data used for that analysis, as well as oceanographic and species assemblage changes on the U.S. Pacific coast not thoroughly addressed. Interestingly, however, in the small portion of that area overlapping the Navy's SOCAL Range Complex, long-term residency by individual Cuvier's beaked whales and higher densities provide indications that the proposed decline noted elsewhere is not apparent where for decades the Navy has been intensively training and testing with sonar and other systems.

NMFS also considered New *et al.* (2013) and their mathematical model simulating a functional link between foraging energetics and requirements for survival and reproduction for 21 species of beaked whales. However, NMFS concluded that New *et al.* (2013) model lacks critical data and accurate inputs necessary to form valid conclusions specifically about impacts of anthropogenic sound from Navy activities on beaked whale populations. The study itself notes the need for ''future research,'' identifies ''key data

needs'' relating to input parameters that ''particularly affected'' the model results, and states only that the use of the model ''in combination with more detailed research'' *could* help predict the effects of management actions on beaked whale species. In short, information is not currently available to specifically support the use of this model in a project-specific evaluation of the effects of navy activities on the impacted beaked whale species in NWTT.

No beaked whales are predicted in the acoustic analysis to be exposed to sound levels associated with PTS, other injury, or mortality. After decades of the Navy conducting similar activities in the NWTT Study Area without incident, NMFS does not expect strandings, injury, or mortality of beaked whales to occur as a result of training and testing activities. Additionally, through the MMPA process (which allows for adaptive management), NMFS and the Navy will determine the appropriate way to proceed in the event that a causal relationship were to be found between Navy activities and a future stranding.

The NWTT training and testing activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors for beaked whales. Although no areas of specific importance for reproduction or feeding of beaked whales have been identified in the Study Area, beaked whales are generally found in deep waters over the continental slope, oceanic seamounts, and areas with submarine escarpments (very seldom over the continental shelf). None of the Pacific stocks for beaked whales species found in the Study Area are depleted under the MMPA. Consequently, the activities are not expected to adversely impact annual rates of recruitment or survival of beaked whales.

Dolphins and Small Whales—The Navy's acoustic analysis predicts the following numbers of Level B harassment of the associated species of delphinids (dolphins and small whales, excluding killer whales) may occur each year from sonar and other active acoustic sources during training and testing activities in the Study Area: 2,362 short-beaked common dolphins (California/Oregon/Washington stock); 36 striped dolphins (California/Oregon/Washington stock); 8,354 Pacific white-sided dolphins (California/Oregon/Washington and North Pacific stocks); 3,370 Northern right whale dolphins (California/Oregon/Washington stock); and 1,811 Risso's dolphins (California/Oregon/Washington stock). Based on the distribution information presented in the LOA application, it is highly unlikely that short-finned pilot whales or common bottlenose dolphins would be encountered in the Study Area. The acoustic analysis did not predict any takes of short-finned pilot whales or bottlenose dolphins and NMFS is not authorizing any takes of these species. Relative to delphinid population sizes (stock abundance estimates are shown in Table 9), these activities are anticipated to generally result only in a limited number of level B harassment takes. When the numbers of behavioral takes are compared to the estimated stock abundance and if one assumes that each take happens to a separate animal, less than 30 percent of the California/Oregon/Washington stock of Risso's dolphin; less than 30 percent of the California/Oregon/Washington stock and less than 0.02 percent of the North Pacific stock of pacific white-sided dolphin; less than 28 percent of the California/Oregon/Washington stock of northern right whale dolphin; less than 0.6 percent of the California/Oregon/Washington stock of short-beaked common dolphin; and less than 0.4 percent of the California/Oregon/Washington stock of striped dolphin would be behaviorally harassed during the course of a year. More likely, slightly fewer individuals are harassed, but a subset are harassed more than one time during the course of the year.

All of these takes are anticipated to be in the form of behavioral harassment (TTS and behavioral reaction) and no injurious takes of delphinids from sonar and other active acoustic stressors or explosives are requested or proposed for authorization. Further, the majority of takes are anticipated to be by behavioral harassment in the form of mild responses. Behavioral responses can range from a mild orienting response, or a shifting of attention, to flight and panic (Richardson, 1995; Nowacek, 2007; Southall *et al.,* 2007). Delphinid species generally travel in large pods and should be visible from a distance in order to implement mitigation measures and reduce potential impacts. Many of the recorded delphinid vocalizations overlap with the MFAS/HFAS TTS frequency range (2–20 kHz); however, as noted above, NMFS does not anticipate TTS of a serious degree or extended duration to occur as a result of exposure to MFAS/HFAS. Recovery from a threshold shift (TTS) can take a few minutes to a few days, depending on the exposure duration, sound exposure level, and the magnitude of the initial shift, with larger threshold shifts and longer exposure durations requiring longer recovery times (Finneran *et al.,* 2005; Mooney *et al.,* 2009a; Mooney *et al.,* 2009b; Finneran and Schlundt, 2010). Large threshold shifts are not anticipated for these activities because of the unlikelihood that animals will remain within the ensonified area (due to the short duration of the majority of exercises, the speed of the vessels, and the short distance within which the animal would need to approach the sound source) at high levels for the duration necessary to induce larger threshold shifts. Threshold shifts do not necessarily affect all hearing frequencies equally, so some threshold shifts may not interfere with an animal's hearing of biologically relevant sounds.

The predicted effects to delphinids are unlikely to cause long-term consequences for individual animals or populations. The NWTT activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors for delphinids. Pacific stocks of delphinid species found in the Study Area are not depleted under the MMPA. Consequently, the activities are not expected to adversely impact annual rates of recruitment or survival of delphinid species.

Killer Whales—The Navy's acoustic analysis predicts 250 instances of Level B harassment of killer whales (Alaska Resident, Northern Resident, West Coast Transient, Eastern North Pacific Offshore, and Eastern North Pacific Southern Resident stocks), including 2 Level B takes of southern resident killer whales, from sonar and other active acoustic sources during annual training activities in the Study Area. Relative to population sizes (killer whale stock abundance estimates are shown in Table 9), these activities are anticipated to generally result only in a limited number of level B harassment takes. When the numbers of behavioral takes are compared to the estimated stock abundance and if one assumes that each take happens to a separate animal, less than 15 percent of all killer whale stocks—and 2 percent of the Southern Resident stock of killer whale—would be behaviorally harassed during the course of a year. More likely, slightly fewer individuals would harassed, but a subset would be harassed more than one time during the course of the year.

All of these takes are anticipated to be in the form of behavioral harassment (TTS and behavioral reaction) and no injurious takes of killer whales from sonar and other active acoustic stressors or explosives are requested or proposed for authorization. Further, the majority of takes are anticipated to be by behavioral harassment in the form of

mild responses. Behavioral responses can range from a mild orienting response, or a shifting of attention, to flight and panic (Richardson, 1995; Nowacek, 2007; Southall *et al.,* 2007). Killer whales generally travel in pods and should be visible from a distance in order to implement mitigation measures and reduce potential impacts. Recovery from a threshold shift (TTS) can take a few minutes to a few days, depending on the exposure duration, sound exposure level, and the magnitude of the initial shift, with larger threshold shifts and longer exposure durations requiring longer recovery times (Finneran *et al.,* 2005; Mooney *et al.,* 2009a; Mooney *et al.,* 2009b; Finneran and Schlundt, 2010). Large threshold shifts are not anticipated for these activities because of the unlikelihood that animals will remain within the ensonified area (due to the short duration of the majority of exercises, the speed of the vessels, and the short distance within which the animal would need to approach the sound source) at high levels for the duration necessary to induce larger threshold shifts. Threshold shifts do not necessarily affect all hearing frequencies equally, so some threshold shifts may not interfere with an animal's hearing of biologically relevant sounds.

The southern resident killer whale is the only ESA-listed marine mammal species with designated critical habitat located in the NWTT Study Area (NMFS, 2006). The majority of the Navy's proposed training and testing activities would, however, not occur in the southern resident killer whale's designated critical habitat (NMFS, 2006). For all substressors that would occur within the critical habitat, those training and testing activities are not expected to impact the identified primary constituent elements of that habitat and therefore would have no effect on that critical habitat. Furthermore, the majority of testing events would occur in Hood Canal, where southern resident killer whales are not believed to be present, while the majority of training activities would occur in the offshore portions of the Study Area where they are only present briefly during their annual migration period. Effects to designated critical habitat will be fully analyzed in the Navy's and NMFS' internal ESA Section 7 consultations for NWTT.

The whale's size and detectability makes it unlikely that these animals would be exposed to the higher energy or pressure expected to result in more severe effects. As stated above, the vocalizations of killer whales fall directly into the frequency range in which TTS would be incurred from the MFAS sources used during ASW exercises; however, the Navy is conducting ASW exercises mainly in the Offshore Area while killer whales are predominantly situated in the Inland Waters Area. Both behavioral and auditory brainstem response techniques indicate killer whales can hear a frequency range of 1 to 100 kHz and are most sensitive at 20 kHz. This is one the lowest maximum-sensitivity frequencies known among toothed whales (Szymanski *et al.,* 1999).

The NWTT training and testing activities are generally not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors for killer whales. Consequently, the activities are not expected to adversely impact annual rates of recruitment or survival of killer whale species and will therefore not result in population-level impacts.

Pinnipeds—The Navy's acoustic analysis predicts that the following numbers of Level B harassment (TTS and behavioral reaction) may occur annually from sonar and other active acoustic stressors and sound or energy from explosions associated with training and testing activities in the Study Area: 908 Steller sea lions (Eastern U.S. stock); 10 Guadalupe fur seals (San Miguel Island stock); 2,887 California sea lions (U.S. stock); 4,389 northern fur seals (Eastern Pacific and California stocks); 2,596 northern elephant seals (California Breeding stock); and 63,475 harbor seals (Southeast Alaska [Clarence Strait], Oregon/Washington Coast, Washington Northern Inland Waters, Southern Puget Sound, and Hood Canal stocks). These estimates represents the total number of exposures and not necessarily the number of individuals exposed, as a single individual may be exposed multiple times over the course of a year. Northern elephant seals are the only pinnipeds predicted to incur takes (one Level B take) from exposure to explosives. The acoustic analysis (factoring in the post-model correction for avoidance and mitigation) also indicates that 2 Northern elephant seals and 92 harbor seals would be exposed to sound levels likely to result in Level A harassment (PTS) from sonar or other active acoustic sources.

Research has demonstrated that for pinnipeds, as for other mammals, recovery from a hearing threshold shift (*i.e.,* TTS; temporary partial hearing loss) can take a few minutes to a few days depending on the severity of the initial shift. More severe shifts may not fully recover and thus would be considered PTS. However, large degrees of PTS are not anticipated for these activities because of the unlikelihood that animals will remain within the ensonified area (due to the short duration of the majority of exercises, the speed of the vessels, and the short distance within which the animal would need to approach the sound source) at high levels for the duration necessary to induce larger threshold shifts. Threshold shifts do not necessarily affect all hearing frequencies equally, so threshold shifts may not necessarily interfere with an animal's ability to hear biologically relevant sounds. The likely consequences to the health of an individual that incurs PTS can range from mild to more serious, depending upon the degree of PTS and the frequency band it is in, and many animals are able to compensate for the shift, although it may include energetic costs. Likely avoidance of intense activity and sound coupled with mitigation measures would further reduce the potential for severe PTS exposures to occur. If a marine mammal is able to approach a surface vessel within the distance necessary to incur PTS, the likely speed of the vessel (nominal 10–15 knots) would make it very difficult for the animal to remain in range long enough to accumulate enough energy to result in more than a mild case of PTS.

Research and observations show that pinnipeds in the water may be tolerant of anthropogenic noise and activity (a review of behavioral reactions by pinnipeds to impulsive and non-impulsive noise can be found in Richardson *et al.,* 1995 and Southall *et al.,* 2007). Available data, though limited, suggest that exposures between approximately 90 and 140 dB SPL do not appear to induce strong behavioral responses in pinnipeds exposed to nonpulse sounds in water (Jacobs and Terhune, 2002; Costa *et al.,* 2003; Kastelein *et al.,* 2006c). Based on the limited data on pinnipeds in the water exposed to multiple pulses (small explosives, impact pile driving, and seismic sources), exposures in the approximately 150 to 180 dB SPL range generally have limited potential to induce avoidance behavior in pinnipeds (Harris *et al.,* 2001; Blackwell *et al.,* 2004; Miller *et al.,* 2004). If pinnipeds are exposed to sonar or other active acoustic sources they may react in a number of ways depending on their experience with the sound source and what activity they are engaged in at the time of the acoustic exposure. Pinnipeds may not react at all until the sound source is approaching within a few hundred meters and then may alert, ignore the stimulus, change their

behaviors, or avoid the immediate area by swimming away or diving. Effects on pinnipeds in the Study Area that are taken by Level B harassment, on the basis of reports in the literature as well as Navy monitoring from past activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring). Most likely, individuals will simply move away from the sound source and be temporarily displaced from those areas, or not respond at all. In areas of repeated and frequent acoustic disturbance, some animals may habituate or learn to tolerate the new baseline or fluctuations in noise level. Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). While some animals may not return to an area, or may begin using an area differently due to training and testing activities, most animals are expected to return to their usual locations and behavior. Given their documented tolerance of anthropogenic sound (Richardson *et al.,* 1995 and Southall *et al.,* 2007), repeated exposures of individuals (*e.g.,* harbor seals) to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. As stated above, pinnipeds may habituate to or become tolerant of repeated exposures over time, learning to ignore a stimulus that in the past has not accompanied any overt threat.

Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in fitness to those individuals, and would not result in any adverse impact to the stock as a whole. Evidence from areas where the Navy extensively trains and tests provides some indication of the possible consequences resulting from those proposed activities. In the confined waters of Washington State's Hood Canal where the Navy has been training and intensively testing for decades and harbor seals are present year-round, the population level has remained stable suggesting the area's carrying capacity may have been reached (Jeffries *et al.,* 2003). Within Puget Sound there are several locations where pinnipeds use Navy structures (*e.g.,* submarines, security barriers) for haulouts. Given that animals continue to choose these areas for their resting behavior, it would appear there are no long-term effects or consequences to those animals as a result of ongoing and routine Navy activities.

Generally speaking, pinniped stocks in the Study Area are thought to be stable or increasing. Abundance estimates for pinniped stocks in the Study Area are shown in Table 9. Relative to population size, training and testing activities are anticipated to result only in a limited number of takes for the majority of pinniped species. When the numbers of takes are compared to the estimated stock abundances and if one assumes that each take happens to a separate animal, less than 2 percent of each Steller sea lion, California sea lion, northern fur seal, and northern elephant seal stock would be harassed (behaviorally) during the course of a year. More likely, fewer individuals are harassed, but a subset are harassed more than one time during the course of the year. Takes of depleted (as defined under the MMPA) stocks of northern fur seals (Eastern Pacific) and Guadalupe fur seals (Mexoco) represent only 0.7 percent and 0.07 percent of their respective stock.

NMFS has determined that the Level A and Level B harassment exposures to the Hood Canal stock of harbor seals are not biologically significant to the population because (1) the vast majority of the exposures are within the non-injurious TTS or behavioral effects zones and none of the estimated exposures result in mortality; (2) the majority of predicted harbor seal exposures result from testing activities which are generally of an intermittent or short duration and should prevent animals from being exposed to stressors on a continuous basis; (3) there are no indications that the historically occurring activities resulting in these behavioral harassment exposures are having any effect on this population's survival by altering behavior patterns such as breeding, nursing, feeding, or sheltering; (4) the population has been stable and likely at carrying capacity (Jeffries *et al.,* 2003; Gaydos *et al.,* 2013); (5) the population continues to use known large haulouts in Hood Canal and Dabob Bay that are adjacent to Navy testing and training activities (London *et al.,* 2012); (6) the population continues to use known haulouts for pupping; and (7) the population continues to use the waters in and around Dabob Bay and Hood Canal.

The Guadalupe fur seal is the only ESA-listed pinniped species found within the NWTT Study Area. Guadalupe fur seals are considered ''seasonally migrant'' and are present within the offshore portion of the Study Area during the warm season (summer and early autumn) and during that portion of the year may be exposed to sonar and other active acoustic sources associated with training and testing activities. Predicted Level B takes of Guadalupe fur seals in the Study Area represent a negligible percentage of the San Miguel Island stock. Furthermore, critical habitat has not been designated for Guadalupe fur seals.

We believe that factors described above, as well as the available body of evidence from past Navy activities in the Study Area, demonstrate that the potential effects of the specified activity will have only short-term effects on individuals. The NWTT training and testing activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors for pinnipeds. Consequently, the activities are not expected to adversely impact annual rates of recruitment or survival of pinniped species and will therefore not result in population-level impacts.

Long-Term Consequences

The best assessment of long-term consequences from training and testing activities will be to monitor the populations over time within a given Navy range complex. A U.S. workshop on Marine Mammals and Sound (Fitch *et al.,* 2011) indicated a critical need for baseline biological data on marine mammal abundance, distribution, habitat, and behavior over sufficient time and space to evaluate impacts from human-generated activities on long-term population survival. The Navy has developed monitoring plans for protected marine mammals occurring on Navy ranges with the goal of assessing the impacts of training and testing activities on marine species and the effectiveness of the Navy's current mitigation practices. Continued monitoring efforts over time will be necessary to completely evaluate the long-term consequences of exposure to noise sources.

Since 2006 across all Navy Range Complexes (in the Atlantic, Gulf of Mexico, and the Pacific), there have been more than 80 reports; Major Exercise Reports, Annual Exercise Reports, and Monitoring Reports. For the Pacific since 2011, there have been 29 monitoring and exercise reports (as shown in Table 6–1 of the LOA application) submitted to NMFS to further research goals aimed at understanding the Navy's impact on the environment as it carries out its mission to train and test.

In addition to this multi-year record of reports from across the Navy, there have also been ongoing Behavioral Response Study research efforts (in

Southern California and the Bahamas) specifically focused on determining the potential effects from Navy mid-frequency sonar (Southall *et al.,* 2011, 2012; Tyack *et al.,* 2011; DeRuiter *et al.,* 2013b; Goldbogen *et al.,* 2013; Moretti *et al.,* 2014). This multi-year compendium of monitoring, observation, study, and broad scientific research is informative with regard to assessing the effects of Navy training and testing in general. Given that this record involves many of the same Navy training and testing activities being considered for the Study Area, and because it includes all the marine mammal taxonomic families and many of the same species, this compendium of Navy reporting is directly applicable to the Study Area. Other research findings related to the general topic of long-term impacts are discussed above in the Species/Group Specific Analysis.

Based on the findings from surveys in Puget Sound and research efforts and monitoring before, during, and after training and testing events across the Navy since 2006, NMFS' assessment is that it is unlikely there would be impacts to populations of marine mammals having any long-term consequences as a result of the proposed continuation of training and testing in the ocean areas historically used by the Navy, including the Study Area. This assessment of likelihood is based on four indicators from areas in the Pacific where Navy training and testing has been ongoing for decades: (1) Evidence suggesting or documenting increases in the numbers of marine mammals present (Calambokidis and Barlow, 2004; Calambokidis *et al.,* 2009a; Falcone *et al.,* 2009; Hildebrand and McDonald, 2009; Berman-Kowalewski *et al.,* 2010; Moore and Barlow, 2011; Barlow *et al.* 2011; Falcone and Shorr, 2012; Kerosky *et al.,* 2012; Smultea *et al.,* 2013), (2) examples of documented presence and site fidelity of species and long-term residence by individual animals of some species (Hooker *et al.,* 2002; McSweeney *et al.,* 2007; McSweeney *et al.,* 2009; McSweeney *et al.,* 2010; Martin and Kok, 2011; Baumann-Pickering *et al.,* 2012; Falcone and Schorr, 2014), (3) use of training and testing areas for breeding and nursing activities (Littnan, 2010), and (4) 6 years of comprehensive monitoring data indicating a lack of any observable effects to marine mammal populations as a result of Navy training and testing activities.

To summarize, while the evidence covers most marine mammal taxonomic suborders, it is limited to a few species and only suggestive of the general viability of those species in intensively used Navy training and testing areas. There is no direct evidence that routine Navy training and testing spanning decades has negatively impacted marine mammal populations at any Navy Range Complex. Although there have been a few strandings associated with use of sonar in other locations (see U.S. Department of the Navy, 2013b), Ketten (2012) has recently summarized, ''to date, there has been no demonstrable evidence of acute, traumatic, disruptive, or profound auditory damage in any marine mammal as the result of anthropogenic noise exposures, including sonar.'' Therefore, based on the best available science (Barlow *et al.,* 2011; Falcone *et al.,* 2009; Falcone and Schorr, 2012, 2014; Littnan, 2011; Martin and Kok, 2011; McCarthy *et al.,* 2011; McSweeney *et al.,* 2007; McSweeney *et al.,* 2009; Moore and Barlow, 2011; Tyack *et al.,* 2011; Southall *et al.,* 2012; Manzano-Roth *et al.,* 2013; DeRuiter *et al.,* 2013b; Goldbogen *et al.,* 2013; Moretti *et al.,* 2014; Smultea and Jefferson, 2014), including data developed in the series of reports submitted to NMFS, we believe that long-term consequences for individuals or populations are unlikely to result from Navy training and testing activities in the Study Area.

Preliminary Determination

Training and testing activities proposed in the NWTT Study Area would result in Level B and Level A takes, as summarized in Tables 17–21. Based on best available science, as summarized in this proposed rule and in the January 2014 DEIS/OEIS (Section 3.4.4.1), NMFS concludes that exposures to marine mammal species and stocks due to NWTT activities would result in only short-term (temporary and short in duration) and relatively infrequent effects to most individuals exposed, and not of the type or severity that would be expected to be additive for the generally small portion of the stocks and species likely to be exposed. Marine mammal takes from Navy activities are not expected to impact annual rates of recruitment or survival and will therefore not result in population-level impacts for the following reasons:

- Most acoustic exposures (greater than 99 percent) are within the non-injurious TTS or behavioral effects zones (Level B harassment consisting of generally temporary modifications in behavior) and none of the estimated exposures result in mortality.
- Although the numbers presented in Tables 17–21 represent estimated harassment under the MMPA, as described above, they are conservative estimates of harassment, primarily by behavioral disturbance, and made without taking into consideration *all* possible reductions as a result of standard operating procedures and mitigation measures (only a subset of mitigations are factored into the post-modeling analysis).
- Additionally, the protective measures described in the Proposed Mitigation section above are designed to reduce sound exposure and explosive effects on marine mammals to levels below those that may cause physiological effects (injury) and to achieve the least practicable adverse effect on marine mammal species or stocks.
- Range complexes where intensive training and testing have been occurring for decades have populations of multiple species with strong site fidelity (including highly sensitive resident beaked whales at some locations) and increases in the number of some species.
- Years of monitoring of Navy-wide activities (since 2006) have documented hundreds of thousands of marine mammals on the range complexes and there are only two instances of overt behavioral change that have been observed.
- Years of monitoring of Navy-wide activities on the range complexes have documented no demonstrable instances of injury to marine mammals as a direct result of non-impulsive acoustic sources.
- In at least three decades of the same type of activities, only one instance of injury to marine mammals (March 4, 2011; three long-beaked common dolphin off Southern California) has occurred as a known result of training or testing using an impulsive source (underwater explosion). Of note, the time-delay firing underwater explosive training activity implicated in the March 4 incident is not proposed for the training activities in the NWTT Study Area.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat and dependent upon the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that the total taking from Navy training and testing exercises in the NWTT Study Area will have a negligible impact on the affected species or stocks. NMFS has proposed regulations for these exercises that prescribe the means of effecting the least practicable adverse impact on marine mammals and their habitat and set forth requirements pertaining to the monitoring and reporting of that taking.

Subsistence Harvest of Marine Mammals

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

ESA

There are nine marine mammal species under NMFS jurisdiction that are listed as endangered or threatened under the ESA with confirmed or possible occurrence in the NWTT Study Area: North Pacific right whale, blue whale, humpback whale, fin whale, sei whale, gray whale (Western North Pacific stock), sperm whale, killer whale (Eastern North Pacific Southern Resident stock), and Guadalupe fur seal. The Navy will consult with NMFS pursuant to section 7 of the ESA, and NMFS will also consult internally on the issuance of LOAs under section 101(a)(5)(A) of the MMPA for NWTT activities. Consultation will be concluded prior to a determination on the issuance of the final rule and an LOA.

NEPA

NMFS is a cooperating agency on the Navy's NWTT DEIS/OEIS, which was prepared and released to the public in January 2014. Upon completion, the Final EIS/OEIS (FEIS/OEIS) will be made available for public review and posted on NMFS' Web site: *http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm.* NMFS intends to adopt the Navy's NWTT FEIS/OEIS, if adequate and appropriate. Currently, we believe that the adoption of the Navy's NWTT FEIS/OEIS will allow NMFS to meet its responsibilities under NEPA for the issuance of regulations and LOAs for NWTT. If necessary, however, NMFS will supplement the existing analysis to ensure that we comply with NEPA prior to the issuance of the final rule or LOA.

NMSA

Some Navy NWTT activities will occur within the Olympic Coast National Marine Sanctuary (OCNMS). Federal agency actions that are likely to injure sanctuary resources are subject to consultation with the NOAA Office of National Marine Sanctuaries (ONMS) under section 304(d) of the National Marine Sanctuaries Act (NMSA). The Navy analyzed potential impacts to sanctuary resources and has provided the analysis in the January 2014 NWTT DEIS/OEIS. Where the Navy either proposes new military activities or proposes to modify existing military activities that are otherwise exempted by individual sanctuary regulations at 15 CFR part 922 in a way that the modified activities would adversely impact sanctuary resources and qualities, the Navy will initiate consultation with ONMS.

NMFS is currently consulting with ONMS on the issuance of regulations and LOAs for NWTT activities. Consultation will be concluded prior to a determination on the issuance of the final rule and an LOA.

Classification

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The RFA requires federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a federal agency may certify, pursuant to 5 U.S.C. 605 (b), that the action will not have a significant economic impact on a substantial number of small entities. The Navy is the sole entity that would be affected by this rulemaking, and the Navy is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Any requirements imposed by an LOA issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, would be applicable only to the Navy. NMFS does not expect the issuance of these regulations or the associated LOAs to result in any impacts to small entities pursuant to the RFA. Because this action, if adopted, would directly affect the Navy and not a small entity, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 218

Exports, Fish, Imports, Incidental take, Indians, Labeling, Marine mammals, Navy, Penalties, Reporting and recordkeeping requirements, Seafood, Sonar, Transportation.

Dated: May 26, 2015.

Samuel D. Rauch III,

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

For reasons set forth in the preamble, 50 CFR part 218 is proposed to be amended as follows:

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 218 continues to read as follow:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. In § 218.75, revise introductory paragraph (f)(1)(ii)(F) as follows:

§ 218.75 Requirements for monitoring and reporting.

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(F) Individual marine mammal sighting information for each sighting when mitigation occurred during each MTE.

* * * * *

■ 3. In § 218.85, revise introductory paragraph (f)(1)(ii)(F) as follows:

§ 218.85 Requirements for monitoring and reporting.

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(F) Individual marine mammal sighting information for each sighting when mitigation occurred during each MTE.

* * * * *

■ 4. In § 218.125, revise introductory paragraph (f)(1)(ii) as follows:

§ 218.125 Requirements for monitoring and reporting.

* * * * *

(f) * * *

(1) * * *

(ii) Individual marine mammal sighting information for each sighting in each exercise when mitigation occurred.

* * * * *

Subpart M—[Removed and Reserved]

■ 5. Remove and reserve subpart M, consisting of §§ 218.110 through 218.119.

Subpart R—[Removed and Reserved]

■ 6. Remove and reserve subpart R, consisting of §§ 218.170 through 218.178.

■ 7. Subpart O is added to part 218 to read as follows:

Subpart O—Taking and Importing Marine Mammals; U.S. Navy's Northwest Training and Testing (NWTT) Study Area

Subpart O—Taking and Importing Marine Mammals; U.S. Navy's Northwest Training and Testing (NWTT) Study Area

§ 218.140 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the NWTT Study Area, which is composed of established maritime operating and warning areas in the eastern North Pacific Ocean region, including areas of the Strait of Juan de Fuca, Puget Sound, and Western Behm Canal in southeastern Alaska. The Study Area includes air and water space within and outside Washington state waters, and outside state waters of Oregon and Northern California. The Study Area includes four existing range complexes and facilities: The Northwest Training Range Complex (NWTRC), the Keyport Range Complex, Carr Inlet Operations Area, and SEAFAC. In addition to these range complexes, the Study Area also includes Navy pierside locations where sonar maintenance and testing occurs as part of overhaul, modernization, maintenance and repair activities at NAVBASE Kitsap, Bremerton; NAVBASE Kitsap, Bangor; and Naval Station Everett.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities within the designated amounts of use:

(1) Sonar and other Active Sources Used During Training:

(i) Mid-frequency (MF) Source Classes:

(A) MF1—an average of 166 hours per year.

(B) MF3—an average of 70 hours per year.

(C) MF4—an average of 4 hours per year.

(D) MF5—an average of 896 items per year.

(E) MF11—an average of 16 hours per year.

(ii) High-frequency (HF) Source Classes:

(A) HF1—an average of 48 hours per year.

(B) HF4—an average of 384 hours per year.

(C) HF6—an average of 192 items per year.

(iii) Anti-Submarine Warfare (ASW) Source Classes:

(A) ASW2—an average of 720 items per year per year.

(B) ASW3—an average of 78 hours per year.

(2) Sonar and other Active Sources Used During Testing:

(i) Low-frequency (LF) Source Classes:

(A) LF4—an average of 110 hours per year.

(B) LF5—an average of 71 hours per year.

(ii) Mid-frequency (MF):

(A) MF3—an average of 161 hours per year.

(B) MF4—an average of 10 hours per year.

(C) MF5—an average of 273 items per year.

(D) MF6—an average of 12 items per year.

(E) MF8—an average of 40 hours per year.

(F) MF9—an average of 1,183 hours per year.

(G) MF10—an average of 1,156 hours per year.

(H) MF11—an average of 34 hours per year.

(I) MF12—an average of 24 hours per year.

(iii) High-frequency (HF) and Very High-frequency (VHF):

(A) HF1—an average of 161 hours per year.

(B) HF3—an average of 145 hours per year.

(C) HF5—an average of 360 hours per year.

(D) HF6—an average of 2,099 hours per year.

(iv) VHF:

(A) VHF2—an average of 35 hours per year.

(v) ASW:

(A) ASW1—an average of 16 hours per year.

(B) ASW2—an average of 64 hours per year.

(C) ASW2—an average of 170 items per year.

(D) ASW3—an average of 444 hours per year.

(E) ASW4—an average of 1,182 items per year.

(vi) Acoustic Modems (M):

(A) M3—an average of 1,519 hours per year.

(vii) Torpedoes (TORP):

(A) TORP1—an average of 315 items per year.

(B) TORP2—an average of 299 items per year.

(viii) Swimmer Detection Sonar (SD):

(A) SD1—an average of 757 hours per year.

(ix) Synthetic Aperture Sonar (SAS):

(A) SAS2—an average of 798 hours per year.

(3) Impulsive Source Detonations During Training:

(i) Explosive Classes:

(A) E1 (0.1 to 0.25 pound [lb] NEW)—an average of 48 detonations per year.

(B) E3 (>0.5 to 2.5 lb NEW)—an average of 6 detonations per year.

(C) E5 (>5 to 10 lb NEW)—an average of 80 detonations per year.

(D) E10 (>250 to 500 lb NEW)—an average of 4 detonations per year.

(E) E12 (>650 to 1,000 lb NEW)—an average of 10 detonations per year.

(ii) [Reserved].

(4) Impulsive Source Detonations During Testing:

(i) Explosive Classes:

(A) E3 (>0.5 to 2.5 lb NEW)—an average of 72 detonations per year.

(B) E4 (>2.5 to 5 lb NEW)—an average of 70 detonations per year.

(C) E8 (>60 to 100 lb NEW)—an average of 3 detonations per year.

(D) E11 (>500 to 650 lb NEW)—an average of 3 detonations per year.

(ii) [Reserved]

§ 218.141 Effective dates.

Regulations in this subpart are effective June 2, 2015 through June 2, 2020.

§ 218.142 Permissible methods of taking.

(a) Under Letters of Authorization (LOAs) issued pursuant to § 218.147, the Holder of LOA may incidentally, but not intentionally, take marine mammals within the area described in § 218.140, provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate LOA.

(b) The activities identified in § 218.140(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in § 218.140(c) is limited to the following species, by the identified method of take and the indicated number of times:

(1) Level B Harassment for all Training Activities:

(i) Mysticetes:
(A) Blue whale (Balaenoptera musculus)—25 (an average of 5 per year).
(B) Fin whale (Balaenoptera physalus)—125 (an average of 25 per year).
(C) Gray whale (Eschrichtius robustus)—30 (an average of 6 per year).
(D) Humpback whale (Megaptera novaeangliae)—60 (an average of 12 per year).
(E) Minke whale (Balaenoptera acutorostrata)—90 (an average of 18 per year).
(ii) Odontocetes:
(A) Baird's beaked whale (Berardius bairdii)—2,955 (an average of 591 per year).
(B) Mesoplodont beaked whale Mesoplodon spp.)—7,085 (an average of 1,417 per year).
(C) Cuvier's beaked whale Ziphius cavirostris—1,765 (an average of 353 per year).
(D) Dall's porpoise Phocoenoidea dalli—18,188 (an average of 3,732 per year).
(E) Harbor porpoise Phocoena phocoena—441,984 (an average of 88,932 per year).
(F) Killer whale Orcinus orca—110 (an average of 24 per year).
(G) Kogia spp.—365 (an average of 73 per year).
(H) Northern right whale dolphin Lissodelphis borealis—6,660 (an average of 1,332 per year).
(I) Pacific white-sided dolphin Lagenorhynchus obliquidens—17,408 (an average of 3,482 per year).
(J) Risso's dolphin Grampus griseus—3,285 (an average of 657 per year).
(K) Short-beaked common dolphin Delphinus delphis—3,670 (an average of 734 per year).
(L) Sperm whale Physeter macrocephalus—405 (an average of 81 per year).
(M) Striped dolphin Stenella coerulealba—110 (an average of 22 per year).
(iii) Pinnipeds:
(A) California sea lion Zalophus californianus—4,038 (an average of 814 per year).
(B) Steller sea lion Eumetopias jubatus—1,986 (an average of 404 per year).
(C) Guadalupe fur seal Arctocephalus townsendi—35 (an average of 7 per year).
(D) Harbor seal Phoca vitulina—4,161 (an average of 832 per year).
(E) Northern elephant seal Mirounga angustirostris—6,353 (an average of 1,271 per year).
(F) Northern fur seal Callorhinus ursinus—12,660 (an average of 2,532 per year).

(2) Level A Harassment for all Training Activities:
(i) Mysticetes:
(A) [Reserved]
(B) [Reserved]
(ii) Odontocetes:
(A) Dall's porpoise (Phocoenoidea dalli)—20 (an average of 4 per year).
(B) Harbor porpoise (Phocoena phocoena)—5 (an average of 1 per year).
(iii) Pinnipeds:
(A) Harbor seal (Phoca vitulina)—30 (an average of 6 per year).
(B) [Reserved]
(3) Level B Harassment for all Testing Activities:
(i) Mysticetes:
(A) Blue whale (Balaenoptera musculus)—30 (an average of 6 per year).
(B) Fin whale (Balaenoptera physalus)—180 (an average of 36 per year).
(C) Gray whale (Eschrichtius robustus)—55 (an average of 11 per year).
(D) Humpback whale (Megaptera novaeangliae)—225 (an average of 45 per year).
(E) Minke whale (Balaenoptera acutorostrata)—90 (an average of 18 per year).
(F) Sei whale (Balaenoptera borealis)—10 (an average of 2 per year).
(ii) Odontocetes:
(A) Baird's beaked whale (Berardius bairdii)—870 (an average of 174 per year).
(B) Mesoplodont beaked whale (Mesoplodon spp.)—1,845 (an average of 369 per year).
(C) Cuvier's beaked whale (Ziphius cavirostris)—530 (an average of 106 per year).
(D) Dall's porpoise (Phocoenoidea dalli)—56,695 (an average of 11,339 per year).
(E) Harbor porpoise (Phocoena phocoena)—246,465 (an average of 49,293 per year).
(F) Killer whale (Orcinus orca)—1, 130 (an average of 226 per year).
(G) Kogia spp.—530 (an average of 106 per year).
(H) Northern right whale dolphin (Lissodelphis borealis)—10 (an average of 2,038 per year).
(I) Pacific white-sided dolphin (Lagenorhynchus obliquidens)—24,360 (an average of 4,872 per year).
(J) Risso's dolphin (Grampus griseus)—5,770 (an average of 1,154 per year).
(K) Short-beaked common dolphin (Delphinus delphis)—8,140 (an average of 1,628 per year).
(L) Sperm whale (Physeter macrocephalus)—390 (an average of 78 per year).
(M) Striped dolphin (Stenella coerulealba)—70 (an average of 14 per year).
(iii) Pinnipeds:
(A) California sea lion (Zalophus californianus)—10,365 (an average of 2,073 per year).
(B) Steller sea lion (Eumetopias jubatus)—2,520 (an average of 504 per year).
(C) Guadalupe fur seal (Arctocephalus townsendi)—15 (an average of 3 per year).
(D) Harbor seal (Phoca vitulina)—312,690 (an average of 62,538 per year).
(E) Northern elephant seal (Mirounga angustirostris)—6,625 (an average of 1,325 per year).
(F) Northern fur seal (Callorhinus ursinus)—9,285 (an average of 1,857 per year).
(4) Level A Harassment for all Testing Activities:
(i) Mysticetes:
(A) [Reserved]
(B) [Reserved]
(ii) Odontocetes:
(A) Kogia spp.—5 (an average of 1 per year).
(B) Dall' porpoise (Phocoenoidea dalli)—215 (an average of 43 per year).
(C) Harbor porpoise (Phocoena phocoena)—220 (an average of 44 per year).
(iii) Pinnipeds:
(A) Harbor seal (Phoca vitulina)—430 (an average of 86 per year).(B) Northern elephant seal (Mirounga angustirostris)—10 (an average of 2 per year).
(C) [Reserved]

§ 218.143 Prohibitions.

Notwithstanding takings contemplated in § 218.142 and authorized by an LOA issued under §§ 216.106 and 218.147 of this chapter, no person in connection with the activities described in § 218.140 may:
(a) Take any marine mammal not specified in § 218.142(c);
(b) Take any marine mammal specified in § 218.142(c) other than by incidental take as specified in § 218.142(c);
(c) Take a marine mammal specified in § 218.142(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or
(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or an LOA issued under §§ 216.106 and 218.147.

§ 218.144 Mitigation.

(a) When conducting training and testing activities, as identified in § 218.140, the mitigation measures

contained in the LOA issued under §§ 216.106 and 218.147 of this chapter must be implemented. These mitigation measures include, but are not limited to:

(1) *Lookouts*—The following are protective measures concerning the use of Lookouts.

(i) Lookouts positioned on surface ships will be dedicated solely to diligent observation of the air and surface of the water. Their observation objectives will include, but are not limited to, detecting the presence of biological resources and recreational or fishing boats, observing mitigation zones, and monitoring for vessel and personnel safety concerns.

(ii) Lookouts positioned ashore, in aircraft or on boats will, to the maximum extent practicable and consistent with aircraft and boat safety and training and testing requirements, comply with the observation objectives described in paragraph (a)(1)(i) of this section.

(iii) Lookout measures for non-impulsive sound:

(A) With the exception of vessels less than 65 ft (20 m) in length and the Littoral Combat Ship (and similar vessels which are minimally manned), ships using low-frequency or hull-mounted mid-frequency active sonar sources associated with anti-submarine warfare and mine warfare activities at sea will have two Lookouts at the forward position of the vessel. For the purposes of this rule, low-frequency active sonar does not include surface towed array surveillance system low-frequency active sonar.

(B) While using low-frequency or hull-mounted mid-frequency active sonar sources associated with anti-submarine warfare and mine warfare activities at sea, vessels less than 65 ft (20 m) in length and the Littoral Combat Ship (and similar vessels which are minimally manned) will have one Lookout at the forward position of the vessel due to space and manning restrictions.

(C) Ships conducting active sonar activities while moored or at anchor (including pierside or shore-based testing or maintenance) will maintain one Lookout.

(D) Small boats, range craft, minimally manned vessels, or aircraft conducting hull-mounted mid-frequency testing will employ one Lookout.

(E) Ships or aircraft conducting non-hull-mounted mid-frequency active sonar, such as helicopter dipping sonar systems, will maintain one Lookout.

(F) Surface ships or aircraft conducting high-frequency or non-hull-mounted mid-frequency active sonar activities associated with anti-submarine warfare and mine warfare activities at sea will have one Lookout.

(iv) Lookout measures for explosives and impulsive sound:

(A) Aircraft conducting improved extended echo ranging sonobuoy activities will have one Lookout.

(B) Aircraft conducting explosive sonobuoy activities using >0.5 to 2.5-lb net explosive weight (NEW) will have one Lookout.

(C) General mine countermeasure and neutralization activities involving positive control diver placed charges using >0.5 to 2.5 lb NEW will have a total of two Lookouts (one Lookout positioned in each of the two support vessels). All divers placing the charges on mines will support the Lookouts while performing their regular duties. The divers and Lookouts will report all marine mammal sightings to their dive support vessel.

(D) Surface vessels or aircraft conducting small- and medium-caliber gunnery exercises will have one Lookout. Towing vessels, if applicable, will also maintain one Lookout.

(E) Aircraft conducting missile exercises against a surface target will have one Lookout.

(F) Aircraft conducting explosive bombing exercises will have one Lookout and any surface vessels involved will have trained Lookouts.

(G) During explosive torpedo testing from aircraft one Lookout will be used and positioned in an aircraft. During explosive torpedo testing from a surface ship the Lookout procedures implemented for hull-mounted mid-frequency active sonar activities will be used.

(H) Ships conducting explosive and non-explosive large-caliber gunnery exercises will have one Lookout. This may be the same Lookout used for small, medium, and large-caliber gunnery exercises using a surface target when that activity is conducted from a ship against a surface target.

(v) Lookout measures for physical strike and disturbance:

(A) While underway, surface ships will have at least one Lookout.

(B) During activities using towed in-water devices towed from a manned platform, one Lookout will be used. During activities in which in-water devices are towed by unmanned platforms, a manned escort vessel will be included and one Lookout will be employed.

(C) Activities involving non-explosive practice munitions (*e.g.,* small-, medium-, and large-caliber gunnery exercises) using a surface target will have one Lookout.

(D) During non-explosive bombing exercises one Lookout will be positioned in an aircraft and trained Lookouts will be positioned in any surface vessels involved.

(2) *Mitigation zones*—The following are protective measures concerning the implementation of mitigation zones.

(i) Mitigation zones will be measured as the radius from a source and represent a distance to be monitored.

(ii) Visual detections of marine mammals (or sea turtles) within a mitigation zone will be communicated immediately to a watch station for information dissemination and appropriate action.

(iii) Mitigation zones for non-impulsive sound:

(A) The Navy shall ensure that hull-mounted mid-frequency active sonar transmission levels are limited to at least 6 dB below normal operating levels if any detected marine mammals (or sea turtles) are within 1,000 yd. (914 m) of the sonar dome (the bow).

(B) The Navy shall ensure that hull-mounted mid-frequency active sonar transmissions are limited to at least 10 dB below the equipment's normal operating level if any detected marine mammals (or sea turtles) are within 500 yd. (457 m) of the sonar dome.

(C) The Navy shall ensure that hull-mounted mid-frequency active sonar transmissions are ceased if any detected cetaceans (or sea turtles) are within 200 yd. (180 m) and pinnipeds are within 100 yd. (90 m) of the sonar dome. Transmissions will not resume until the marine mammal has been observed exiting the mitigation zone, is thought to have exited the mitigation zone based on its course and speed, has not been detected for 30 minutes, the vessel has transited more than 2,000 yd. beyond the location of the last detection, or the Lookout concludes that dolphins are deliberately closing in on the ship to ride the ship's bow wave (and there are no other marine mammal sightings within the mitigation zone). Active transmission may resume when dolphins are bow riding because they are out of the main transmission axis of the active sonar while in the shallow-wave area of the ship bow. The pinniped mitigation zone does not apply for pierside or shore-based testing in the vicinity of pinnipeds hauled out on man-made structures and vessels.

(D) The Navy shall ensure that low-frequency active sonar transmission levels are ceased if any detected cetaceans (or sea turtles) are within 200 yd. (180 m) and pinnipeds are within 100 yd. (90 m) of the source. Transmissions will not resume until the marine mammal has been observed

exiting the mitigation zone, is thought to have exited the mitigation zone based on its course and speed, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yd. beyond the location of the last detection. The pinniped mitigation zone does not apply for pierside testing in the vicinity of pinnipeds hauled out on man-made structures and vessels.

(E) The Navy shall ensure that high-frequency and non-hull-mounted mid-frequency active sonar transmission levels are ceased if any detected cetaceans are within 200 yd. (180 m) and pinnipeds are within 100 yd. (90 m) of the source. Transmissions will not resume until the marine mammal has been observed exiting the mitigation zone, is thought to have exited the mitigation zone based on its course and speed, the mitigation zone has been clear from any additional sightings for a period of 10 minutes for an aircraft-deployed source, the mitigation zone has been clear from any additional sightings for a period of 30 minutes for a vessel-deployed source, the vessel or aircraft has repositioned itself more than 400 yd. (370 m) away from the location of the last sighting, or the vessel concludes that dolphins are deliberately closing in to ride the vessel's bow wave (and there are no other marine mammal sightings within the mitigation zone). The pinniped mitigation zone does not apply for pierside or shore-based testing in the vicinity of pinnipeds hauled out on man-made structures and vessels.

(iv) Mitigation zones for explosive and impulsive sound:

(A) For activities using IEERs, explosive detonations will cease if a marine mammal, sea turtle, or concentrations of floating vegetation are sighted within a 600-yd. (550 m) mitigation zone. Detonations will recommence if the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, or the mitigation zone has been clear from any additional sightings for a period of 30 minutes.

(B) A mitigation zone with a radius of 350 yd. (320 m) shall be established for explosive signal underwater sonobuoys using >0.5 to 2.5 lb net explosive weight. Detonations will recommence if the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, or the mitigation zone has been clear from any additional sightings for a period of 10 minutes.

(C) A mitigation zone with a radius of 400 yd. (366 m) shall be established for mine countermeasures and neutralization activities using positive control firing devices. Explosive detonations will cease if a marine mammal is sighted in the water portion of the mitigation zone (*i.e.,* not on shore). Detonations will recommence if the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, or the mitigation zone has been clear from any additional sightings for a period of 30 minutes.

(D) A mitigation zone with a radius of 200 yd. (180 m) shall be established for small- and medium-caliber gunnery exercises with a surface target. Firing will cease if a marine mammal is sighted within the mitigation zone. Firing will recommence if the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, the mitigation zone has been clear from any additional sightings for a period of 10 minutes for a firing aircraft, the mitigation zone has been clear from any additional sightings for a period of 30 minutes for a firing ship, or the intended target location has been repositioned more than 400 yd. (370 m) away from the location of the last sighting.

(E) A mitigation zone with a radius of 600 yd. (550 m) shall be established for large-caliber gunnery exercises with a surface target. Firing will cease if a marine mammal is sighted within the mitigation zone. Firing will recommence if the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, or the mitigation zone has been clear from any additional sightings for a period of 30 minutes.

(F) The Navy is not proposing to use missiles with less than a 251 lb NEW warhead in the NWTT Study Area. However, should the need arise to conduct training activities using missiles in this category, a mitigation zone with a radius of 2,000 yd. (1.8 km) shall be established for missile exercises with up to 250 lb net explosive weight and a surface target. Firing will cease if a marine mammal is sighted within the mitigation zone. Firing will recommence if the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, or the mitigation zone has been clear from any additional sightings for a period of 10 minutes or 30 minutes (depending on aircraft type).

(G) A mitigation zone with a radius of 2,000 yd. (1.8 km) shall be established for missile exercises with 251 to 500 lb NEW using a surface target. Firing will cease if a marine mammal is sighted within the mitigation zone. Firing will recommence if the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, or the mitigation zone has been clear from any additional sightings for a period of 10 minutes or 30 minutes (depending on aircraft type).

(H) A mitigation zone with a radius of 2,500 yd. (2.3 km) around the intended impact location for explosive bombs shall be established for bombing exercises. Bombing will cease if a marine mammal is sighted within the mitigation zone. Bombing will recommence if the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, or the mitigation zone has been clear from any additional sightings for a period of 10 minutes.

(I) A mitigation zone with a radius of 2,100 yd. (1.9 km) shall be established for torpedo (explosive) testing. Firing will cease if a marine mammal, sea turtle, or concentrations of floating vegetation are sighted within the mitigation zone. Firing will recommence if the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, or the mitigation zone has been clear from any additional sightings for a period of 10 minutes or 30 minutes (depending on aircraft type).

(iii) Mitigation zones for vessels and in-water devices:

(A) A mitigation zone of 500 yd. (460 m) for observed whales and 200 yd (183 m) for all other marine mammals (except bow riding dolphins) shall be established for all vessel movement during training activities, providing it is safe to do so. During testing activities, all range craft (vessels and aircraft, including helicopters) shall not approach within 100 yd. (90 m) of marine mammals.

(B) A mitigation zone of 250 yd. (230 m) shall be established for all towed in-water devices, providing it is safe to do so.

(vi) Mitigation zones for non-explosive practice munitions:

(A) A mitigation zone of 200 yd. (180 m) shall be established for small, medium, and large caliber gunnery exercises using a surface target. Firing will cease if a marine mammal is sighted within the mitigation zone. Firing will recommence if the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and

speed, the mitigation zone has been clear from any additional sightings for a period of 10 minutes for a firing aircraft, the mitigation zone has been clear from any additional sightings for a period of 30 minutes for a firing ship, or the intended target location has been repositioned more than 400 yd. (370 m) away from the location of the last sighting.

(B) A mitigation zone of 1,000 yd. (920 m) shall be established for bombing exercises. Bombing will cease if a marine mammal is sighted within the mitigation zone. Bombing will recommence if the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed, or the mitigation zone has been clear from any additional sightings for a period of 10 minutes.

§ 218.145 Requirements for monitoring and reporting.

(a) The Navy is required to cooperate with the NMFS, and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals.

(b) General Notification of Injured or Dead Marine Mammals—Navy personnel shall ensure that NMFS is notified immediately (or as soon as clearance procedures allow) if an injured, stranded, or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing MFAS, HFAS, or underwater explosive detonations. The Navy will provide NMFS with 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, stranded, or dead marine mammal is found by the Navy that is not in the vicinity of, or during or shortly after, MFAS, HFAS, or underwater explosive detonations, the Navy will report the same information as listed above as soon as operationally feasible and clearance procedures allow.

(c) General Notification of Ship Strike—In the event of a ship strike by any Navy vessel, at any time or place, the Navy shall do the following:

(1) Immediately report to NMFS the species identification (if known), location (lat/long) of the animal (or the strike if the animal has disappeared), and whether the animal is alive or dead (or unknown)

(2) Report to NMFS as soon as operationally feasible the size and length of animal, an estimate of the injury status (ex., dead, injured but alive, injured and moving, unknown, etc.), vessel class/type and operational status.

(3) Report to NMFS the vessel length, speed, and heading as soon as feasible.

(4) Provide NMFS a photo or video, if equipment is available

(d) Event Communication Plan—The Navy shall develop a communication plan that will include all of the communication protocols (phone trees, etc.) and associated contact information required for NMFS and the Navy to carry out the necessary expeditious communication required in the event of a stranding or ship strike, including as described in the proposed notification measures above.

(e) The Navy must conduct all monitoring and/or research required under the Letter of Authorization including abiding by the NWTT Monitoring Plan (*http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm*).

(f) Annual NWTT Monitoring Plan Report—The Navy shall submit an annual report of the NWTT Monitoring Plan describing the implementation and results of the NWTT Monitoring Plan from the previous calendar year. Data collection methods will be standardized across range complexes and study areas to allow for comparison in different geographic locations. Although additional information will be gathered, the protected species observers collecting marine mammal data pursuant to the NWTT Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in § 218.145. The report shall be submitted either 90 days after the calendar year, or 90 days after the conclusion of the monitoring year to be determined by the Adaptive Management process.

The NWTT Monitoring Plan may be provided to NMFS within a larger report that includes the required Monitoring Plan reports from multiple range complexes and study areas (the multi-Range Complex Annual Monitoring Report). Such a report would describe progress of knowledge made with respect to monitoring plan study questions across all Navy ranges associated with the ICMP. Similar study questions shall be treated together so that progress on each topic shall be summarized across all Navy ranges. The report need not include analyses and content that does not provide direct assessment of cumulative progress on the monitoring plan study questions.

(g) Annual NWTT Exercise and Testing Reports—The Navy shall submit preliminary reports detailing the status of authorized sound sources within 21 days after the anniversary of the date of issuance of the LOA. The Navy shall submit detailed reports 3 months after the anniversary of the date of issuance of the LOA. The detailed annual reports shall describe the level of training and testing conducted during the reporting period, and a summary of sound sources used (total annual hours or quantity [per the LOA] of each bin of sonar or other non-impulsive source; total annual number of each type of explosive exercises; total annual expended/detonated rounds [missiles, bombs, etc.] for each explosive bin; and improved Extended Echo-Ranging System (IEER)/sonobuoy summary, including total number of IEER events conducted in the Study Area, total expended/detonated rounds (buoys), and total number of self-scuttled IEER rounds. The analysis in the detailed reports will be based on the accumulation of data from the current year's report and data collected from previous reports.

(h) 5-year Close-out Exercise and Testing Report—This report will be included as part of the 2020 annual exercise or testing report. This report will provide the annual totals for each sound source bin with a comparison to the annual allowance and the 5-year total for each sound source bin with a comparison to the 5-year allowance. Additionally, if there were any changes to the sound source allowance, this report will include a discussion of why the change was made and include the analysis to support how the change did or did not result in a change in the SEIS and final rule determinations. The report will be submitted 3 months after the expiration of the rule. NMFS will submit comments on the draft close-out report, if any, within 3 months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or 3 months after the submittal of the draft if NMFS does not provide comments.

§ 218.146 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to the regulations in this subpart, the U.S. citizen (as defined by § 216.106) conducting the activity identified in § 218.140(c) (the U.S. Navy) must apply for and obtain either an initial LOA in accordance with § 218.147 or a renewal under § 218.148.

§ 218.147 Letters of Authorization.

(a) An LOA, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart.

(b) Each LOA will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (*i.e.,* mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the LOA will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 218.148 Renewals and Modifications of Letters of Authorization and Adaptive Management.

(a) A Letter of Authorization issued under §§ 216.106 and 218.147 of this chapter for the activity identified in § 218.140(c) will be renewed or modified upon request of the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision of this chapter), and;

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision of this chapter) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis illustrating the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under § 216.106 and § 218.147 of this chapter for the activity identified in § 218.144 of this chapter may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with the Navy regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, and reporting measures in an LOA:

(A) Results from Navy's monitoring from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies; or

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS would publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 218.142(c), an LOA may be modified without prior notification and an opportunity for public comment. Notification would be published in the **Federal Register** within 30 days of the action.

[FR Doc. 2015–13038 Filed 6–2–15; 8:45 am]

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FEDERAL REGISTER

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No. 106 June 3, 2015

Part V

The President

Federal Register
Vol. 80, No. 106
Wednesday, June 3, 2015

Presidential Documents

Title 3—

The President

Proclamation 9288 of May 29, 2015

African-American Music Appreciation Month, 2015

By the President of the United States of America

A Proclamation

For centuries, African-American musicians have shaped our Nation and helped tell our story. By melding enduring truths with new sounds, they have pioneered entire genres and contributed to the foundation of our musical landscape—capturing an essential part of who we are as Americans. During African-American Music Appreciation Month, we recognize the artists who have enriched our lives and the ways their beats and harmonies have advanced our unending journey toward a more perfect Union.

With all the energy and diversity of our great Nation, the stirring sounds of the American experience have expanded our minds and lifted our souls, helping us better understand ourselves and one another. When the tides of injustice and hardship have seemed too great, melodies of hope have given us strength, and in moments of joy, powerful songs speak to the audacity that fuels our dreams. Through momentous change—above the jangling discord of a people determined to write their own destiny and the consonance of great progress—our music has remained a constant source of inspiration, bringing us together and empowering us to reach for what we know is possible.

By honoring the timeless sounds that define our past and help transform our future, we celebrate not only the musicians who move us, but also the spirit of resilience and renewal they embody. This month, let us remember the essential role music plays in breaking the barriers of our time and guiding us toward a more inclusive and more equal tomorrow.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2015 as African-American Music Appreciation Month. I call upon public officials, educators, and all the people of the United States to observe this month with appropriate activities and programs that raise awareness and foster appreciation of music that is composed, arranged, or performed by African Americans.

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

[FR Doc. 2015–13745
Filed 6–2–15; 11:15 am]
Billing code 3295–F5

Presidential Documents

Proclamation 9289 of May 29, 2015

Great Outdoors Month, 2015

By the President of the United States of America

A Proclamation

America's vast and varied landscapes have always been central to the character of our Nation and the story of our people. Their rugged beauty reflects our national history and heritage—as pioneers who forged new paths and explorers who dared to venture into the unknown—and continues to inspire new generations of outdoor enthusiasts. Our mountains and rivers are part of who we are, and they are the birthright of all our people. Today, one-third of all our Nation's land is publicly owned and set aside for the use and enjoyment of every American. These are the places that make our country great, and as heirs to this extraordinary legacy of conservation, we have an obligation to make sure our children and grandchildren can enjoy the everlasting bounty of the great outdoors.

Our Nation's public lands and waters fuel our economy and support our industries. Home to living laboratories and wondrous playgrounds, they spark boundless curiosity and innovation, and in the desolate wilderness, adventurers rediscover the spirit of independence that unites all Americans. As President, I am committed to ensuring every child in America—regardless of who they are or where they live—has the opportunity to explore these treasured spaces. That is why earlier this year I launched the Every Kid in a Park initiative, which will provide all fourth graders and their families with free admission to our National Parks and other Federal lands and waters for a full year. And I invite all Americans to ''Find Your Park'' and celebrate some of the most beautiful landscapes and waterscapes in the world.

As a Nation, we must work to safeguard nature's splendor for generations to come. Climate change threatens our lands and waters, as well as the health and well-being of future generations. That is why my Administration has taken commonsense actions to combat climate change, ensure the resilience of our natural resources, and protect our children. I am proud to have protected more than 260 million additional acres of public lands and waters—more than any other President—which includes the establishment or expansion of 16 National Monuments through my Executive authority. For more than a half-century, the Land and Water Conservation Fund has helped to protect these iconic places and make it easier for families to spend time outside. The Fund has advanced over 40,000 local projects by making critical investments, including in battlefields, National Parks, baseball fields, and community green spaces, and I continue to call for the full and permanent funding of this vital tool of environmental stewardship.

During Great Outdoors Month, Governors, communities, business leaders, and organizations will host thousands of events across the country to celebrate our unparalleled outdoors. I encourage Americans to participate in these activities and to take the time to experience the natural grandeur of our Nation. As we enjoy these magnificent places, let us rededicate ourselves to doing our part to preserve them for all our future explorers, adventurers, and environmental stewards.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2015 as Great Outdoors Month. I urge all Americans to explore the great outdoors and to uphold our Nation's legacy of conserving our lands and waters.

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

[FR Doc. 2015–13746
Filed 6–2–15; 11:15 am]
Billing code 3295–F5

Presidential Documents

Proclamation 9290 of May 29, 2015

Lesbian, Gay, Bisexual, and Transgender Pride Month, 2015

By the President of the United States of America

A Proclamation

From the moment our Nation first came together to declare the fundamental truth that all men are created equal, courageous and dedicated patriots have fought to refine our founding promise and broaden democracy's reach. Over the course of more than two centuries of striving and sacrifice, our country has expanded civil rights and enshrined equal protections into our Constitution. Through struggle and setback, we see a common trajectory toward a more free and just society. But we are also reminded that we are not truly equal until every person is afforded the same rights and opportunities—that when one of us experiences discrimination, it affects all of us—and that our journey is not complete until our lesbian, gay, bisexual, and transgender (LGBT) brothers and sisters are treated like anyone else under the law.

Across our Nation, tremendous progress has been won by determined individuals who stood up, spoke out, and shared their stories. Earlier this year, because of my landmark Executive Order on LGBT workplace discrimination, protections for Federal contractors went into effect, guarding against discrimination based on sexual orientation and gender identity. The Federal Government is now leading by example, ensuring that our employees and contractors are judged by the quality of their work, not by who they love. And I will keep calling on the Congress to pass legislation so that all Americans are covered by these protections, no matter where they work.

In communities throughout the country, barriers that limit the potential of LGBT Americans have been torn down, but too many individuals continue to encounter discrimination and unfair treatment. My Administration supports efforts to ban the use of conversion therapy for minors because the overwhelming scientific evidence demonstrates that it can cause substantial harm. We understand the unique challenges faced by sexual and gender minorities—especially transgender and gender non-conforming individuals—and are taking steps to address them. And we recognize that families come in many shapes and sizes. Whether biological, foster, or adoptive, family acceptance is an important protective factor against suicide and harm for LGBTQ youth, and mental health experts have created resources to support family communication and involvement.

For countless young people, it is not enough to simply say it gets better; we must take action too. We continue to address bullying and harassment in our classrooms, ensuring every student has a nurturing environment in which to learn and grow. Across the Federal Government, we are working every day to unlock the opportunities all LGBT individuals deserve and the resources and care they need. Too many LGBTQ youth face homelessness and too many older individuals struggle to find welcoming and affordable housing; that is why my Administration is striving to ensure they have equal access to safe and supportive housing throughout life. We are updating our National HIV/AIDS Strategy to better address the disproportionate burden HIV has on communities of gay and bisexual men and transgender women. We continue to extend family and spousal benefits to legally married same-sex couples. And because we know LGBT rights are human rights, we

are championing protections and support for LGBT persons around the world.

All people deserve to live with dignity and respect, free from fear and violence, and protected against discrimination, regardless of their gender identity or sexual orientation. During Lesbian, Gay, Bisexual, and Transgender Pride Month, we celebrate the proud legacy LGBT individuals have woven into the fabric of our Nation, we honor those who have fought to perfect our Union, and we continue our work to build a society where every child grows up knowing that their country supports them, is proud of them, and has a place for them exactly as they are.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2015 as Lesbian, Gay, Bisexual, and Transgender Pride Month. I call upon the people of the United States to eliminate prejudice everywhere it exists, and to celebrate the great diversity of the American people.

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

[FR Doc. 2015–13747
Filed 6–2–15; 11:15 am]
Billing code 3295–F5

Presidential Documents

Proclamation 9291 of May 29, 2015

National Caribbean-American Heritage Month, 2015

By the President of the United States of America

A Proclamation

For centuries, Americans have been united with our Caribbean neighbors not just by friendship and economic cooperation, but also by our common values and ties of kin. From a region of extraordinary beauty, generations of immigrants have brought their enormous spirit, unique talents, and vibrant culture to the United States. Their contributions have enriched our Nation and strengthened the deep bonds between our peoples. This month, we celebrate the Caribbean Americans whose legacies are woven into the fabric of our Nation, and we reaffirm our belief that throughout the region, we all share a stake in one another's success.

As partners, our nations have reached for progress together, and in our diverse cultures and complex histories, we see a common trajectory toward a more free, equal, and prosperous community. Throughout the Caribbean, courageous peoples have thrown off the yoke of colonial rule, seizing the right to chart their own destinies, and they have overcome the stains of slavery and segregation to widen the circle of opportunity for all. Here in America, Caribbean Americans have followed in the footsteps of their ancestors, joining their voices with the chorus of patriots and carrying forward the baton of justice—from the battlefield and the outfield, in places like Selma and Seneca Falls, and through powerful song, poetry, and prose.

Just as our nations' pasts are shared, our futures are inextricably linked. As millions of Caribbean Americans continue to innovate and thrive in the United States, my Administration is committed to lifting up hardworking individuals throughout the Caribbean and partnering with governments to build the foundation for the next century of progress and prosperity. We are investing in young business leaders and civil society activists, working to expand what is possible for the next generation of Caribbean leaders, and supporting entrepreneurship, student exchanges, and more effective job training. With new partnerships, we are helping to move the region toward cleaner, more affordable energy. And as the United States begins to normalize our relations with Cuba, we have the potential to empower a nation and end a legacy of mistrust in our hemisphere.

America is and always has been a Nation of immigrants, and today—as pillars of family and leaders in their communities—Caribbean Americans strengthen every aspect of our society. We must ensure our Nation remains a magnet for the best and the brightest around the world. Because of my 2012 DACA policy, thousands of DREAMers from the Caribbean have been able to live up to their potential, and last year, I announced my intent to take action that would allow more high-skilled immigrants, graduates, entrepreneurs, and families to contribute to our economy, including by expanding the existing DACA policy and creating a new policy to provide temporary relief to certain undocumented parents of American citizens and lawful permanent residents. And I continue to call on the Congress to finish the job by passing comprehensive immigration reform.

Caribbean Americans have shaped the course of our country since the earliest chapters of our history, and they continue to drive our Nation to realize the promise of our founding. During National Caribbean-American Heritage

Month, we honor the courage and perseverance of the Caribbean-American community, and we rededicate ourselves to building opportunity and protecting human rights for all our citizens.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2015 as National Caribbean-American Heritage Month. I encourage all Americans to celebrate the history and culture of Caribbean Americans with appropriate ceremonies and activities.

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

[FR Doc. 2015–13748
Filed 6–2–15; 11:15 am]
Billing code 3295–F5

Presidential Documents

Proclamation 9292 of May 29, 2015

National Oceans Month, 2015

By the President of the United States of America

A Proclamation

This summer, millions of Americans will take in the beauty and natural splendor of our oceans, coasts, and Great Lakes. As destinations for recreation and tourism, these bodies of water rejuvenate our spirit and cultivate a love of our great outdoors. And no matter where you live or who you are, a healthy and thriving ocean is essential to all people all year. Our marine environments contribute to our food supply, bolster our economy, strengthen our national defense, and support important scientific research and innovation. They are some of humanity's greatest treasures and central to who we are as a people. During National Oceans Month, we celebrate these life-sustaining ecosystems, and we reaffirm our vital role as stewards of our planet.

Ensuring the long-term health, resilience, and productivity of our marine environments requires us to act to protect and preserve them in the face of a range of threats. Climate change is causing sea levels and ocean temperatures to rise, and these effects can harm coral reefs and force certain species to migrate. Carbon pollution is being absorbed by our oceans, causing them to acidify and changing entire ecosystems. And illegal fishing continues to threaten our global and economic security, as well as the sustainability of our world's fisheries.

My Administration is committed to doing all we can to combat these threats and leave our children and grandchildren clean and vibrant oceans. As part of my National Ocean Policy, we are creating a coordinated, science-based approach to managing our coasts and oceans, and we are focused on implementing specific, on-the-ground actions to improve our ocean economy and bolster ocean health. We continue to make meaningful progress toward ending overfishing, and the Federal Government is partnering with State, local, and tribal leaders to promote marine conservation. As President, I continue to use my authority to preserve our most precious ecosystems, including last year when I expanded the largest marine reserve in the world—ensuring more of our pristine tropical marine environments are off limits to commercial resource extraction.

We are heirs to a vast expanse of oceans and waterways that have sustained our ancestors for centuries. As caretakers of our planet, we share an obligation to protect these magnificent ecosystems for generations to come. This month, let us work to do our part and recommit to leading the way toward a safer, cleaner, more stable world.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2015 as National Oceans Month. I call upon Americans to take action to protect, conserve, and restore our oceans, coasts, and Great Lakes.

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

[FR Doc. 2015–13752
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H.R. 1690/P.L. 114–20
To designate the United States courthouse located at 700 Grant Street in Pittsburgh, Pennsylvania, as the ''Joseph F. Weis Jr. United States Courthouse''. (May 29, 2015; 129 Stat. 217)

H.R. 2353/P.L. 114–21
Highway and Transportation Funding Act of 2015 (May 29, 2015; 129 Stat. 218)

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Justice for Victims of Trafficking Act of 2015 (May 29, 2015; 129 Stat. 227)

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